

Project

Economic Crime and Money Laundering

Subject: The Georgian Energy Sector: Systemic Problems and Evidence of Economic Crime

Author: Paliko Kublashvili

თრანსლაცედ ბჟ თაძრიკო შჰანიდზე

Tbilisi

17 March – 17 June 2003

Content

	Page
Introduction	3
1. Status of the Wholesale Electricity Market in Georgia	
1.1 First Issue – Organizational and Legal Structure of the Electricity Market	5
1.2. Second Issue – Legal Status of the Electricity Market	8
1.3 Third Issue – Guaranties of Independence of the Electricity Market	11
2. The issue of liabilities to “Armenergo”	13
3. Import of Electricity	15
4. Issue of the “Ashotsk-Ninotsminda” 110 Kwatt Electricity Transmission Line	18
Conclusion	26
References	26

Introduction

This research paper aims to explore the situation in the energy sector of Georgia. This issue has been studied and analyzed by numerous governmental and international institutions in recent years. Georgian and foreign experts unanimously agree that the situation in this sphere is disastrous. A number of problems manifested themselves in the energy sector during the last decade. In particular:

- Problems of debt accumulation and the restructuring processes;
- Purposeless spending of foreign credits; and
- Problems stemming from meaningless and endless reforms.

It is impossible to thoroughly consider all of the problems that have accumulated in the field in a single study. It is even more difficult to outline a general concept of measures that are to be undertaken in order to improve the situation. Therefore, the present study will be focused on some of the specific interrelated problems that shape the situation in the energy sector. The paper also features certain facts of delinquency that might be considered typical for the sector. We believe that the following paper will complement the analytical materials of other experts. Taken together with other studies, this paper will make it possible to identify the main causes of problems in the sector and to facilitate the development of specific measures to resolve them.

It should also be mentioned that the paper is focused on specific issues due to the fact that it has been prepared based on various legislative and sub-legislative acts, and correspondence, rather than on general theoretical literature. This is reflected in the references provided at the end of the paper.

1. ოპი Status of the Wholesale Electricity Market in the Energy Sector of Georgia

The Georgian law “On Electric Energy and Natural Gas” was used as the legal basis for the creation of the Wholesale Electricity Market of Georgia. In accordance with the law, along with increased competitiveness, the Wholesale Electricity Market should ensure financial transparency and equal rights for juridical entities operating in the field. The Wholesale Electricity Market of Georgia has been operating since July 1, 1999 in compliance with Order 379 of the President of Georgia, dated June 13, 1999, and Resolution 22 of the National Energy Regulatory Commission of Georgia, dated May 27, 1999.

In accordance with the law, the Electricity Wholesale Market is a union/association of licensees and direct users of the electric energy sector and it is an independent non-entrepreneurial juridical entity. In accordance with paragraph 30 of the Civil Code, entrepreneurial activities of a non-entrepreneurial juridical entity could only be adjuvant and could serve the goals of the juridical entity. The Electricity Market is financed by membership fees.

The Accounts Director of the Wholesale Market, acting independently from all licensees, registers the amount of financial resources which the Market members owe each other as a result of commercial operations performed on the Market. The Director of Market Funds issues invoices on these and distributes the money received from the buyers to the transmission and dispatching licensees.

From the present perspective, it could be assumed that the Electricity Market is unable to fulfill its main function: the even distribution of money. This is evidenced by statistical data (see Attachment #1) and the conclusions of the Chamber of Control of Georgia. [8]

The operation of the Electricity Market has been heavily criticized in the recent years.

Performance of the Wholesale Market was evaluated as unsatisfactory by almost all commissions studying the situation in the energy sector. The same evaluation was given by the relevant

Parliamentary Commission, which investigated the operations of the Electricity Market. The evaluation is cited below:

“Since the creation of the Wholesale Market, the registration of utilized electric energy and the decreased collection rates have been especially alarming.

The Wholesale Market does not possess mechanisms of selling electric energy under retail market conditions; this results in degradation of the electric energy structure. The Wholesale Market was unable to collect money and to distribute the collected amount evenly. Due to these reasons, just in 2001, the members of the electric energy sector failed to receive GEL 278.3 million from the Wholesale Market. Below is a break down of the aforementioned number:

- Hydroelectric power stations – GEL 77.6 million
- Thermoelectric power stations – GEL 72 million
- JSC “Elektrogadacema” - GEL 97 million
- “Dispecherizacia 2000” Ltd - GEL 12.6 million
- JSC “Sakrusenergo” - GEL 23.5 million
- JSC “Pontoeli” - GEL 800,000

Failure to receive due amounts deteriorates the financial situation in the electric energy sector and results in unpaid salaries to its employees. This in turn causes their reasonable dissatisfaction and worsens already disastrous social conditions.” [3]

We believe that the issues related to the operation of the Wholesale Market are central in a wide range of problems existing in the energy sector; therefore, we have to focus on several important issues related to this institution.

