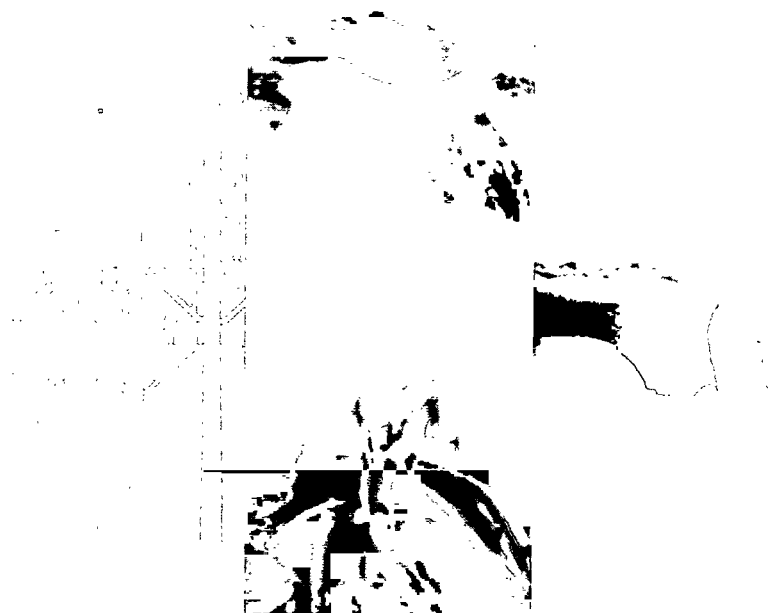


The Electricity Law for Vietnam
Status and Policy Issues
The Socialist Republic of Vietnam

ESM259



Energy

Sector

Management

Assistance

Programme



Report 259/02

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JOINT UNDP / WORLD BANK
ENERGY SECTOR MANAGEMENT ASSISTANCE PROGRAMME (ESMAP)

PURPOSE

The Joint UNDP/World Bank Energy Sector Management Assistance Programme (ESMAP) is a special global technical assistance partnership sponsored by the UNDP, the World Bank and bi-lateral official donors. Established with the support of UNDP and bilateral official donors in 1983, ESMAP is managed by the World Bank. ESMAP's mission is to promote the role of energy in poverty reduction and economic growth in an environmentally responsible manner. Its work applies to low-income, emerging, and transition economies and contributes to the achievement of internationally agreed development goals. ESMAP interventions are knowledge products including free technical assistance, specific studies, advisory services, pilot projects, knowledge generation and dissemination, trainings, workshops and seminars, conferences and roundtables, and publications. ESMAP work is focused on three priority areas: access to modern energy for the poorest, the development of sustainable energy markets, and the promotion of environmentally sustainable energy practices.

GOVERNANCE AND OPERATIONS

ESMAP is governed by a Consultative Group (the ESMAP CG) composed of representatives of the UNDP and World Bank, other donors, and development experts from regions which benefit from ESMAP's assistance. The ESMAP CG is chaired by a World Bank Vice President, and advised by a Technical Advisory Group (TAG) of independent energy experts that reviews the Programme's strategic agenda, its work plan, and its achievements. ESMAP relies on a cadre of engineers, energy planners, and economists from the World Bank, and from the energy and development community at large, to conduct its activities under the guidance of the Manager of ESMAP.

FUNDING

ESMAP is a knowledge partnership supported by the World Bank, the UNDP and official donors from Belgium, Canada, Denmark, Finland, France, Germany, the Netherlands, Norway, Sweden, Switzerland, and the United Kingdom. ESMAP has also enjoyed the support of private donors as well as in-kind support from a number of partners in the energy and development community.

FURTHER INFORMATION

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1

Introduction and Overview

Report Objectives

- 1.1 This report has four main objectives:
1. To provide a status report on the work undertaken since 1996 to prepare the draft Electricity Law and associated secondary regulations (Chapter 1).
 2. To review the outcomes of the September 2000 round table that used objective-oriented planning methodology to identify the issues constraining the finalization of an effective electricity law for Vietnam (Chapter 2).
 3. To provide recommendations on the immediate and medium-term policy issues that the Government should address to facilitate drafting an effective electricity law (Chapter 3).
 4. To provide a review of the fourteenth draft of the Electricity Law (March 2001) and draft decrees on tariffs and regulation with specific suggestions on how the policy issues and recommendations discussed in Chapter 3 may be addressed in subsequent drafting work (Chapter 4).

Background

1.2 The Government of Vietnam has been working for six years to prepare a new Electricity Law that would facilitate key structural, governance, and regulatory reforms in the power sector. The principal objective of these reforms is to enhance the efficiency and effectiveness of the power sector to meet the needs of a growing economy and ultimately to provide electricity to the entire population of Vietnam.

1.3 The need for the Electricity Law was recognized by the Prime Minister in 1996, for two main reasons. First, no basic law governing the power sector had been approved at the level of the National Assembly – existing legal documents passed since 1960 were largely in the form of decrees and directives that were often inconsistent with each other. Second, the existing framework of decrees was not suitable for the wider economic transition, particularly in the power sector, to a socialist market orientation.

Given these imperatives, the specific objectives of the Government in establishing a new Electricity Law were:

- To attract domestic and foreign investment in power-sector activities;
- To ensure equality, fairness, and protection from monopolistic behavior in power sales and purchases;
- To protect the legal rights of power consumers and establish their legal obligations; and
- To ensure the efficient operation of the power sector.

1.4 In 1996, the Prime Minister directed the Minister of Industry to establish a program and plan to draft the Electricity Law. After six years of work and consultation with the relevant ministries, state agencies, provincial People's Committees, representatives of large consumers, power enterprises, and the international investment community, the primary Law is now in its fourteenth draft. Several secondary regulations have also been drafted to support the implementation of the primary Electricity Law.

1.5 Despite the efforts of an extremely competent working group and the guidance of the Steering Committee headed by the Minister, the fourteenth draft of the Electricity Law falls short of achieving its objectives. Several factors have constrained the preparation of an effective Electricity Law for Vietnam. Perhaps the most significant factor is that the legal drafting proceeded with policy guidance and basic assumptions that were not always clear. It may also be argued that there is limited Government commitment to undertaking any substantive reform of the sector and the regulatory arrangements under which it operates.

Support for the Preparation of the Electricity Law

1.6 Assistance for the preparation of the Electricity Law and secondary regulations has been provided by ESMAP¹, the World Bank, and ADB. ESMAP supported the initial work, and complementary funds were obtained from the Institutional Development Fund, administered by the World Bank and managed directly by MOI. The Asian Development Bank (ADB) provided the funding to support the preparation of draft secondary regulations.

