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This policy brief is intended for public policy makers and practitioners; it will also be useful for those groups and individuals seeking to influence the policymaking processes.

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## Risky business: hydropower plant construction in Georgia

### Introduction

At the top of the Georgian government's energy security agenda is the full-scale development of its hydropower resources. By gradually replacing electricity imports and increasing its export potential, the government hopes to turn the country into a regional hub for clean energy production and trade. The Ministry of Energy's July 2014 Energy Policy is the basis for the development of short, medium and long-term programmes and legal framework for the energy sector<sup>1</sup>.

While the policy has yet to be approved, it is clear that the key priority for the government is the exploitation of hydro power. The policy says, "Georgia is remarkably rich in hydropower resources, and also has a potential for wind, solar, biomass and geothermal resources that allow for the creation of additional capacities by attracting domestic and foreign investments."

In order to attract such investments, the government adopted 'Resolution of the government of Georgia 107 of April 18, 2008 of the national programme 'Renewable Energy 2008' – regulation for the construction of new renewable energy sources in Georgia (hereafter Resolution 107). Resolution 107 established the overall legal basis for the government to draw memorandums of understanding (MoUs) and agreements within the framework of the 'Renewable energy 2008' programme. In total, 24 MoUs and agreements<sup>2</sup> were signed during the programme, providing for the construction of over 45 hydropower plants.

In August 2013, the government adopted Resolution 214 to replace Resolution 107 and subsequently the regulation for signing MoUs regarding the construction of hydropower plants was also changed. The rules set in the new resolution significantly differ from those in the previous one (resolution 214 does not apply to those 24 MoUs or agreements that were signed). Currently 26 MoUs for the construction of hydropower projects have been signed with the consent of the government, and the relevant resolutions are available for four projects (see table 2 below).

MoUs and agreements between the state and investors should distribute risks, costs and benefits. Regulations for concluding a MoU or agreement should as such rule out those that create preferential conditions for one company or another, or those that fail to ensure obligations for mitigating environmental and social impacts.

This briefing reviews to what extent memorandums and agreements signed by the Georgian government are adequately backed by risk insurance. The brief analyses the existing legal framework, including Resolution 214, a legal analysis prepared by Green Alternative in 2012 about the 2007-2012 memorandums and agreements between the Georgian government and various companies and as well Green Alternative's 2013 report "Energy Projects and Corruption in Georgia".

<sup>1</sup> According to the draft energy policy of Georgia;

<sup>2</sup> See table 2: Memorandums of understanding and agreements concluded between the Government of Georgia and the companies in 2007-2012 on the construction of hydro power plants.

## 1. Financial insurance against hydropower plant risks

In the process of analysing the MoUs and agreements one of the recurring problems is the absence of any financial mechanisms to ensure compensation in the case of damages. Whether bank guarantees, insurance or other mechanisms, MoUs and agreements are not secured against possible environmental and social damages or damages to the third parties caused by the project.

Hydropower plants are typically considered one of the most challenging pieces of infrastructure to construct, as they involve a number of related facilities. Damages can therefore emerge as a result of mistakes in the process of construction or in the case of natural disasters<sup>3</sup>. In addition, the constructing dams takes a long time and requires huge investments, creating additional financial risks that need to be taken into account by the company and the government. Therefore effective risk management systems are needed to ensure proper instruments are in place to reduce significantly or avoid financial losses at an early stage of the project implementation.

Yet creating an effective risk management system at an early stage of the project is impossible without first identifying and assessing all project-related risks that may have adverse impacts not only on the project area itself but also the natural and social environment within the project's impact area. At an early stage of the project it is necessary for the company to identify and assess all such factors, which may increase or reduce the probability of the project if such risks occur in the future (e.g. the impact of climate change on the project). A company should make a decision about constructing a hydropower plant only after having identified and assessed all project-related risks<sup>4</sup>.

For its part, the state should integrate such financial risk management instruments into MoUs. In the MoUs or agreements signed between 2007 and 2012 (see table 1), the technical parameters of potential hydropower plants, as well as the starting and ending dates for construction works and other important details were already determined, based on a list of potential hydropower plants posted on the Ministry of Energy's website. Yet only afterwards did the companies start to study a project's environmental and social impacts in order to obtain the necessary permits. Such practice rules out the possibility to identifying project-related risks from the onset.

As mentioned previously, resolution 214 has significantly changed procedures for signing MoUs. It no longer requires companies to provide key technical parameters of the plant. Companies now must carry out detailed project studies. However the resolution does not identify any financial instruments in MoUs that would provide financial guarantees to back up the risks related to hydropower plants and compensate against possible damages caused by the project. Not only do MoUs not contain any efficient financial instruments for backing up project related risks, but as experience shows, the government does not use even those financial instruments that are already in place in the MoUs.