1.1 First Issue - Organizational and Legal Structure of the Electricity Market

It has already been mentioned that in accordance with the law, the Electricity Market was established as a union/association – a non-entrepreneurial juridical entity. In accordance with the Civil Code, a union has to be a non-profit juridical entity. In accordance with the legislation, entrepreneurial activities of a juridical entity of the mentioned organizational and legal status could only be of an adjuvant character.

Lawmakers do not specify what the term “adjuvant character” means. Therefore, to identify whether the choice of the organizational and legal structure was appropriate, it is

necessary to analyze the nature of the operation itself. In actuality, the Market purchases electricity from electricity generation units, issues appropriate invoices, and sells it to distribution units. In other words, the Wholesale Market is involved in the process of electric energy operations as one of the intermediaries. The same conclusion was made by the Parliamentary Commission:

“If as a result of commercial operations the members of the Electricity Wholesale Market are still indebted to each other, questions arise: Why does it issue invoices to clients? Why does it accumulate the total amount of money paid by the clients at a special transfer bank account? Why is money transferred from this account to the sellers/providers of the Wholesale Market, who also issue invoices to the Wholesale Market in return for electric energy and services provided?” [3]

The representatives of the Wholesale Market deny that the liabilities of the Market are incurred through energy trade operations. They argue that since the money is transferred to an account, it is that account that should incur liabilities, rather than the Electricity Market.

These arguments have no legal merit. It is obvious to anybody with an elementary understanding of legal issues that liabilities can not be attributed to any type of an account. Liabilities can only be assumed by juridical or physical entities. Accordingly, the members of the Market, i.e. the entities participating in electric energy generation and distribution, had no liabilities to each other, but the Wholesale Market is indebted to those organizations which sell electricity and provide other services.

From the abovementioned facts we conclude that it is necessary to re-examine the issue of the organizational and legal status of the Wholesale Electricity Market, as well as the issue of generation and distribution of electric energy through such mechanisms.

The opponents of the aforementioned idea often argue that for the Wholesale Market, the legal form of a union is necessary in order to protect it economically. However, the violation of

legislative requirements and principles cannot be justified by arguments of strategic inevitability or political and economic expediency.

In February 2001, the Parliament of Georgia adopted legislation “On Bankruptcy Proceedings” [5] and “On Executive Proceedings.” [4] The law stated that enterprises, in which “the state owns at least 50 percent of stock or capital,” could not be subject to forced executive measures [4] and bankruptcy proceedings could not be initiated against them. [5]

It is disputable whether these amendments are constitutional but we are only commenting on the facts. By law (even though the same law ignores the principles of competitiveness) the enterprises in which the state is a shareholder are still protected from forced executive measures and bankruptcy. While the Electricity Market is a union, it is not an enterprise and thus does not fall under the mentioned guarantees.

In the recent period the Wholesale Electricity Market has accumulated massive debts to different juridical entities. Therefore, according to the legislation currently in force, any creditor has a full right to use bankruptcy in order to request the repayment of debts. This step would make the already disastrous situation in the energy sector absolutely uncontrollable.

In summary, we can conclude that in its current form, the Electricity Market is unprotected from creditors and thus poses a threat to the entire energy sector of Georgia.

1.2. Second Issue – Legal Status of the Electricity Market

The legal status of the Electricity Market is a disputable issue as well. Today it is not clear whether the Georgian Electric Energy Wholesale Market is an administrative body. Even the representatives of the Market do not discuss the juridical characteristics of its operations. Consequently, in order to comprehend the issue of its organizational and legal form, we have to

prove that the Electricity Market is an administrative body, and in doing so we need to address additional matters.

In accordance with the General Administrative Code of Georgia, article 2, part 1, subparagraph “a”:

“An administrative body is any state or local governmental body or institution, as well as any physical or legal entity, which exercises public legal authority on the basis of legislation.”

Since lawmakers used the term “as well as any other entity” in this definition, according to the legislation a juridical entity of the public, as well as a juridical entity of the private law could be considered an administrative body, provided it exercises public juridical authority on a legal basis. [1]

Therefore, despite the fact that the Electricity Market exists in the organizational and legal form of a union, (i.e. it is a juridical entity of private law) it could still be considered an administrative body.” [2].

To verify the fact that Georgian Wholesale Electricity Market is an administrative body the rule of its formation and its authority should be analyzed, in order to prove that the Market exercises public authority based on legislation.

In accordance with the Georgian Law “On Electric Energy and Natural Gas,” article 2, subparagraph “zh,” the Electricity Market is a juridical entity of private law established for the purposes of wholesale commercial operations management and gradual development of competition in the electric energy sector.

The laws on the “Market Rules” and the “Technical Standards of the Electricity Market” define the functions and the authority of the Electricity Market.