1.7 The World Bank, ADB, and the wider donor community are committed to continuing their support to the Government of Vietnam in advancing and finalizing an effective legal framework for the power sector. ²

Key Steps – 1996-2001

- **Preparing the basic outline of the electricity law** (April-July 1996): The purpose of the law and the topics that the law should cover are identified. Discussion focuses on the concept of separate licensing and on the legal definition and effective separation of state management functions that are currently combined (that is, ownership, policy, and regulation).
- **Developing the structure of the Electricity Law and general discussion of content** (August-October 1996): The decision is made to recognize the function of regulation in the law and to require separate licensing. Basic content and structure are submitted to the Steering Committee
- **Developing the main body of the Law** (December 1996 – August 1997): Discussions are held with legal international and domestic legal drafting advisors. During this period, the main content of the law is developed in detail. The fifth draft of the Electricity Law is prepared and submitted to the Steering Committee.
- **Holding regional consultation workshops** (September-October 1997): The first of a series of consultations is held. The Steering Committee conducts three workshops, in Danang, HCMC, and Hanoi. These consultations focus on domestic stakeholders (that is, provincial and municipal People’s Committees).
- **Drafting and consulting with the international community** (November 1997-March 1998): Based on the comments received at the regional workshops, a sixth draft of the law is prepared and a consultation workshop with the international law firms, foreign investors, and the donor community is held in Hanoi in March 1998. The feedback received is used to prepare the seventh draft of the Law.
- **Holding consultations with state management agencies** (March 1998 – June 1998): MOI organizes a workshop to discuss the seventh draft of the law with State management agencies. These include the Department of Enterprise Renovation; State Pricing Committee; Government Personnel Department; Ministry of Finance; Ministry of Planning and Investment; Ministry of Labor; Ministry of Science, Technology and Environment; Ministry of Trade; Ministry of Justice; People's Supreme Court; and the National Prosecution Institute. The eighth draft of the Electricity Law is prepared.
- **Holding discussions with international regulators, and regulatory study tour** (June 1998 - May 1999): The eighth draft of the electricity law is prepared, incorporating some elements of advice from two international regulators. The working group visits Argentina, Germany, Jamaica, Panama, Thailand, and the USA, studying different types of regulatory agencies; various processes of reform and change in ownership; models for organizing the power market; separation of state management functions; and methods of formulating electricity tariffs. The ninth draft

of the Electricity Law is prepared in May 1999, after additional discussion with legal advisors and international regulatory advisors.

- **Consultations with government agencies and civil society** (June-July 1999): The ninth draft is sent to all ministries and branches as well as to social organizations, among them the National Front of Vietnam; Labor Union; Youth Union; Women's Union; Union of Science and Technical Associations of Vietnam; and the Association of Consumer Protection. After getting around 30 key comments from the above organizations, the tenth draft is prepared.
- **Regional consultations** (August-September 1999): MOI organizes a second series of regional consultations in Danang, HCMC, and Haiphong in August and September with the local People's Committees and large consumers. The working group incorporates some of the feedback and comments to prepare the eleventh draft of the law.
- **Round table on electricity legislation and policy** (November 2000): MOI, with the assistance of the ADB and the World Bank, organizes a round table in Haiphong to identify issues constraining the finalization of the Electricity Law and to provide guidance for future changes to the draft Law.
- **Second round table on electricity legislation and policy** (March 2001): Following the success of the November 2000 round table, a follow-up session is organized in Sapa focusing on issues identified as contentious during the November 2000 round table--specifically, the structure and responsibilities of an electricity regulatory authority in Vietnam, responsibility for tariff setting, and transition to regionally differentiated electricity tariffs.

Secondary Regulations

1.8 In accordance with legislative practice in Vietnam, the primary electricity law is intended to establish key principles, institutional requirements, and guidelines to provide a stable legal framework for the sector, and leave implementation details to secondary regulation. For the legislative package to be reviewed by the Legislative Committee of the National Assembly, it is also necessary to prepare drafts of the key components of the secondary regulations. The working group determined that the main secondary regulations that had to be prepared for a comprehensive legislative package were decrees on:

1. Organizational structure and regulatory procedures of the regulatory agency;
2. Tariff-setting methodology and approval procedures; and
3. Rural electrification.

1.9 In mid-1998, work started on drafting the secondary regulations. The Prime Minister issued the Decree on rural electrification in early 1999. Although draft Decrees on the regulatory agency and tariff- setting methodology have been prepared, they have not been given sufficient attention owing to the uncertainties surrounding the future of the Law itself.

Advancing the Electricity Law

1.10 MOI, in consultation with the World Bank (WB) and the Asian Development Bank (ADB), decided it was time to analyze why progress was slow and what could be done to overcome this problem. The parties agreed that the situation could best be analyzed in a open round-table discussion where participants would be able to express their opinions freely and work towards identifying solutions. It was therefore decided to conduct a facilitated participatory discussion that would achieve this goal. It was also expected that the outcomes of the round-table discussions could be used to develop recommendations to revitalize the law-drafting process, perhaps in the form of a policy guidance paper for consideration by senior policy makers.

1.11 Section 2 reviews the outcomes of the round-table discussion held on September 26 and 27, 2000. Section 3 is a power policy guidance document prepared by the World Bank and advisory team. Section 4 is a detailed legislative review of the fourteenth draft of the Electricity Law addressing specific issues that should be considered in the new phase of drafting.

2

The Round Table on Policy and Law

Introduction and Objectives

2.1 On September 26 and 27, 2000, a round table was held in Halong Bay to discuss the reasons why the Electricity Law drafting process was not leading to a satisfactory final outcome, despite four years of extremely hard work by a very competent working group assisted by international legal and policy advisors.

2.2 The main objective of the round table was to have all participants from the main stakeholder agencies in the power sector work together to identify and analyze the policy decisions that must be addressed to prepare a satisfactory Electricity Law for Vietnam.

2.3 The round table represented a significant and innovative departure from the traditionally formal and constrained exchanges of opinions and ideas between government agencies, energy enterprises, and other stakeholders. Using a participatory discussion format with a facilitator, the thirty-five participants worked together to identify specific problems and possible solutions to clarify power-sector policy in Vietnam and prepare a good Electricity Law.

2.4 Two days of round-table talks clearly do not provide enough time to determine and discuss all pertinent issues, evaluate likely problems, and determine complete solutions. However, all participants agreed that the discussion was successful in identifying the priorities the Government should focus on in the short term.