## 2. Bank guarantees to ensure obligations are fulfilled

Both Resolution 107 and Resolution 214 envisage an obligation for submitting a bank guarantee to ensure that the hydropower plant is built and put into operation in line with the specified terms. The analysis of MoUs on hydropower plants reveals examples of a selective approach towards various companies regarding requests for bank guarantees.

Tables 1 and 2 at the conclusion of the study outline the 52 MoUs and agreements signed by the government with various companies for the construction, ownership and operation of hydropower plants, and all the amendments made in these MoUs and agreements with respect demanding bank guarantees and ensuring the fulfillment of obligations.

### What is a bank guarantee

According to the Tax Code of Georgia<sup>5</sup>, "with the bank guarantee, a bank, other credit institution or insurance company (guarantor) at the request of another person (principal) shall undertake a written commitment to cover the principal's debt to the creditor (beneficiary) on the basis of a written request of the beneficiary within the range of undertaken obligation." In this case it means that if the company fails to meet obligations undertaken in the MoU e.g. the company violates the timeframe for project construction, the bank, credit institution or insurance company, upon the request of the government, will unconditionally transfer the sum defined in the guarantee to the state.

<sup>3</sup> Rejda, George E. Principles of Risk Management and Insurance. 12/e. 2013

<sup>4</sup> Halpin, E. – "Risk Management for Dam Safety A Joint Approach by USBR, FERC, and USACE." Presented at the workshop on 'The Future of Dam Safety Decision Making: Combining Standards and Risk' at the USSD Annual Meeting, Nashville, Tennessee. April, 2009.

<sup>5</sup> Tax Code of Georgia; article 879-890

A bank guarantee, as a financial instrument, is used in memorandums for hydropower projects only as a means of financial insurance so that the project is built and put into operation in due terms outlined in the MoUs.

For its turn, in order to receive a bank guarantee, a company also needs to meet certain criteria set by the bank, such as work experience, a stable financial position, positive tax or credit history and the like. So the presence of a bank guarantee in memorandums enables the state on one hand to be convinced of the company's reliability, and on another hand, to receive certain benefits even in the case that a company does not fulfill its obligations in the memorandum.

#### Bank guarantees in practice

Until August 21, 2013 demanding a bank guarantee as per a hydropower project MoU was regulated by Resolution 107<sup>6</sup>. According to this, in order to ensure that the project was built and put into operation in due terms, a company had to submit a bank guarantee corresponding to the total installed capacity of the project: USD 170 000 or EUR 120 000 per megawatt. It should be noted that these and other rules set by the regulation did not apply to all hydropower projects. The regulation determined a number of exceptions (paragraphs 6, 23, 23<sup>1</sup> and 24), which did not oblige a company to submit a bank guarantee to the government, for example in cases where the project was bigger than 100 MW.

Table 1 presents all those MoUs or agreements on 24 hydropower projects concluded between the government and companies before 21 August 2013. This shows that the amount of bank guarantees demanded by the government varies from project to project: in most cases, the companies have not been asked to provide a bank guarantee at all; some companies provided bank guarantees according to the current regulation, and others provided less amounts in guarantees than envisaged by the regulation.

Kazbegi HPP LLC is a clear example of this. If the rule set by the regulation had applied to it, it would have had to provide a USD 850 000 bank guarantee, instead of the provided USD 200 000. Unfortunately, the analysis of the MoUs does not provide any reason provide for such a different approach, which is grounds for investigation by law enforcement agencies. Another problematic issue is that government did not use its opportunity to demand a bank guarantee although the company had violated the conditions determined by the memorandum.

#### Bakhvi 3 HPP: evading the bank guarantees

On 14 May 2012 the Georgian government and Bakhvi Hydro Power LLC signed a memorandum for the construction of the 6 MW Bakhvi 3 hydropower plant. In light of amendments made to the memorandum<sup>7</sup>, the company violated the timeframe for completing the plant; the government was entitled to demand USD 1 020 000 in the form of a bank guarantee. On 19 November 2012 Georgia issued Resolution 1939 on the withdrawal of the bank guarantee.

However shortly after the resolution was issued, the company sent a letter to the Ministry of Energy and requested that it not withdraw the money but instead postpone the deadline for completing the construction and putting the project into operation<sup>8</sup>. The company committed itself to providing USD 1 166 000 in the form of bank guarantee, instead of USD 1 020 000 as defined by the memorandum, because the projected capacity increased to 9.8 MW.

The government acceded to the company's request<sup>9</sup> and resolution 1939 was rendered invalid.

This example makes clear certain rules don't apply to certain companies in Georgia. Such examples should be investigated by relevant agencies, since they contain hints of corruption and put other companies in Georgia on an unequal footing.

#### Resolution 214 – the new rule for concluding a memorandum

On 21 August 2013 Georgia adopted Resolution 214 to replace Resolution 107<sup>10</sup>. According to the new resolution, the rule for determining and demanding a bank guarantee in the MoU has been changed, in particular through the introduction of a two-phase approach for demanding bank guarantee: pre- and construction guarantees.