In accordance with the aforementioned acts:

- Only one Electricity Market is allowed to operate in Georgia (Law, article 22, item 3);

- Membership of the Electricity Market is mandatory for all licensees and direct consumers. (Law, article 22, item 6)
- Along with dispatching licensees, the Electricity Market approves electric energy balances and modifies them when necessary.
- The licensees are obliged to provide truthful information to the Electricity Market to ensure an adequate performance of its duties.
- The Electricity Market issues instructions, which are mandatory for dispatching licensees (“Market Rules,” article 9).
- The licensees and the members of the Electricity Market are required to coordinate direct contracts with the Electricity Market in advance and to provide information about these contracts in line with existing regulations (Law, article 22, item 4).
- The Director General of the Electricity Market issues individual legal acts within his/her competencies and oversees their execution. (“Market Rules,” article 7, item 2, sub-item “m”)

Interestingly, persons without administrative authority could not be granted the competence to issue individual legal acts. The definition of a legal act is provided in the Georgian Law on Standard Acts, article 2, where it is obvious that these acts could only be issued by relevant bodies and officials with special authorization for their issuance. To put it more simply, an entity/official authorized for issuance of individual legal acts is an administrative body.

It is apparent from the aforementioned facts that the Electricity Market has the public legal authority to issue mandatory instructions and acts. Since the law requires licensees and direct customers to be members of the Market, it would be inappropriate to claim that the relationships

between the Market and the licensees or direct customers are ruled by private law. Relationships ruled by private law are based on the principles of voluntary participation and equality of sides.[2] But, if legal relationships are regulated by law, and if one side has a legal right to issue mandatory instructions, these relationships should be considered to be ruled by public law. [1] Thus, the Electricity Market exercises authority regulated by public law, in line with the existing legislation. Consequently, it is an administrative body.

Apart from the abovementioned facts, in accordance with “Market Rules,” article 6, item 1, the Executive Council and the Director General of the Wholesale Market are accountable to the Georgian National Energy Regulatory Commission (GNERC).

The staff list and annual budget of the Electricity Market is approved by the GNERC (article 6, item 10); In accordance with paragraph 6, item 11, the Director General of the Wholesale Market is appointed with the approval of GNERC. In accordance with item 7.1 of the same rules, the Director General of the Electricity Market is accountable to the Georgian National Energy Regulatory Commission.

One interesting legal aspect that proves the Electricity Market to be an administrative body is the rule for suing its decisions. In accordance with “Market Rules,” article 6, item 8, any member of the Market has the right to sue a decision of the Electricity Market’s Executive Council in GNERC.

Such accountability and the ability to sue a decision in an administrative institution is an exceptional characteristic of administrative legislation and it could be related to the activities of administrative bodies.[2]; This further proves that the Electricity Market is an administrative body.

Thus, wrapping up the discussion of the organizational and legal form and status of the Electricity Market, one can conclude that based upon the particularities of its operations the Electricity Market should have been established as a juridical entity of public law.

1.3 Third Issue - Guarantee of Independence for the Electricity Market

The discussion of the problems of the Electricity Market should include the issue of its independence. Today, the following problems are often discussed at the legislative and executive levels: the Electricity Wholesale Market fails to fulfill its functions properly; the goals and objectives of the Market Rules have not been achieved; electric power generation, transmission, dispatching, distribution, import, export and efficiency of utilization is decreasing consistently, gradual competition is not developing, conditions for investment in the sector are not favorable, and the relationships between the licensees have not become reliable, fair or stable.

Despite all this, it should be noted that the problems of the Electricity Market often stem from the activities of certain institutions and officials; for example, the failure of the Ministry of Fuel and Energy to develop a comprehensive policy and its frequent interference with the activities of the Wholesale Market.

There are a number of legal acts directly requiring the Wholesale Market to perform certain financial operations. The Parliamentary Commission gives a specific example of such a case: Decree 1213 of the President of Georgia, “On Reimbursement of the Cost of Electric Energy Received from Energy Systems of Neighboring Countries and on ensuring their Parallel Operations,” dated November 14, 2000. [6] We will use this example to prove that the mentioned cases often violated the law.

One can conclude that the efficient operation of the Electric Energy Wholesale Market is crucial for the stability of the energy sector of Georgia. For the time being the Wholesale Market has failed its legally defined function of collecting the costs for the utilized electric energy and equally and fairly distributing finances among the members of the market. Therefore, the existence of the Electricity Market in its current organizational and legal form is unreasonable. It is necessary to urgently re-examine the juridical basis along with the purposefulness of the organizational and legal form of this institution.

2. Issue of the Liabilities to “Armenergo”

Analysis of the materials collected on the status and operations of the Electricity Wholesale Market has revealed one more case of economic crime that can be considered a typical violation of the law. It is the case of the “repayment” of debts to the Armenian company “Armenergo.”