Round-table Format and Methodology

2.5 The round table was conducted using a participatory process based on Objective Oriented Project Planning (OOPP) methodology.³ Essentially it consists of the following steps:

1. Brainstorming on objectives

2. Problem analysis
3. Problem prioritization
4. Brainstorming on issues to be addressed in the Electricity Policy
5. Policy elements prioritization
6. Discussion on follow-up

2.6 The tool used for the discussion process can be described as structured brainstorming, employing such techniques as:

Visualization of inputs

2.7 Visualization is achieved by limiting oral contributions and by requesting the participants to write their contributions on cards (10 cm x 20 cm), using flip-chart markers. The contributions are subsequently taped on a board or wall so that all participants can see them.

Clarification of inputs

2.8 After receiving the inputs of the participants, the cards are read out loud one by one, and participants have the opportunity to ask questions for clarification. No judgment of the inputs is allowed--participants are expected to respect each other's opinions. To limit the oral discussions, participants are requested to speak briefly and to the point.

Structuring of inputs

2.9 After the meaning of the inputs is clear to everyone, the cards are put in order. First, cards with similar or duplicate ideas are grouped together. Then, when possible, cards are grouped in specific categories, such as "Market Structure," "Technical," or "Policy." Finally, where possible and applicable, an attempt is made to establish the cause-effect relationship between the different cards.

2.10 The round table was conducted in two languages, Vietnamese and English, using sequential translation. This allowed everyone the opportunity to express themselves in their preferred language. The sequential translation, however, did slow the discussion. Mr. Enno Heijndermans, an expert on participatory discussion methodology, was the round-table moderator.

Round-table Program

2.11 The round-table discussion was structured as follows over the two days:

Agenda Item	Time Spent (hours)
1. Opening	½
2. Introducing participants	½
3. Explaining the methodology	½
4. Brainstorming on power-sector objectives	1
5. Prioritizing objectives	½
6. Analyzing problems	5
7. Prioritizing problems	1
8. Identifying policy impediments	2
9. Follow-up and Closing	2

Round-table Outcomes

2.12 The participants at the round table worked together to:

1. Agree on the main objectives of the power sector in Vietnam;
2. Identify the problems that constrain the achievement of the main sector objectives;
3. Prioritize the problems constraining the achievement of the two main objectives;
4. Identify issues that should be addressed/clarified in the power-sector policy; and
5. Prioritize the issues that needed to be addressed/clarified in the power-sector policy.

Main Objectives of the Power Sector in Vietnam

2.13 In order to reach a common understanding of the objectives of the electricity sector, brainstorming on objectives was considered necessary. Participants were asked to submit written answers to a question on objectives. The question posed to the participants was: “What do you think should be the main policy objective for the electricity sector in Vietnam?”

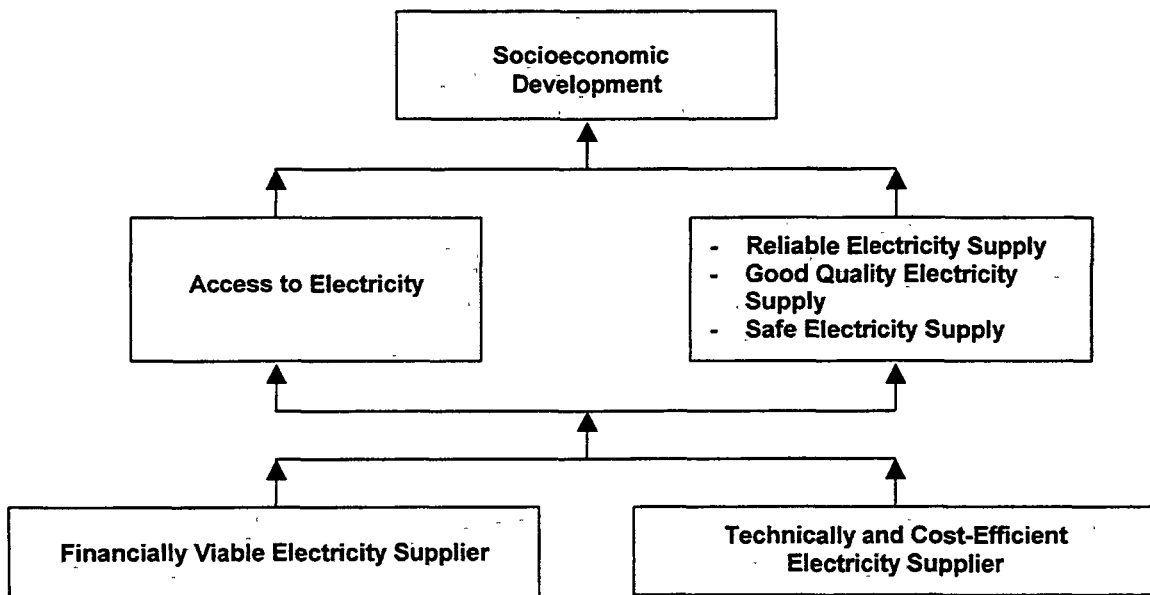
2.14 The cards with participant responses were read out loud and the opportunity was offered to ask questions for clarification. Next, cards were grouped in a number of categories. Cards with similar meanings were combined. The responses varied widely, from the very general, for example “sustainable development” or “socio-economic development,” to the more specific, such as “optimize distribution system” or “appropriate tariffs.” The contributions were classified into six categories:

- Cost
- Sustainability
- Reliability
- Efficiency
- Economic development
- Access/equity

2.15 There was a suggestion that the objectives be prioritized. However, most participants felt this would not be appropriate as the objectives proposed belonged to different objective levels. It was therefore decided to construct a simple objective tree using the categories noted above (see Figure 1 below.) The three-level objective tree showed that the highest level represented a *national goal* (socio-economic development), the middle level the *sector goals* (access and reliability/quality), and the lowest level *enterprise goals* (financial viability, technical and cost efficiency).

2.16 The objective tree showed clearly that there are two main sector goals – access and reliability (or quality). It was decided to analyze separately, in further detail, the problems in achieving these sector goals. Relevant enterprise-level problems would come up automatically; problems related to achieving the country-level goal are beyond the purpose of the round table.

Figure 1. Objective Tree



Problem Analysis and Prioritization

2.17 Problem analysis was a major focus of the round table, both in terms of its importance and the time it required. The two main sector problems were identified as “Access to electricity is inadequate” and “Reliability, quality, and safety of electricity supply is unsatisfactory”; then these were labeled the “core problems.” Participants were asked to identify factors that had led to those problems. Participants were also asked to consider problems or issues that had caused these core problems and were asked whether the core problems were an effect of these problems or issues.