<sup>6</sup> Resolution 107 from April 18, 2008 "the State Program 'Renewable Energy 2008' on Approval of the Rule for Ensuring the Construction of Renewable Energy Sources in Georgia."

<sup>7</sup> On February 27, 2013 amendments were made to the Memorandum of Understanding signed between the Government of Georgia and Bakhvi Hydro Power LLC on May 14, 2009;

<sup>8</sup> September 1, 2013

<sup>9</sup> Resolution 130 of the Government of Georgia was issued on January 29, 2013

<sup>10</sup> According to Article 2 of resolution 214 of the Government of Georgia dated August 21, 2013, "according to and/or based on the Georgian Government resolution 107 dated April 18, 2008, the issues connected with the memorandums of understanding, signed with Georgian Government shall be regulated in compliance with the same Resolution."

In order to participate in the expression of interest for a project, a company must submit a preconstruction guarantee based on the total installed capacity of a hydropower plant, USD 5000 or the euro equivalent per megawatt identified in the feasibility study. But this rule applies only to those hydropower projects that are included in the list of potential projects. If the hydropower plant is not included in this list, then the rule does not apply. In this case, the rules and conditions for submitting to the Ministry and evaluating proposals for the construction, ownership and operation of hydropower projects is done by the Ministry through a relevant administrative-legal act (articles 8, 8<sup>1</sup> and 9).

In order to begin construction after meeting the conditions set out in MoU and obtaining a construction permit, a company has to submit a USD 100 000 bank guarantee per megawatt to the government (in cases of projects smaller than 100 MW) and a USD 50 000 bank guarantee in cases of projects over 100 MW. As seen in table 2, after the enactment of the new rule, 30 MoUs were signed or proposed for signing.

The memorandums concluded during the previous regulation shows that this selective approach is not found in the new memorandums; however, it is still early to make any conclusions, as these projects are still under evaluation.

### 3. Penalties for not fulfilling obligations

As in the case of demanding bank guarantees, the practice of using a selective approach to penalties for not fulfilling the obligations towards various companies varies from project to project. As seen in table 1, of 24 memorandums or agreements concluded during Resolution 107, only in six memorandums or agreements were specified sanctions for not fulfilling obligations. Of these, only three were backed up by appropriate bank guarantees: JSC Optimum Energy Uretim, Kolin Construction, Tourism, Industry and Trading Co, Inc and Ltd Adjara Energy 2007. Under these memorandums, in case the company failed to fulfill its obligations to obtain a permit, begin and end construction and put the project into operation, that penalties would range from USD 1000 –45 000 per day; no similar sanctions have been specified by any other memorandum, clearly pointing to the selective approach of the state.

The rule for imposing penalties under Resolution 214 later included three more memorandums. These are: (1) the memorandum signed with Hydro Development Company LLC on the construction of the 5MW Kintrisha hydropower project; (2) the memorandum signed with AE-SGI Energy I on 1.9MW Nabeglavi hydropower project and (3) the memorandum concluded with KGM Iletisim Ve HISM. Lojistik INS. Ve Turizm TIC.LTD.STI on the construction of Bakhvi 1 and Bakhvi 2 hydropower projects<sup>11</sup>. Based on these examples, it is unclear why a similar approach was not applied to other memorandums as well.

In addition to these cases, three more agreements regarding large hydropower plants with Trans Electrica Limited, Adjaristskali Georgia and Dariali Energy envisaged applying penalties. Although these agreements determine penalties for not fulfilling contractual obligations, actually implementing the fines is suspect, as these penalties are not backed financially by bank guarantees. The selective approach when imposing penalties was also found in the case of Adjaristskali Georgia LLC and Energy Ltd.

#### On forgiving penalties to Adjaristskali Georgia LLC

On the basis of Resolution 16/08/02, the Ministry of Economy and Sustainable Development of Georgia and Adjaristskali Georgia LLC signed a purchase agreement on 26 August 2013, under which the company became the owner of non-agricultural lands in the municipalities of Shuakhevi and Khulo and undertook commitments related to the Shuakhevi hydropower project envisaged as per an agreement between Georgia, JSC Clean Energy Invest and Adjaristskali Georgia LLC of 11 June 2011.

According to Annex 4 of the June 2011 agreement, 7 October 2012 was determined as the deadline for obtaining a construction permit; however, the company obtained the permit only on 31 July 2013 i.e. with a delay of 297 days. The complex nature of land acquisition and delays in registration procedures were cited as the reasons for the delay. As a result, a GEL 148 500 penalty was imposed on the company.