In 1998-1999 Georgia was experiencing a shortage of internal energy resources and was importing electric energy mainly from Armenia and Russia. For this period, the debts to the Armenian company “Armenergo” accumulated to approximately GEL 7 million.

Later, in the fall of 2000, representatives of the Russian company “Energomashkorporatsia” appeared in Georgia and presented a copy of an agreement on debt transfer. The agreement stated that “Armenergo” had passed the liabilities of the Georgian company, “Sakenergo 2000,” to “Energomashkorporatsia.” In accordance with this agreement, a reconciliation statement was drawn up between “Sakenergo 2000” and “Energomashkorporacia” on October 5, 2000. [10]

Item 3.4 of this document stated that for the period of August 1998 to March 1999 the debt accumulated for the electricity imported from Armenia had amounted to USD 4,394,068. On

the basis of this statement the amount of interest charged to the principal debt was calculated in accordance with agreement 999/31 “On Supply of Electric Energy,” dated February 15, 1999. The sanctions amounted to USD 2,343,503, so the total debt to “Armenergo” came to USD 6,737,571.

After the final calculation of the debt, the Ministry of Fuel and Energy of Georgia started to look for solutions. They drafted the order of the President of Georgia 1213, “On Reimbursing Costs of Electric Energy Received from Energy Systems of Neighboring Countries and on Ensuring Simultaneous Operations,” dated November 14, 2000. [6] In accordance with item 2 of the Order, a Georgian Rail Road Company, “Sakartvelos Rkinigza Ltd,” was allowed:

“...to reimburse the costs of the electricity, supplied by the Armenian energy system, through July 1, 1999 through barter operations of the Electric Energy Wholesale Market.” [6]

We have to emphasize that the debts accumulated prior to July 1999 are registered in “Sakenergo 2000” Ltd, the legal successor of “Sakenergo,” which is responsible for paying these amounts. The Wholesale Market is not related to the company in any way.

Later “Energomashcorporatsia” requested the payment of the debt with increased pressure. The representatives of the corporation even brought a suit to Tbilisi Chamber of Arbitration on November 29, 2001, [11] but the case was not considered by the Chamber of Arbitration since the Georgian side had paid the debt without delay. The Electric Energy Wholesale Market transferred GEL 7,000,000, almost half the amount of the total owed to the account of “Energomashcorporatsia,” in December of 2000. Later the debt was paid fully with the resources of “Sakartvelos Rkinigza” Ltd. [11]

After settling the debt, the issue of indebtedness to “Armenergo” should have been closed, but additional information proved that economic crime had had taken place.

In December 2002, “Sakenergo 2000” sent “Armenergo” a letter requesting to verify that its debts to “Armenergo” were settled. Representatives of “Armenergo” responded that they had never even sold their debt to “Energomashcorporatsia,” thus the debt was never officially paid in any form, neither by the Wholesale Market nor by “Energomashkorporacia.”

So the Georgian Electric Energy Wholesale Market has paid USD 7 million to a company that was in no way related to the import of electric energy to Georgia. Meanwhile the amount that was actually owed to “Armenergo” is still not paid.

This fact is not openly discussed in the Ministry of Fuel and Energy or in the Electricity Wholesale Market, though specific materials, related to the case, have been obtained. In private conversations representatives of both institutions talked about the conflict of interest of high officials. However, without a proper investigation it would be impossible to accuse any of these officials of criminal activity.

Even from a simple analysis of the mentioned scenario it is clear that these activities were illegal and it is likely that representatives on both sides participated in them. All of this confirms that the Wholesale Market is unable to control the situation in the electric energy market, and to accurately register current processes in order to prevent economic crimes. It is possible to continue the investigation of this issue, but the relevant institutions should be involved to ensure efficiency.

3. Import of Electric Energy

One more issue often connected to economic crime and money laundering in the energy sector is the import of electric energy. Numerous conclusions and evaluations have been made on the subject of electricity import.

The main supervisory institution of the country, the Chamber of Control, has been critical in its evaluation of the issue time and again.

“Export and import of electric energy and registration of transit has relatively improved in 2000-2001, but the situation is still unsatisfactory due to the fact that registration of export and import of electric energy is performed separately by “Electrogadatsema,” “Sakrusenergo,” “Electric Energy Wholesale Market of Georgia” and “AES Telasi”. [8]

Despite this conclusion one may conclude that registration is not the main problem facing import.

“Usually under the conditions of energy shortage the country has to import electricity. Covering costs of import requires mobilization of resources not only from the energy sector, but also the use of transfers allocated for the energy sector from the budget. This financial policy undermines the process of electricity production inside the country. The energy system of the country faces the danger of remaining without its own sources of energy.