2.18 The participants were in the first instance requested to write just one problem (one problem per card) leading to one core problem (for instance, "Access to electricity is limited"). Later the opportunity was offered to submit additional cards listing additional problems leading to the first core problem. The participant inputs were discussed and, where necessary, clarified. After addressing the overlap between different cards, the cards were grouped into categories for further processing. The same procedure was followed for the other core problem ("Reliability, quality, and safety of electricity supply is insufficient"). The participants brought forward 27 problems related to access to electricity and 29 problems related to reliability and quality of electricity supply.

2.19 The problems, having been identified and grouped, were organized into problem trees to establish the cause-effect relationships between responses (see Figures 2 and 3). These problem trees have been kept simple. With more time, the round table could have focused on developing a more detailed analysis of cause-effect relationships. The result, however, is sufficient to understand the key issues constraining the development of the Vietnamese electricity sector.

2.20 After completing the problem trees, participants prioritized the problems using a voting procedure.³ The voting procedure overcomes a weakness of the OOPP methodology, which tends to treat all problems as equally important.

2.21 In the problem trees, the numbers in parentheses reflect the sum of the points that participants individually assigned to a specific issue or problem. The higher the number of points, the higher the relative importance of the identified issue or problem.

Problem Prioritization – Access

2.22 The priorities related to access as perceived by the round-table participants were as follows:

1. Institutional arrangement not favorable or inadequate (83 points)

2. Insufficient investment (47 points)
3. Law on electricity not available (37 points)
4. Economic/financial investment not viable (15 points)
5. Insufficient ability to pay (14)
6. Insufficient policy mechanisms, including tariff and investment for power sector (14 points)
7. Poor institutional arrangements for nongrid and remote areas (13 points)
8. Lack of investment mechanisms (12 points)

2.23 It should be noted that the problem tree on access has six main roots. It is also relevant to look at the total number of points in each root. Below, the main access roots are given with the number of points received (out of a total of 269).

1. Investment (89 points)
2. Institutional arrangement (98 points)
3. Electricity law (37 points)
4. Ability to pay (14 points)
5. Willingness to pay (6 points)
6. Electricity policy (25 points)

2.24 From the above prioritization exercise, it can be concluded that the round-table participants considered investment and institutional arrangements the most important problems related to access, by a wide margin. Both the law and policy are also considered to be important issues. They came up as independent roots, but it is obvious that these problems are in fact a cause of many of the problems in the other roots. If these problems are addressed, a number of low-level problems in other roots can be overcome. Overall this makes both issues very important. Willingness to pay is not considered to be a major problem. “Insufficient ability to pay” may have received a relatively low priority because it is considered to be a given, and a factor the electricity sector cannot do much about. However, insufficient ability to pay may pose a major problem to attempts to increase electricity access. For instance, insufficient ability to pay may hamper attempts to increase further investment. As noted earlier, these issues could have been discussed at greater length at the round table and the problem tree rationalized further – something that was not possible owing to the lack of time.

Problem Prioritization – Reliability and Quality

2.25 The round-table participants perceived that the important priorities related to reliability, quality, and safety were as follows:

1. Lack of regulator (47 points)

2. Poor (technical) quality of distribution system (43 points)
3. Monopoly (31 points)
4. Irresponsible behavior of customer-service staff-- monopolistic, bad treatment of customers and low quality (24 points)
5. Institutional arrangement not good (22 points)
6. No incentives or penalties for institutions or employees of institutions (18 points)
7. Not enough investment in technical equipment (17 points)

2.26 For the reliability, quality, and safety problem tree it is not so easy to identify main roots. In fact, most problems raised lead directly or indirectly to the market structure and the monopoly position of EVN. Basically, the problem tree indicates that there are serious technical problems (poor quality of the system, maintenance and operation problems) and that EVN is not able to solve these problems (insufficient investment) and has no incentive to do so (monopoly situation).

2.27 Cards related to the market structure totaled 149 points (out of a possible 274 points). This includes the following problems:

1. Irresponsible behavior of customer-service staff. Monopolistic, bad treatment of customers (24 points)
2. No effective pressure on EVN to improve performance (7 points)
3. No incentive or penalties for institutions or employees of institutions (18 points)
4. Lack of regulator (47 points)
5. Monopoly (31 points)
6. Institutional arrangement not good (22 points)

2.28 What the foregoing analysis and problem prioritization has confirmed is the need to clarify a number of policy areas and make critical policy decisions. This was felt by most participants, but in particular by the members of the Working Group on the Electricity Law. The next step in the round table was to identify the policy areas, topics, and issues which the participants felt needed to be clarified further by the Government.