On 15 January 2014, the commission studying the issues related to the agreements on state property disposal discussed (meeting minutes 11) the proposal of the National Agency for State Property Management to forgive this penalty. Adjaristskali Georgia LLC applied to the latter with this relevant request. The commission discussed the agency's proposal and made a unanimous decision on to fully forgive the penalty, and this position was shared by the Ministry of Energy<sup>12</sup>.

<sup>11</sup> Abolished by agreement concluded on July 24, 2014 <http://www.energy.gov.ge/projects/pdf/pages/Shetankhmeba%2024072014%20879%20geo.pdf>

<sup>12</sup> Letter No 45238/04 of the Ministry of Energy of Georgia dated November 28, 2013

### On Forgoing Penalties to Energy Ltd

Another example of the selective approach is in the case of Energy Ltd<sup>13</sup> and the implementation of the 5MW Shilda project. In September 2012, a presidential Resolution handed over land plots, the 972-metre Saguramo-Tsiteli Khidi trunk gas pipeline and the Chelta riverbed to Energy Ltd for the project for a period of 99 years.

Energy Ltd completed the construction of its facilities on 12 August 2013 and on 5 December 2013 applied to the National Agency for State Property Management requesting exemption from a penalty resulting from a violating of the in its purchase agreement<sup>14</sup> with the Ministry of Economy and Sustainable Development of Georgia. Under the purchase agreement, the company was obliged to submit an auditor report within 30 days after the hydropower plant began operations. The penalty carried a GEL 68 000 fine.

On 10 April 2014 the government responded by issuing Resolution 659 on implementing a number of measures to promote the activities of Energy Ltd, according to which the company was released from its obligation to pay the penalty. The rationale for Resolution 659, as in previous cases, was a 'special' case, according to the commission studying issues related to the agreements on state property disposal<sup>15</sup>: "A penalty does not represent planned revenue of the state budget, because in case of proper and honest fulfilment of obligations by Energy Ltd, the state would not have had the right for demanding a penalty; respectively, the release of the mentioned resolution will not cause reduction of state revenues."

At the meeting of the commission, the company's request, like in case of Adjaristskali Georgia, was supported by the Deputy Minister of Energy, who gave his consent to release the company from its penalty, as the company had fully met other obligations in the memorandum.

It is clear from these examples that an investigation into this selective approach is needed, because otherwise the purpose of penalties as a financial incentive, if and when it becomes necessary to impose, becomes meaningless. Such a pattern generates suspicions of corrupt deals in the energy sector.

### **Conclusions**

This study reveals a number of issues related to the financial guarantees for the environmental and social risks posed by hydropower projects when signing memorandums. Neither the previous Resolution 107 nor the Resolution 214 regulate adequately financial guarantees in cases of possible losses connected to hydropower projects and so such measures are not enshrined in memorandums or agreements. Not only are guarantees not regulated in the memorandums but those that are in place are not enforced by the state. Moreover this study reveals a selective approach towards companies that causes suspicions of wrong doing. While instances of the selective approach have not been observed in recently signed memorandums, such projects are still at the feasibility stage, meaning that it is too early to draw any conclusions.

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<sup>13</sup> Energy Ltd was founded in September 2010; 70% of its shares are owned by Russian citizen, Mevlud Bliadze and 30% are owned by Peri LLC.

<sup>14</sup> August 24, 2012 and October 11, 2012

<sup>15</sup> The commission set up on the basis of Resolution 67 of the Government of Georgia dated March 28, 2013 – minutes No 11 from January 15, 2014 meeting.

Table 1: Memorandums of understanding and agreements on HPPs concluded between the Government of Georgia and the companies in 2007-2012