It seems that high placed officials of the energy sector inspired with the import of energy resources have no time to think about their main duty: balancing the fuel and energy sector with local resources.” [8]

Currently the largest amount of financial resources collected from the consumers of electricity, throughout the country, is not allocated to generation, transmission and dispatching units. These resources are used to cover the costs of electricity imported for the period of winter.

In order to discover the source that maintains such a situation year to year, it is necessary to understand the mode of electric energy import to Georgia.

Before 2000, electric energy was purchased on the basis of an agreement between “RAO EES Russia” and Joint Stock Company “Sakrusenergo,” at the rate of 1.8 cents per Kilowatt of electric energy. But the situation has changed and since 2000 electric energy is purchased from Russia through an intermediary company, “Wingfield International Limited.” The difference is in the purchasing price, which is 2.3 to 2.4 cents per Kilowatt. [12]

The intermediary company, “Wingfield International Limited,” is registered in an offshore zone, the city of Tortolla, Virgin Islands. There is much speculation as to the identity of the founder of the company. Even the Ministry of Fuel and Energy could not provide this information, since it does not possess it. According to one version, a powerful group of Georgian

politicians is behind “Wingfield.” Others claim that powerful Russian groups founded the company. Joint operations of Georgian and Russian groups are also a possibility. According to another version the Minister of Energy personally lobbies for the intermediary company, but this version, like the other two, requires confirmation. (For data on “Electric Energy Imported by the Company “Wingfield,” see Attachment #2.)

What kind of violations can be found through an investigation of the operations of the mentioned company? Here is a brief citation from the work report of the Chamber of Control of Georgia, 2000:

“547.1 million Kwatt/hour electricity was transferred to Turkey in 2000-2001, including 359.1 million Kwatt/hour purchased from the Electricity Wholesale Market of Georgia (average purchasing price is 1.8 cents per 1 Kwatt), while 188 million Kwatt/hour (average purchasing price - 2.3-2.4 cents per 1 Kwatt) was purchased from Russia through the company “Wingfield,” including 52.8 million Kwatt during high water period. Purchase of electric energy from “Wingfield” was justified due to the unavailability of electricity from the Wholesale Market, though at that time, hydroelectric generators were not working at full capacity at the “Vartsikhe Hydropower Plant,” “Lajanuri Hydropower Plant” and “Rioni Hydropower Plant”. [8]

These activities are negatively evaluated by Georgian power engineering specialists as well, who repeatedly state their position publicly in regards to this case. [9]

Simple calculations are enough to identify the amount of financial resources involved in the case. Copies of the agreements with “Wingfield International Limited” obtained by request demonstrate that at least 800 million Kwatt/hour electricity was purchased via the company in 2000-2001. Therefore, the profit of the intermediary company presumably amounted to USD $(2.4 - 1.8) \times 800,000,000$, i.e. approximately USD 4 million.

Energy sector experts who have been appealing to the President of Georgia for reform have confirmed such activities of the intermediary company. From their point of view, the most alarming aspect is that electricity is imported at the expense of Georgian energy resources, thus causing significant deterioration of the energy system of Georgia.

It is reasonable to continue the investigation of this issue in order to identify the founders of the company “Wingfield International Limited.” Continuation of research in this direction would likely reveal an interesting case of money laundering.

4. Issue of the “Ashotsk-Ninotsminda” 110 Kwatt Electricity Transmission Line

Experts in the field suggested focusing on one more issue that clearly demonstrates the damage caused to the state by the irresponsible attitude of relevant institutions: the construction of the “Ashotsk-Ninotsminda” 110 Kwatt electricity transmission line.

On September 29, 1999 during the visit of the President of Georgia to Armenia, the Georgian and Armenian Ministers of Energy signed an agreement regarding the possible construction of the 220 Kwatt or 110 Kwatt electricity transmission line between Armenia and Georgia. According to this general document, working groups should have been created in order to identify the route of the electricity transmission line and the plan for connecting it to a substation. [7]

On October 29, 1999, the Armenian Deputy Minister of Energy confirmed, in writing, [13] the provisions outlined in the Agreement of September 29, 1999, and raised the issue of the construction of the 110 Kwatt line between Armenian Ashotsk and Georgian Ninotsminda. The letter emphasized the possibility of starting construction in the year 2000. [7]

The Armenian Ministry was informed about the position of the Georgian side regarding this issue with a letter signed by the Director General of “Sakartvelos Elektrogadacema,” G. Javakhadze, dated November 11, 1999. The letter clearly specified that the Georgian side considered the construction of the “Ashotsk-Ninotsminda” 110 Kwatt electricity transmission line unreasonable.

Later the Armenian side raised the issue again. Therefore, on the basis of order 39 issued by the Minister of Fuel and Energy of Georgia and dated July 19, 2000, a working group was set up to study the issue of constructing the new 110 Kwatt electricity transmission line in order to make appropriate proposals to the authorities. G. Javakhadze, Director General of “Sakartvelos Elektrogadatsema,” was appointed head of the group.