Figure 2. Access Problem Tree

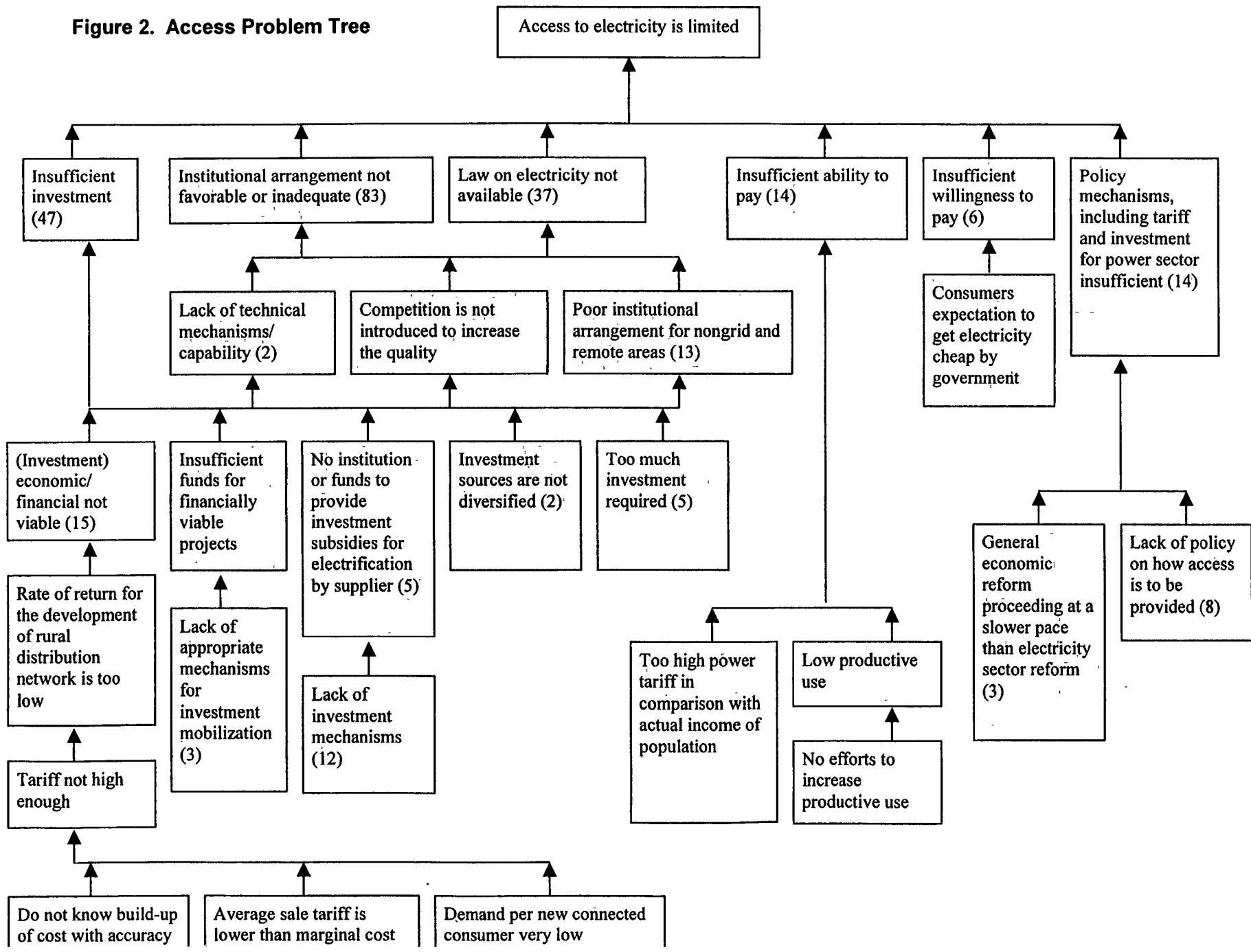
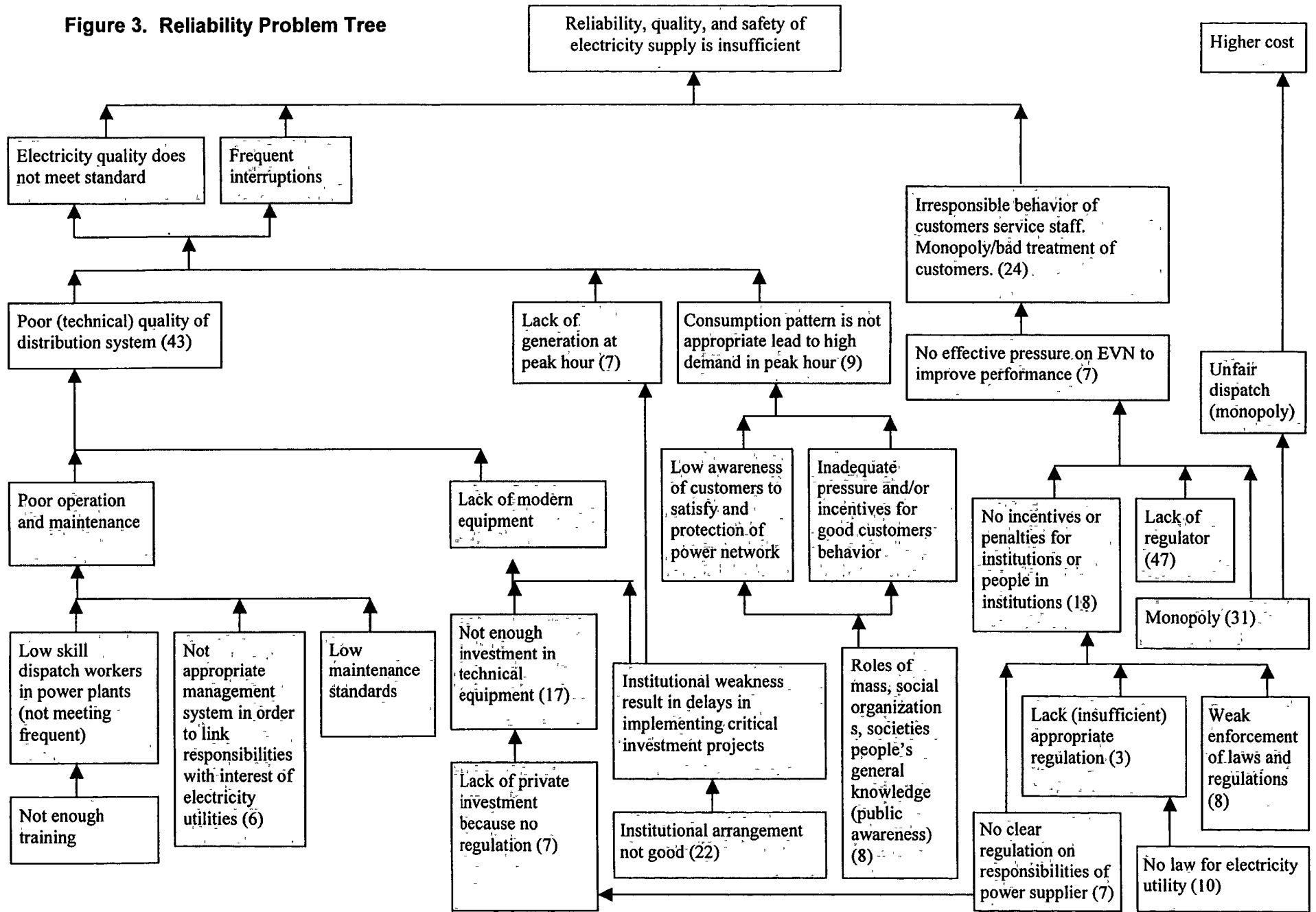


Figure 3. Reliability Problem Tree



Identifying Issues to be Addressed in the Power-Sector Policy

2.29 Completing the problem trees gave all participants a common framework of understanding regarding the main problems in the electricity sector and the need to have a comprehensive approach to address them. The framework enabled participants to brainstorm to identify the policy issues that should be addressed within a comprehensive government power-sector policy. For this purpose, verbal answers were requested to the question: “Which policy elements need to be addressed in the electricity policy?” The contributions were discussed, clarified, and written on flip charts. The participants identified 13 main policy elements:

1. Market structure
2. Role of other agencies (private/nongovernment)
3. Regulation (clarified as “effective” regulation)
4. Mechanisms for rural electrification
5. Natural-resource use policy
6. Investment stimulus
7. Energy efficiency
8. Role of National Committee on Energy Development
9. Tariff policy
10. Electricity export and import policy
11. Human resources development (training, quality standards, qualification)
12. Environmental protection
13. Transition policy (road map)

2.30 After the main elements were clear, each element was investigated in more detail. The participants were requested to answer the following question for each policy element: “Which aspects should be clarified in this policy element?” Again, after discussion and clarification the answers were written on flip charts. These responses are summarized in the following table.