| #  | Company                                | Hydro power plant and installed capacity MW   | Apparent volume of investments USD    | Amount of bank guarantee and percentage ratio to apparent amount of investment      | Penalties                   | Date of signature           |
|----|--|---|---------------------------------------|---|-----------------------------|-----------------------------|
| 1. | Georgian Urban Energy Ltd              | Paravani HPP (85)   | 100.000.000 <sup>16</sup>             | Not requested<br>In case of application of Resolution 107 - 14,450,000              | Not requested <sup>17</sup> | 29 May, 2007                |
| 2. | Energo-Aragvi Ltd                      | HPP cascade in the Tetri Aragvi River Gorge, to the west of Zemo Mleta village (8)  | Undetermined <sup>18</sup>            | Not requested <sup>19</sup><br>In case of application of Resolution 107 - 1,360,000 | Not requested               | 2007; exact date is unknown |
| 3. | Adjara Energy 2007 Ltd                 | Kintrisha HPP (7.5)<br>Kobuleti I HPP (13.30)<br>Kobuleti II HPP (14.30)<br>Kirnati HPP (14.40)<br>Khelvachauri HPP (22.40)<br>Chorokhi I – II HPPs (48.00) | 167.860.000                           | 5.035.800<br>3%<br>In case of application of Resolution 107 - 0                     | Not requested               | 28 February 2008            |
| 4. | JSC Caucasus Energy and Infrastructure | Mtkvari HPP (28)  | 50.000.000                            | 4.760.000<br>9%<br>In case of application of Resolution 107 - 4,760,000             | Not requested               | 24 November, 2008           |
| 5. | Bakhvi Hydro Powers LLC                | Bakhvi 3 HPP (6 <sup>20</sup> )   | 9.700.000                             | 1.020.000 <sup>21</sup><br>In case of application of Resolution 107 - 1,020,000     | Not requested               | 14 May, 2009                |
| 6. | Zoti Hydro LLC                         | Zoti HPP (36)<br>Kvirila HPP (5.20)   | From USD 78.000.000 to USD 92.000.000 | Not requested<br>In case of application of Resolution 107 - 7,004,000               | Not requested               | 28 May, 2009                |
| 7. | Rusmetal LLC                           | Lukhuni 1 (10.8)<br>Lukhuni 2 (12)<br>Lukhuni 3 (7.5)   | From USD 39.000.000 to USD 51.000.000 | Not requested<br>In case of application of Resolution 107 - 5,151,000               | Not requested               | 27 July, 2009               |
| 8. | Georgian Investment Group Energy LLC   | Khobi HPP 2 (25) <sup>22</sup><br>Khobi HPP 3 (11)  | 64.000.000 <sup>23</sup>              | Not requested<br>In case of application of Resolution 107 - 6,120,000               | Not requested               | 15 September, 2009          |

<sup>16</sup> <http://www.ebrd.com/work-with-us/projects/psd/paravani-hpp.html>

<sup>17</sup> Two amendments were made to the initial memorandum on April 10, 2009 and February 18, 2013; as a result of the last amendment, a subchapter was added to the memorandum about imposing penalties in case of violation of the dates of ending the HPP construction and its putting in operation; however, no bank guarantee was requested.

<sup>18</sup> It was determined four years after the memorandum was concluded, particularly after amendments were made to the memorandum on September 15, 2011. Total amount of investment was determined at USD 8 million.

<sup>19</sup> According to the amendments made to the memorandum on September 15, 2011, the company was requested to submit a bank guarantee at USD 1 million amounting to 12.5% of apparent amount of investment; in case of application of Resolution 107, the company should have provided USD 1.360.000.

<sup>20</sup> Amendment was made to the memorandum concluded on August 27, 2012 and the installed capacity of Bakhvi 3 HPP was increased from 6MW to 9.8MW.

<sup>21</sup> According to the amendments made on February 27, 2013, the amount of bank guarantee increased up to USD 1.666.000 as determined in Resolution 107.

<sup>22</sup> According to the amendments made to the memorandum on April 30, 2010 and July 11, 2014, the names and installed capacities of hydro power plants were changed: Khobi HPP 1 (60) and Khobi HPP 2 (55).

<sup>23</sup> According to the amendments made to the memorandum on April 30, 2010 and July 11, 2014, the apparent amount of investments increased up to USD 185.000.000.

|     |  |  |                           |  |                         |                   |
|-----|--|--|---------------------------|--|-------------------------|-------------------|
| 9.  | Nurol (Nurol Energy Production and Marketing Inc.) KEPCO (Korea Electric Power Corporation) SK & C (SK Engineering and Construction Co. Ltd) | Zhoneti HPP (100)<br>Namakhvani HPP (250)<br>Tvishi HPP (100)                          | 1.000.000.000             | Not requested  | Not requested           | 8 December, 2009  |
| 10. | Georgian Railway Construction LLC  | Nenskra HPP  | Undetermined              | Not requested  | Not requested           | 11 June, 2010     |
| 11. | Kolin Construction, Tourism, Industry and Trading Co, Inc  | Nobulevi HPP (25.70)<br>Tskhimra HPP (32.00)<br>Erjia HPP (27.00)<br>Lechakha HPP (21) | 150.000.000               | For preconstruction period - 2.000.000<br>1%<br>For construction period - 10.000.000<br>7%<br>A possibility of submitting an additional bank guarantee is envisaged, but its total amount should not exceed USD 20 million. In case of application of Resolution 107 – USD 0 | Envisaged               | 10 November, 2010 |
| 12. | Unal Insaat Ve Ticaret AS  | Khunevi HPP (11)   | 19.780.000                | 1.921.000<br>10%<br>In case of application of Resolution 107 – USD 1,870,000   | Not requested           | 28 December, 2010 |
| 13. | JSC Energo-Pro Georgia   | Alpana HPP (71)<br>Sadmeli HPP (97)  | 305.000.000               | Not requested  | Not requested           | 15 February, 2011 |
| 14. | JSC Optimum Energy Uretim  | Arakali HPP (11)<br>Abuli HPP (20)<br>Akhalkalaki HPP (15) <sup>24</sup>               | 90,000,000 <sup>25</sup>  | 9,080,000 <sup>26</sup><br>10%<br>In case of application of Resolution 107 - 7,820,000   | Envisaged               | 19 February, 2011 |
| 15. | Trans Electrica Ltd  | Khudoni HPP (702)  | 1.200.000                 | Not requested  | Envisaged               | 28 April, 2011    |
| 16. | Energy LLC   | Larsi HPP (20) <sup>27</sup>   | 20.000.000                | 3.400.000 <sup>28</sup><br>17%<br>In case of application of Resolution 107 - 340,000   | Not envisaged           | 17 May, 2011      |
| 17. | Dariali Energy Ltd   | Dariali HPP (109) <sup>29</sup>  | 135.000.000 <sup>30</sup> | Not requested  | Envisaged <sup>31</sup> | 19 May, 2011      |