In accordance with article 2 of the order, the working group was assigned to study the issue of the construction of the new 110 Kwatt electricity transmission line from the territory of Armenia to “Ninotsminda,” where a 110 35 10 Kwatt substation would be raised by the Armenian side. The group was to submit its findings by August 15, 2000. The group was instructed to consider the financial implications of the project. The Armenian side proposed to finance the construction of the transmission line up to the Georgian-Armenian border, while the Georgian side would have to finance the construction of the line from its border to “Ninotsminda 110 35 10” Kwatt substation.

On July 24, 2000, the Minister of Energy of Armenia explicitly stated in an unofficial letter that the construction of the “Ashotsk-Ninotsminda” high-voltage electricity transmission line was planned in accordance with the Declaration “On Further Cooperation between Georgia and Armenia,” signed by Georgian and Armenian presidents on November 20, 1998, and the agreement of the Ministers of Energy of both countries.

The Project Institute of Armenia designed the route of the line through the territory of Armenia and construction was launched. The overall length of the line on the territory of Armenia is 14 km, while the length on the territory of Georgia is 24 km.

The Armenian Minister proposed a construction deadline of October-November 2000, and appealed for cooperation to permit Armenian construction and installation companies to operate on the territory of Georgia.

The Minister of Fuel and Energy of Georgia notified the President of Georgia, in writing, [14] that on the basis of the agreement of the ministers of Energy of Armenia and Georgia, signed on September 29, 1999, a decision was made about the construction of the 110 Kwatt transmission line “Ashotsk-Ninotsminda.” In the letter, he repeated the provisions specified in the letter from the Armenian side, dated July, 24, 2000. [7] He also has mentioned the concerns of the population of Ninotsminda and Akhalkalaki.

In order not to politicize the issue the Minister suggested considering it at a closed governmental meeting or at a Security Council meeting in order to base further activities of the Ministry of Fuel and Energy on the results of these considerations. [3]

The problem has not been considered in the Security Council. The meeting was postponed due to a business trip of the Minister. Later, on October 30, 2000, Mirtskhulava stated to the President that it was too early to consider the problem in the National Security Council, even though he raised the issue initially.

Meanwhile, the group of Georgian experts had finished their work and the Director General of the joint-stock company “Elektrogadatsema” informed the Minister of Fuel and Energy that:

“The group set up in accordance with the ministerial Order #39, dated July 19, 2000, has considered the issue of the new 110 Kwatt electricity transmission line from the territory of Armenia to “Ninotsminda 110 35 10 Kwatt” substation, and has concluded that the construction of such a line is unreasonable from technical and economic points of view” [15].

The conclusion of the working group was based on the assumption that no technical reasons existed that would make it worth to import electricity to Javakheti directly, in order to solve the problem of electricity supply only in that region.

On August 17, 2000, G. Javakhadze, the Director General of the JSC “Elgadatsema” submitted a note to the Ministry of Fuel and Energy on current and perspective external

electricity supply to Ninotsminda and Akhalkalaki districts. Along with other issues the suggestion of the Armenian side was also mentioned, which implied a connection of Ninotsminda 110 Kwatt substation with “Gukasian” 110 Kwatt substation. G. Javakhadzse clearly indicated that a 14 km electricity transmission line had already been constructed on the Armenian territory and that the Armenian side was trying to start construction on the territory of Georgia.

Later, the Director General of the JSC “Elgadatsema” informed the Minister of Fuel and Energy once more about the intensive construction of the 110 Kwatt electricity transmission line “Gukasian-Ninotsminda,” conducted by Armenian electricity network construction company in the Samtskhe-Javakheti region, on the territory of Ninotsminda. Javakhadze wrote that work spilled over to Georgian territory 4 kilometers past the border; towers were delivered to the “Ninotrinda” substation [16], and that an appropriate response was required. A similar letter was sent to the deputized representative of the President of Georgia in Samtskhe-Javakheti G. Baramidze. [7]

In a letter dated October 6, 2000, the Armenian Minister of Energy informed the Minister of Fuel and Energy of Georgia that the construction of the high-voltage transmission line “Ashotsk-Ninotsminda” was at its final stage and applied for support to provide joint efforts of Armenian specialists and relevant Georgian organizations for the installation and setup jobs necessary for a final connection of the line to the Ninotsminda substation.

On October 12, 2000, in his letter # 01 1600, the Minister of Fuel and Energy of Georgia informed the President of Georgia that: “The Armenian side made a unilateral decision and the 110 Kwatt electricity transmission line from Ashotsk to Ninotsminda has been constructed without permission.”

In his letter # 01 1715, dated October 27, 2000 the Minister of Fuel and Energy notified the President of Georgia about the following:

“As you are already informed the Armenian side has independently completed the implementation of the project of the 110 Kwatt electricity transmission line “Ashotsk-Ninotsminda” and is asking for permission to connect the line to the Ninotsminda substation.”