2.31 To get an idea about the way participants perceived priorities of the policy elements, a voting round was held. (The voting methodology is described in Footnote 2.)

Policy Issue	Voting Points	Priority Rank
1. Market structure	86	1
<ul style="list-style-type: none"> • Clarify corporate structure. • Identify who sells to whom. • Open market for generation first. • Open market for distribution next. • Keep transmission with government. • Clarify role of private sector. • Define pace of change. • Develop transition policy. 		
2. Role of other agencies (private/nongovernment)	9	-
<ul style="list-style-type: none"> • Boundary with participation of foreign/private sector. • Should there be limits on private sector? • Should there be a 15 percent control limit? • Will EVN play a major role? • Will ownership diversify? • Limits on domestic state sector? • Joint ventures (state and private)? 		
3. Regulation (effective regulation)	55	2
<ul style="list-style-type: none"> • Electricity regulator? • Functions and responsibilities? • Boundary regulator and government? • Relation with other government agencies? • Composition? • Model of operation? • Separate state management functions from other functions. • Institution to house the regulator (very sensitive, very important) Should the regulator be located in a general department of energy outside state management? 		

Policy Issue	Voting Points	Priority Rank
4. Mechanisms for rural electrification	21	4
<ul style="list-style-type: none"> • Investment support from government. • Subsidies. • Mechanisms for rural electrification management (local authorities/cooperatives?). • Clarify responsibilities of EVN. • Reduce the burden on EVN. • Obligations of distribution licensees. • Check consistency of policy and law with old rural electrification policy paper! • Establish a clear policy on off-grid rural electrification! 		
5. Natural-resource use policy	4	–
<ul style="list-style-type: none"> • Prioritize use of natural resources. • Prepare a policy on effective economic use. • Consider relative cost of using different resources for power. • Subsidize new and renewable resources (such as wind, solar, water). • Explore possibilities of nuclear energy. • Clarify mechanism to make trade-offs between resources. 		
6. Stimulate investment	4	–
<ul style="list-style-type: none"> • Statement on competitive bidding. • Government commitments to simplify time bound processes. • Policy on import of foreign equipment. • Government should protect investments. • Design of regulatory procedures. • Ownership policy. • Clear definition of private and public sector roles. • Tariff policy to ensure cost recovery and reasonable return on investments. • Government commitment to remove barriers. • Define security package available to protect investments. • Identify government support for implementation (such as rights of way, licenses, permits). • Licencing foreign projects are covered by foreign investment law. Separate provision on licensing in electricity law? 		
7. Energy efficiency	Zero (0)	–
<ul style="list-style-type: none"> • Appropriate incentive structures. • Load management (timetable/plan). • Tariff policy for energy efficiency. • Incentives for using high-efficiency consumer appliances. 		

Policy Issue	Voting Points	Priority Rank
8. Role of National Committee on Energy Development	12	6
<ul style="list-style-type: none"> • Clarify relative role to state management and regulator. • Clarify legal status. • Define mandate and composition. • Location. • Define if it will have a full-time secretariat. 		
9. Tariff policy	55	2
<ul style="list-style-type: none"> • Uniform versus nonuniform tariffs nationwide. • Tariff framework fixed by government. • Tariff approval by government. • Does Prime Minister set end-user tariffs or ceiling price? • Cross-subsidy allowed? • Wholesaler to farmers: How to regulate or intervene? • Competition in generation and distribution: what will happen? • End-user tariffs. • Market mechanisms? • Contracts: price or price formula cannot be changed? • Principles in policy: enable to recover cost and return on capital. • Affordability: protection of low-income consumers. • Appropriate policy on subsidies and cross-subsidies. • Lifeline rate. • Changes in tariff and tariff structure to be coordinated. • Should policy state that subsidies decrease over time? • Who should bear the burden of subsidies? Should not be EVN. • Make subsidies transparent. 		
10. Electricity export and import policy	Zero (0)	–
<ul style="list-style-type: none"> • Greater Mekong region: Reconcile link between commercial and political objectives. • Who is allowed to export/import electricity? Distribution companies near the border? • Who authorizes import/export? Is it necessary to authorize? • Guarantees? • Dispute settlement: Which law? • Equipment exports/imports. 		

Policy Issue	Voting Points	Priority Rank
11. Human resources development	2	–
<ul style="list-style-type: none"> • Where does the budget come from? • Identify key priorities. • Employee rights/obligation during transition. • Socialization policy? • Raise and diversify sources of finance. • Professional training information system (two-way communication). • Management training, training of scientific and technical staff. • Responsibilities of state, Government, and enterprises. • International cooperation: right for companies to deal directly with foreign parties. • Two levels: Education by state, education by enterprises. Address overlaps. • Regularly update curriculum to address technical changes. • Re-training. • Should government provide incentives for training? 		
12. Environmental protection	2	–
<ul style="list-style-type: none"> • Internalize environmental cost in investment decisions. • Covered by existing laws and decrees. No need for extra coverage in Electricity Law. • Clean technology for production. • Linkage to fuel choice (hydro versus coal trade-offs). • Should be consistent with international agreements (Mekong River agreement, Kyoto). • Cost of environmental standards needs to be considered (life-cycle cost). • Cost recovery policy. • To address the concerns of international financiers, include a specific statement that good environmental practices will be adopted. • Hydropower and flood control. 		
13. Transition policy (road map) °	23	4
<ul style="list-style-type: none"> • Indication of timetable for structural changes in sector (immediate, short, medium, long). • Timetable for change in tariff (level and structure). • When will the Regulatory Agency start operating? • Consistency (structure – regulation – tariffs). • Immediate next steps. • Role of government, regulator, transmission (in law). 		

2.32 As can be seen from the above, participants provided responses both in terms of specific questions and issues and in terms of recommendations and suggestions.

Prioritization of the Policy Issues

2.33 The priorities, as perceived by the round-table participants, were very clear and extremely interesting. The summary results below demonstrate this.

1.	Market structure	86 points
2.	Regulation (effective)	55 points
2.	Tariff policy	55 points
3.	Transition policy (road map)	23 points
4.	Mechanisms for rural electrification	21 points
5.	Role of the National Committee on Energy	12 points

2.34 Clarity on market structure, regulation, and tariff policy were identified as key priorities that need to be addressed in the power-sector policy.