<sup>24</sup> As a result of amendments made to the memorandum on March 12, 2014, the scheme of Akhalkalaki HPP was removed from the project, while the installed capacity of Arakali HPP was reduced to 8.88 MW and Abuli HPP - 22.20 MW.

<sup>25</sup> According to the amendments made to the memorandum on March 12, 2014, the amount of investments was reduced to USD 60.220.000.

<sup>26</sup> According to the amendments made to the memorandum on March 12, 2014, the amount of bank guarantee was reduced to USD 3.108.000; Under Resolution 107, it should have amounted to USD 5,270,000.

<sup>27</sup> According to the amendments made to the memorandum on December 1, 2011, the HPP capacity was determined at 19MW.

<sup>28</sup> It turns out from the amendment made to the memorandum on December 21, 2012 that an agreement was reached in May 2011 on the reduction of bank guarantee, which was determined at USD 2.034.600. By the mentioned amendments, the company again requested the reduction of bank guarantee to USD 1.430.000 in accordance with paragraph 7' of Resolution 107 of the Government of Georgia dated April 18, 2008 and this request was satisfied again. By the amendments from May 2, 2013, bank guarantee was again reduced to USD 575.000.

<sup>29</sup> According to the amendments made on February 13, 2012, the project's installed capacity was determined at 108MW.

<sup>30</sup> According to the amendments made on July 11, 2014, apparent amount of investments was determined at USD 105 million. However, according to the data of the European Bank for Reconstruction and Development, an apparent cost of the project is USD 123 million.

<sup>31</sup> According to the amendments made on July 11, 2014, the amount of penalties imposed on a company should in no way exceed USD 600.000.

|     |   |  |                           |   |                             |                   |
|-----|---|--|---------------------------|---|-----------------------------|-------------------|
| 18. | JSC Clean Energy Invest <sup>32</sup>                                   | Skhalta HPP (9.8)<br>Shuakhevi HPP (175)<br>Koromkheti HPP (150)<br>Khertvisi HPP (65)     | 417.000.000 <sup>33</sup> | Unknown   | Envisaged                   | 11 June, 2011     |
| 19. | Adjara Energy 2007 Ltd  | Khelvachauri 1 HPP (36.3) <sup>34</sup><br>Khelvachauri 2 HPP (34.3)<br>Kirnati HPP (34.6) | 196.032.494 <sup>35</sup> | 5.900.000 <sup>36</sup><br>3%<br>In case of application of Resolution 107 - 0 USD     | Envisaged                   | 1 July, 2011      |
| 20. | Energy LLC  | Shilda HPP (5)   | 5,500,000                 | Not requested<br>In case of application of Resolution 107 - 850,000                   | Not envisaged               | 13 July, 2012     |
| 21. | Kazbegi HPP Ltd   | Kazbegi HPP (5)  | 3.000.000                 | Not requested <sup>37</sup><br>In case of application of Resolution 107 - 850,000     | Not envisaged <sup>38</sup> | 13 July, 2012     |
| 22. | KGM Iletisim Ve HISM. Lojistik INS. Ve Turizm TIC.LTD.STI <sup>39</sup> | Bakhvi 1 HPP (15)<br>Bakhvi 2 HPP (20) <sup>40</sup>                                       | 77.000.000 <sup>41</sup>  | 6.800.000 <sup>42</sup><br>9%<br>In case of application of Resolution 107 - 5,950,000 | Not envisaged <sup>43</sup> | 27 October, 2011  |
| 23. | JSC Alliance Energy <sup>44</sup>                                       | Nabeglavi HPP (1.9)  | 2.800.000                 | 340.000<br>12%<br>In case of application of Resolution 107 - 323,000                  | Not envisaged <sup>45</sup> | 18 November, 2011 |
| 24. | Hydro Development Company Ltd   | Kintrisha HPP(5MW)   | 8.000.000                 | EUR 600.000<br>10%<br>In case of application of Resolution 107 - USD 850,000          | Not envisaged <sup>46</sup> | 23 January, 2012  |

<sup>32</sup> This agreement contains confidential articles; it was confidential, but as a result of public pressure, it was partially made public. Regretfully, important articles related to the project still remain confidential.