The Minister of Fuel and Energy also noted that the Georgian Ministry of Energy made it perfectly clear to its Armenian counterpart that in accordance with Georgian legislation the construction of the Ninotsminda substation was impossible due to the following reasons:

1. In accordance with Georgian Law “On Electric Energy and Natural Gas,” the Ministry of Fuel and Energy has to issue a license for the allocation of a 110 Kwatt line. Therefore, the Agreement, dated October 29, 1999, and signed by the Minister of Energy of Armenia and the Former Minister of Fuel and Energy of Georgia (T. Giorgadze) could not be acknowledged as a legal basis for the construction of the 110 Kwatt line.
2. The construction of the transmission line should be coordinated with and approved by the Ministry of Construction and Urbanization of Georgia; only after its approval would it be possible to undertake the construction and installation jobs.

Due to the aforementioned, the electricity transmission line “Ashotsk-Ninotsminda” is illegal. Therefore, it should not be allowed to connect to the Ninotsminda substation.

Thus, the Armenian side made a unilateral decision without the permission of the Georgian side to construct the electricity transmission line “Ashotsk-Ninotsminda” using the abovementioned agreement as a basis for construction. However, the agreement did not contain any references to “Ashotsk” (former “Gukasian”) or “Ninotsminda,”

The line was constructed without permission and more importantly it was constructed in the Ninotsminda district, a territory that is unacceptable for the security of the energy system of the country.

All technical standards were ignored during the construction process and despite a negative assessment of various institutions, the Minister of Fuel and Energy of Georgia (D. Mirtskhulava) did not take effective measures in order to stop the construction of the electricity transmission line on the territory of Georgia. Moreover, after the completion of the construction process the 110 Kwatt line was connected to the Ninotsminda substation at the order of the Deputy Minister of Fuel and energy, N. Uplisashvili.

It should be mentioned that the output of the Ninotsminda substation has been redirected from the Georgian energy system to the Armenian side. Thus, Georgia has lost one more vital factor in this important region: control over energy issues. This was a logical result of the irresponsible attitude of government leaders towards their duties.

Evaluation of the situation

In this particular case the Minister of Fuel and Energy of Georgia has repeatedly demonstrated an indifferent attitude towards his duties:

- The Minister has informed the President of Georgia that the working group set up by Georgian side did not work, while he knew that:

“The group set up in accordance with the ministerial Order #39, dated July 19, 2000, has considered the issue of the new 110 Kwatt electricity transmission line from the territory of Armenia to “Ninotsminda 110 35 10 Kwatt” substation, and has concluded that the construction of such a line is unreasonable from technical and economic points of view” [15].

- There was no response to the alarming information provided by Georgian experts.
- The Minister misinformed the President of Georgia once more with the letter dated July 31, 2000, stating that:

“On the basis of the agreement signed by the Ministers of Energy of Armenia and Georgia on September 29, 1999 a decision was made about the construction of the 220 or 110 Kwatt transmission line “Ashotsk-Ninotsminda.”

This did not correspond to facts, as no particular issues were referred to in the agreement.

[3]

- The Minister ordered his deputy, N. Uplisashvili, to connect the illegally constructed electricity transmission line to Ninotsminda substation. As a result of this operation, bypassing the Georgian budget, the costs for the utilized electricity are fully transferred to Armenia.

Situation after the construction of the electricity transmission line

In his letter 01 1600, dated October 12, 2000, the Minister informed the President that:

“It is the opinion of the Ministry that in case of electricity import through this line to the territory of Georgia in the future, an agreement should be signed only with the regional Samtskhe-Javakheti company, provided that if the cost for the imported electricity is not paid, the Armenian side will stop supplying electricity, in order to avoid the accumulation of debts.

On January 21, 2001, an agreement was signed in Yerevan between “Armenergo” and JSC “Elektrosinatle” envisaging the transmission of 84 million Kwatts of electricity from “Armenergo” through the "Ashotsk-Ninotsminda" line; the cost of 1 Kwatt/hour of electric energy was USD 0.025.

All of the abovementioned placed the Georgian government in a deadlock. The legalization of the line is necessary; however, it entails severe economic outcomes for Georgia. A stable 24-hour supply of electricity is provided through the illegally constructed and connected line. Closure of the line will lead to the dissatisfaction of the population in the region. Georgia will have to pay accumulated debts, but if the state energy distribution company

“Elektrosinatle” is privatized it will fall under the ownership of the Armenian company, which is its largest creditor.

It is clear that due to the irresponsibility of highly placed officials, an illegal construction project, involving serious violations of technical standards, has been undertaken on the territory of Georgia. The operation of the electricity transmission line was launched, bypassing official procedures, licensing, and without identifying the owner of the line and the bodies responsible for its operation.