Discussion on Follow-up

2.35 As the end of the round-table discussion drew nearer, participants decided to agree very quickly on a series of suggested next steps to assist the Electricity Law working group in preparing a new, improved draft of the Electricity Law. The participants suggested the following next steps (not in order of importance; no prioritization was done):

1. Government provides policy clarification and guidance to working group

Government will provide clear policy guidelines on key policy issues to enable the Electricity Law working group to continue improving the draft law and secondary regulations. (Section 3 of this report provides a list of the policy decisions and associated guidance that the Government should strive to clarify and provide to the Electricity Law working group.)

2. National Assembly includes Electricity Law in the legislative approval process for 2001

The Steering Committee will submit its draft for review to the National Assembly in November 2000 to facilitate the inclusion of the Electricity Law in the Assembly's legislative schedule. Although the draft will probably be changed, this initial review was necessary to obtain a "slot" in the law-making procedures of the National Assembly.

3. Relevant agencies continue and intensify consultations on the draft Law

Participants felt that the consultation process on the Electricity Law should continue its work at a greater depth. Although there have been wide regional consultations on the Law, it remains important to intensify the process of informal consultations in order to address specific issues.

4. Future round tables meet to address specific issues

The round-table discussion process was found to be useful in focusing on specific questions. Hence, participants felt that additional round tables of a similar nature would also be useful to analyze and address specific policy issues and define a clear strategy.

3

Policy Guidance Document

Purpose of the Policy Guidance Document

3.1 Based on the outcomes of the round table and the request of senior Ministry of Industry officials, it was decided to prepare a policy guidance document that would:

1. Summarize the key policy issues that senior government policy makers should address to provide adequate guidance to the Electricity Law working group to complete their task.
2. Identify priority policy issues that need to be decided immediately.
3. Recommend possible and/or preferred decisions that could be taken and provide a rationale for the recommendations.

Structure of the Policy Guidance Document

3.2 The policy guidance document addresses four main topics: market structure (MS); regulation (RG); tariff policy (TP); and rural electrification (RE). In the following discussions, the first topic addressed is the one regarded as of the most immediate importance.

Policy Documents Issued by Ministry of Industry

3.3 The following policy documents issued by the Ministry of Industry are provided in Appendix C.

- The Power-Sector Policy Statement, Ministry of Industry, August 12, 1997.
- Policy on Rural Electrification, Ministry of Industry.

Section 3.

Policy Guidance Document

	Recommendation	Rationale
1. Market Structure – (MS)		
MS1	<p data-bbox="480 406 1027 439">Guidelines on Long-term Market Structure</p> <p data-bbox="480 455 1236 893">The future evolution of the power-sector structure (over the next 10 years or so) needs to be broadly defined, with indicative steps and time frames to facilitate the development of the supporting legal and regulatory framework. Many documents prepared by EVN now reflect plans for generation separation and the creation of a power pool. In addition, steps to revise bulk supply tariffs and establish consumer tariffs that reflect actual distribution costs are being considered. It would be appropriate to develop a common set of guidelines on future power-sector restructuring plans that can be used to develop and implement reforms in the power sector. These guidelines (also called the power-sector “road map”) should be issued by the government to clarify:</p> <ul style="list-style-type: none"> <li data-bbox="480 910 1236 1050">(a) Re-organization of power-sector entities – separating transmission and dispatch from generation; corporatizing generation; increasing the independence of distribution companies; planning to create a power pool. <li data-bbox="480 1067 1236 1133">(b) Principles for establishing transfer prices between generation and bulk supply, and to distributors. <li data-bbox="480 1149 1236 1215">(c) Progressive shift from uniform tariffs to regionally differentiated tariffs <li data-bbox="480 1232 1236 1298">(d) Role of the domestic and foreign private sector in generation and distribution – restrictions, if any. <li data-bbox="480 1314 1236 1348">(e) A transition plan 	<p data-bbox="1253 455 1970 860">The lack of a clear long-term vision of future power-sector structure is the main impediment to implementing reforms that will enhance the ability of the sector to achieve its two principal goals – increasing electricity access and improving power supply reliability and quality. These goals were identified by the participants at the power-sector policy and law round table (see Chapter 2). The participants at the round table were also of the opinion that clarification of the market structure was the highest priority issue to be addressed by the Government of Vietnam. Participants identified the preparation of guidelines on long-term market structure as the number-one priority from a list of 13 issues.</p>

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	Recommendation	Rationale
<p>MS2</p>	<p>Agreement on Separate Licensing by Activity</p> <p>The licensing framework in the Electricity Law should require separate (that is, individual) licenses to be issued by activity for all dependent and independent accounting units of EVN and other participants in the sector.</p>	<p>Separate licensing creates the basis for cost transparency by function within an electric utility like EVN, and provides the foundation for later corporate unbundling. While the draft Law currently allows for separate licensing, it allows a single license to be issued to an entity engaged in multiple functions. Therefore a holding company like EVN could, for example, be issued a single license for each different activity it is now engaged in. This would restrict the ability of the regulator to effectively supervise the power utilities – particularly EVN.</p>
<p>MS3</p>	<p>Generation Separation– Action Plan</p> <p>The progressive separation of generation into an adequate number of generation firms is essential for the development of an efficient generation sector that can support fair competition “for” the market (that is, via competitive bidding) and nondiscriminatory dispatch in the immediate future, and “in” the market (such as a power pool) when feasible.</p> <p>A plan should be developed to:</p> <ul style="list-style-type: none"> (a) Convert all generation-dependent accounting units of EVN into independent accounting units. (b) Convert all independent accounting units into separate corporations, with management boards that are separate from EVN management boards. (c) Limit the capacity of each generation company and maximize the number of generation companies 	<p>The monopoly of EVN in the power sector has been identified as a significant constraint to efficiency by participants at the Halong Bay workshop. The demonopolization of the generation sector can provide many immediate benefits, specifically:</p> <ul style="list-style-type: none"> (a) Improve the incentives for generation plants to reduce costs; (b) Remove bias in dispatch decisions by EVN; (c) Allow the purchaser (that is, EVN) to make efficient and fair power purchase decisions from new independent power producers. <p>An integral element of generation separation would be to ensure that EVN and/or EVN-owned generation is restricted from developing new IPPs.</p>