<sup>33</sup> <http://www.ebrd.com/english/pages/project/psd/2014/45335.shtml>

<sup>34</sup> According to the amendments made to the memorandums on July 8, 2013 and March 12, 2014, installed capacities of Khelvachauri 1, Khelvachauri 2 and Kirnati HPPs were changed and amounted to 47,4 MW, 28,9 MW and 51.2 MW, respectively.

<sup>35</sup> According to the amendments made to the memorandum on March 12, 2014, apparent amount of investments constituted USD 229.459.362.

<sup>36</sup> According to the amendments made to the memorandum on March 12, 2014, bank guarantee was increased to USD 6.400.000 and additional obligations were imposed on the company, involving embankment protection works, construction of a new bridge; moreover, the company became responsible for implementing all the measures that would be scientifically and technically substantiated and would be requested by the state in order to liquidate all the consequences caused by the changes carried out in the project.

<sup>37</sup> A purchase agreement related to already existing small hydro power plant on the River Brolistskali envisages an obligation of submitting a bank guarantee at USD 200.000.

<sup>38</sup> A purchase agreement related to already existing small hydro power plant on the River Brolistskali envisages the issue of imposing penalties at GEL 500 per overdue day.

<sup>39</sup> The memorandum concluded on July 24, 2014 was abolished and the government gave its consent to abolish the requested bank guarantee.

<sup>40</sup> According to the amendments made on January 29, 2014, installed capacity of HPPs was increased to 45 MW.

<sup>41</sup> According to the amendments made on January 29, 2014, the amount of apparent investments was increased to USD 85 million.

<sup>42</sup> According to the amendments made on January 29, 2014, the amount of bank guarantee was increased to USD 7,650,000.

<sup>43</sup> According to the amendments made to the memorandum on January 29, 2014, the same rule of imposing penalties as set out in Resolution 214 of the Government of Georgia dated August 21, 2013 was determined in the memorandum, i.e. 0.5% of guarantee amount per overdue day.

<sup>44</sup> According to the amendments made to the memorandum on June 19, 2012, JSC Alliance Energy was replaced by JSC AE-SGI Energy.

<sup>45</sup> According to the amendments made to the memorandum on August 6, 2013, the same rule of imposing penalties as set out in Resolution 214 of the Government of Georgia dated August 21, 2013 was determined in the memorandum, i.e. 0.5% of guarantee amount per overdue day.

<sup>46</sup> According to the amendments made to the memorandum on July 26, 2013, the same rule of imposing penalties as set out in Resolution 214 of the Government of Georgia dated August 21, 2013 was determined in the memorandum, i.e. 0.5% of guarantee amount per overdue day.

**Table 2: Memorandums signed in frames of Resolution 214 of the Government of Georgia dated April 18, 2013**

| #  | Company  | Name of HPP  | Installed capacity                     | Preconstruction bank guarantee | Bank guarantee | Date of signature                                    |
|----|--|--|--|--------------------------------|----------------|--|
| 1. | Hydrolea Ltd;<br>Geoenergy Ltd;<br>Hydrogeorgia Ltd;<br>Storey Power Ltd | Akhmeta HPP<br>Debeda HPP<br>Pshavela HPP  | 9.1 MW<br>2.5 MW<br>1.9 MW             | -                              | -              | 11 September 2013<br><br>Amendment:<br>29 April 2014 |
| 2. | Austrian Georgian Development Ltd  | Lakhami HPP<br>Tskhvandiri HPP<br>Okrili HPP<br>Larakvakva HPP   | -                                      | -                              | -              | 12 September 2013                                    |
| 3. | Georgian Hydro Power Ltd   | Dzirula HPP<br>Akavreta HPP<br>Lodnari HPP   | -                                      | -                              | -              | 22 October 2013                                      |
| 4. | Mtkvari Energy Ltd   | Kvishkheti HPP,<br>Khashuri HPP;<br>Osiauri HPP,<br>Gomi HPP,<br>Akhalsopeli HPP;<br>Kareli HPP,<br>Urbnisi HPP,<br>Skra HPP,<br>Uplistsikhe HPP,<br>Grakali HPP,<br>Kaspi HPP,<br>Ksani HPP,<br>Ponichala 3 and 4 HPPs,<br>Nagebi HPP,<br>Rustavi HPP | -                                      | -                              | -              | 23 October 2013                                      |
| 5. | Royal Haskoning DHV Ltd  | Lechekha HPP<br>Erjia HPP<br>Tskhimra HPP<br>Nobulevi HPP  | 18.4 MW<br>29.1 MW<br>27.6 MW<br>42 MW | -                              | -              | 30 October 2013                                      |
| 6. | Bugato Energy Ltd  | Metekhi 1 HPP<br>Metekhi 2 HPP   | -                                      | -                              | -              | 7 February 2014                                      |