This act might not include elements of economic crime, but it clearly demonstrates how negligent officials can damage the paramount political and economic interests of the country. An in-depth investigation of the energy sector would most likely reveal that similar occurrences are not infrequent in Georgia.

Conclusion

The above study has analyzed several issues related to the critical situation in the energy sector of Georgia. Final recommendations, with regards to the aforementioned issues, could be formulated in the following way:

1. It is necessary to reevaluate the status of the Electricity Wholesale Market of Georgia, including its organizational and legal form and function within the energy system of Georgia. It would be prudent to conform the Electricity Market to the organizational and legal form of a juridical entity of public law, and to ensure additional guaranties for its independence.

2. An institution with procedural authorities should conduct an in-depth investigation of the origin of legal entities related to the import of electric energy to Georgia and of the activities of particular groups behind them.
3. The issues discussed in this study should be thoroughly researched and investigated by the relevant authorities.

Research on the aforementioned issues should be continued. Further investigations of the problems of the energy sector by a diverse group of experts would provide a complex analysis of the reasons for the current situation and would enable policymakers to plan particular measures in order to solve relevant problems.

References

1. Lado Chanturia, "Introduction to Generality of the Civil Law of Georgia", Publishing House "Samartali", Tbilisi, 1997.
2. Zurab Adeishvili, Gerd Vinter, Dimitri Kitoshvili, "Comments to the General Administrative Code of Georgia", Publishing House of "Georgian Book of Laws and Georgian Legislative Messenger", Tbilisi, 2002.
3. Conclusion of the Temporary Commission of the Parliament of Georgia Investigating Critical Situation in the Energy Sector of Georgia, Tbilisi, 2002.
4. Law "On Introduction of Amendments and Add-ins to the Law of Georgia "On Execution Proceedings", (Georgian Legislative Messenger, February 2001).
5. Law "On Introduction of Amendments and Add-ins to the Law of Georgia "On Bankruptcy Proceedings", (Georgian Legislative Messenger, February 2001).

6. The Order of President of Georgia “On Reimbursing Costs of Electric Energy Received from Energy Systems of Neighboring Countries and on Ensuring Simultaneous Operations”, # 1213, 14 November 2000; Digest of Orders and Decrees of the President of Georgia, November 2000.
7. Materials requested from the Ministry of Fuel and Energy of Georgia on the issue of construction of "Ashotsk-Ninotsminda" electricity transmission line.
8. Chamber of Control of Georgia Work Report 2002, magazine “Sakhelmtsipo da Kontroli”, February 2003.
9. “We would Like the President to Know in Order to Prevent Aggravation”, “Sakartvelos Respublika”, 10 October 2001.
10. Statement №01-10-00 on adjustment and collection of debts for electric energy imported from the energy system of Republic of Armenia to the energy system of Georgia for the period of August 1998 - March 1999, 5 October 2000.
11. **Statement of claim**, on adjustment and collection of debts for electric energy imported from the energy system of Republic of Armenia to the energy system of Georgia for the period of August 1998 - March 1999, 28 November 2001.
12. Contract #13-8, on purchase of electric energy between the company “Wingfield International Limited” and joint-stock company “Elektrogadacema”, 14 March 2001; Contract #220 on purchase of electric energy between the company “Wingfield International Limited” and joint-stock company of the United Electricity System “SAKENERGO”, 28 January 2000; Contract #46 on purchase of electric energy between the company “Wingfield International Limited” and joint-stock company “Elektrogadacema”, 12 April 2000, Contract #44 on purchase of electric energy between

the company “Wingfield International Limited” and joint-stock company of the United Electricity System “SAKENERGO”, 9 March 2000.

13. Materials requested from the Ministry of Fuel and Energy of Georgia on the issue of construction of "Ashotsk-Ninotsminda" electricity transmission line. The letter #09-ბ-07 3494 of the Deputy Minister of Energy of Armenia dated 29 October 1999 to the first Deputy Minister of the Fuel and Energy of Georgia M. Kipshidze.
14. Materials requested from the Ministry of Fuel and Energy of Georgia on the issue of construction of "Ashotsk-Ninotsminda" electricity transmission line. The letter of the Minister of Fuel and Energy of Georgia to the President of Georgia dated 31 July 2000.
15. Materials requested from the Ministry of Fuel and Energy of Georgia on the issue of construction of "Ashotsk-Ninotsminda" electricity transmission line.
The letter #15 2-1282 of the Director General of the JSC “Elgadacema” G. Javakhadze to the Minister of Fuel and Energy of Georgia dated 16 August 2000.
16. Materials requested from the Ministry of Fuel and Energy of Georgia on the issue of construction of "Ashotsk-Ninotsminda" electricity transmission line.
The letter #11 1-1433 of the Director General of the JSC “Elgadacema” G. Javakhadze to the Minister of Fuel and Energy of Georgia dated 18 September 2000.