|     |   |  |         |        |           |   |
|-----|---|--|---------|--------|-----------|---|
| 7.  | Hydrolea Ltd                                  | Kasleti 1 HPP  | 8.1 MW  | 40,500 | 810,000   | 17 February 2014  |
|     |   | Kasleti 2 HPP  | 8.1 MW  | 45,000 | 810,000   |   |
| 8.  | Hydrolea Ltd and Darchi Ltd                   | Darchi-Ormeleti HPP                                  | 16.9 MW | 84,500 | 1,690,000 | 17 February 2014  |
| 9   | JSC Aksa Energy Uretim                        | On identifying and studying possible energy projects | -       | -      | -         | 24 February 2014  |
| 10. | JSC Skinest Hydro                             | On implementing up to 100 MW energy projects         | -       | -      | -         | 28 February 2014  |
| 11. | JSC Georgian Energy Development Fund          | Surebi HPP   | -       | -      | -         | 12 March 2014   |
|     |   | Vani HPP   |         |        |           |   |
|     |   | Bukistsikhe HPP                                      |         |        |           |   |
|     |   | Supsa small HPP                                      |         |        |           |   |
|     |   | Baramidze HPP  |         |        |           |   |
| 12. | Trialeti 2013 Ltd                             | Trialeri HPP   | -       | -      | -         | 16 May 2014   |
| 13. | Mardihouse Ltd                                | Khokhnistskali 1 HPP                                 | -       | -      | -         | 19 May 2014   |
|     |   | Khokhnistskali 2 HPP                                 |         |        |           |   |
|     |   | Khokhnistskali 3 HPP                                 |         |        |           |   |
| 14. | Georgian International Energy Corporation Ltd | Zeda Bzhuzha HPP                                     | -       | -      | -         | 16 June 2014  |
| 15. | EG Ltd  | Buja HPP 1   | -       | -      | -         | 16 June 2014  |
|     |   | Buja HPP 2   |         |        |           |   |
|     |   | Buja HPP 3   |         |        |           |   |
| 16. | Pshavi Hydro Ltd                              | Skurdidi HPP   | -       | -      | -         | 19 June 2014  |
| 17. | Gota 21 Ltd                                   | Stori 1HPP   |         | 70,000 |           | 3 July 2014   |
| 18. | JSC Georgian Energy Development Fund          | Lopota 1 HPP   | -       | -      | -         | 17 July 2014  |
| 19. | JSC Georgian Energy Development Fund          | Artana HPP   | -       | -      | -         | 17 July 2014  |
| 20. | Machakhela HPP 1 Ltd                          | Machakhela 1 HPP                                     | 23 MW   | -      | -         | 24 July 2014  |
|     |   | Machakhela 2 HPP                                     | 19 MW   |        |           |   |
| 21. | RBI Ltd                                       | HPP cascade on the River Tskhenistskali              |         |        |           | 1 August 2014<br>Resolution 1344 of the Government of Georgia     |
| 22. | JSC Iori Energy                               | Paldo HPP  | -       | -      | -         | 19 August 2014  |
| 23. | JSC Georgian Energy Development Fund          | Kvirila HPP  | -       | -      | -         | 22 September 2014   |
| 24. | Deka Ltd                                      |  | -       | -      | -         | 10 September 2014<br>Resolution 1565 of the Government of Georgia |
|     |   | Didkhevi HPP   |         |        |           |   |

|     |   |   |                   |           |           |  |
|-----|---|---|-------------------|-----------|-----------|--|
| 25. | Khvamli Ltd                                 | Jonouli 1 HPP<br>Jonouli 2 HPP<br>Jonouli 3 HPP | -                 | -         | -         | 10 September 2014<br>Resolution 1567, 68, 69<br>of the Government of<br>Georgia; |
| 26. | Gold Lip Ltd                                | Khunevi HPP                                     | -                 | -         | -         | 10 September 2014<br>Resolution 1559 of the<br>Government of Georgia             |
| 27. | LTD GGP                                     | Tsablari 2 HPP                                  | -                 | -         | -         | 22 September 2014  |
| 28. | "CALIK ENERJI SANAYI VE<br>TICARET A.S."    | Alpana HPP<br>Sadmeli HPP                       | 70.6 MW<br>153 MW | 1,180,000 | -         | 11 October 2014  |
| 29. | AHLATCI ENERJI SANAYI VE<br>TICARET LTD STI | Dolra 3 HPP                                     | 30 MW             | 150,000   | -         | 11 October 2014  |
| 30. | JSC Svaneti Hydro                           | Mestiachala 2 HPP                               | 27 MW             | 135,000   | 2,700,000 | 31 October 2014  |



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