Section 3. Policy Guidance Document		
	Recommendation	Rationale
MS4	<p>Transmission Consolidation</p> <p>Sector restructuring plans should require the consolidation of the existing four transmission companies into a single EVN company. Initially, this consolidated transmission company could perform the functions of: (a) the grid owners; (b) dispatch (or system operator); (c) bulk power supplier (interim single buyer).</p> <p>The regulatory agency should at a later stage have the capacity to require separate licensing of (a), (b), and (c).</p>	<p>The transmission network is a critical monopoly service that acts as the backbone of a cost-efficient and reliable power system. The integrated management, operation, planning, and expansion of the network will yield significant efficiency benefits.</p>
2. Regulation – (RG)		
RG1	<p>Establishing Regulatory Certainty and Stability in the Primary Electricity Law</p> <p>The creation of stable regulatory agency should be one of the primary objectives of the Electricity Law. To enhance the stability and credibility of this regulatory agency, the Electricity Law should reflect the following basic decisions:</p> <ul style="list-style-type: none"> (a) The location of the regulatory agency (point RG2, below) (b) Decision-making powers of the regulatory agency (point RG3, below) (c) Procedure of appointment of the Board/Commission of the regulatory agency (point RG4, below) (d) Functions of the regulatory agency 	<p>The current legal drafting approach is to leave many of the detailed decisions concerning the regulatory agency to be defined and established in secondary regulations. It is critical to recognize that stability of regulatory agency is key to the financing and development of the electricity industry in Vietnam. The relative ease by which secondary regulations can be amended, compared to the primary Law, makes the secondary regulations inherently less stable than the Law. Therefore, the <i>basic decisions</i> noted in RG1 should be resolved and included in the primary Electricity Law approved by the National Assembly.</p>
RG2	<p>Separation of Regulatory Agency</p> <p>The regulatory agency should be established separate from, and independent of, the agencies that perform the <i>ownership</i> functions (that is, State Management) and management</p>	<p>A key objective of the Electricity Law should be to create a legal basis for a separate regulatory agency that can credibly supervise the electricity sector. Separation of this agency</p>

Section 3. Policy Guidance Document		
	Recommendation	Rationale
	<p>functions (that is, business management). Effectively, this agency needs to be separate from the Ministry of Industry and EVN. There are two main options:</p> <ol style="list-style-type: none"> 1. A regulatory agency (such as a directorate or committee) established within the Office of Government. 2. A regulatory agency (such as a commission) established as a separate government institution. <p>If the overall supporting framework for the regulatory agency is adequate, either option can be made to work effectively. We would, however, recommend Option 2.</p>	<p>from day-to-day supervision and control by MOI or any other government body is absolutely critical to its future effectiveness. In order for a regulatory institution to be credible in the eyes of all stakeholders, it must be able to make meaningful decisions which cannot be reversed on a political basis. This is particularly important to investors, given the capital-intensive nature of the sector.</p> <p>It should be noted that the effectiveness of power-sector regulation was selected as the second-highest priority issue to be clarified by participants at the round table (Chapter 2).</p>
RG3	<p>Decision-Making Powers of the Regulatory Agency</p> <p>For the regulatory agency to be perceived as credible it should have a reasonable degree of autonomy in either making or recommending important decisions (in such areas as tariff, investment, license enforcement). There are two options for establishing its autonomy:</p> <ol style="list-style-type: none"> 1. The Government-appointed regulatory Commissioners or Board should make final tariff decisions (for example) based on transparent Government-approved principles and guidelines. 2. As another example, the Government-appointed Commissioners should be able to make tariff recommendations to the Prime Minister, which the Prime Minister would approve and make effective. Under this option, the Prime Minister should be required to explain to the public any reasons for refusing to accept the regulatory agency's recommendation. <p>Option 1 is the recommended option.</p>	<p>The degree of actual independence that a regulatory agency has is determined by its autonomy to make decisions based on clear Government-approved guidelines and principles. While there is considerable sensitivity in giving a Government regulatory agency decisionmaking authority in an area such as electricity tariffs, the importance of doing so should be considered carefully. It is important that the regulatory process be seen as driven by economic and technical, rather than political, issues.</p>

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	Recommendation	Rationale
RG4	<p>Appointment and Removal Processes for Regulatory Agency Commissioners or Board</p> <p>The procedures for appointment and removal of the commissioners or board of the regulatory agency should be stated in the primary Electricity Law. Presently, the process of appointment and removal of regulatory commissioners or board members is covered in secondary regulation. Although the Prime Minister should have the power to appoint and remove commissioners, the powers of the Prime Minister should be defined in the Primary Law and not in secondary regulations (such as via prime ministerial decree).</p>	<p>Given the importance of the appointment and removal of regulatory commissioners or board members to the overall stability of the regulatory agency, it is suggested that these issues be covered in the primary Law.</p>
RG5	<p>Rationalizing Role of State Pricing Committee</p> <p>The role of the State Pricing Committee needs to be reconsidered and rationalized to reflect the organizational and legal reforms in the power sector. It is recommended that the role of the State Pricing Committee in dealing with electricity tariffs be eliminated, and this responsibility be given to the new regulatory agency.</p> <p>There remains, however, the possibility that existing staff engaged in electricity and energy pricing issues within the State Pricing Committee could be transferred to the new regulatory agency.</p>	<p>Any confusion and/or overlap in the roles of the regulatory agency and the State Pricing Committee (or other agency) with reference to setting electricity tariffs can undermine the effectiveness of the transparent tariff-setting process expected to be created.</p>
3. Tariff Policy – (TP)		
TP1	<p>Clarification of Pricing and Tariff Principles</p> <p>Clear tariff principles should be defined to guide the legal drafting team in the immediate term, and assist the regulator once the Law is passed. Essential pricing and tariff principles</p>	<p>The adoption and application of these broad principles would ensure that licensees are provided incentives to operate efficiently and that, if they do, they will recover</p>

Section 3. Policy Guidance Document		
	Recommendation	Rationale
	<p>suggested are that prices and tariff should :</p> <ul style="list-style-type: none"> (a) be sufficient for an efficient licensee to recover the full costs of doing its licensed business and earn a reasonable return; (b) provide incentives for continued improvement in technical and economic efficiency; (c) give proper price signals to consumers as to the costs that increasing consumption imposes on the licensee's business; (d) allow for a limited lifeline tariff to subsidize low-income users, while phasing out broader direct subsidies and cross-subsidies. 	<p>their costs and earn a proper return on their investments. In short, efficiency should be encouraged and properly rewarded. On the consumption side, it is important that consumers get information regarding the costs to the licensee of providing increasing amounts of electricity. This would correct situations in which, with cross-subsidies, neither the firms (i.e. the PCs) getting them through the bulk-supply tariff, nor the consumers, receiving them get the proper price signals to operate/consume electricity efficiently. Nonetheless, despite these important principles, there are some in society who do need assistance and protection; a limited lifeline, targeted to those truly in need, would be reasonable.</p>
TP2	<p>Progress towards Regionally Differentiated End-User Tariffs</p> <p>The structure and level of power tariffs are currently uniform nationwide. This policy has resulted in a number of major distortions:</p> <ul style="list-style-type: none"> (a) Incentives for distribution utilities to operate efficiently and minimize their costs are diluted. It also becomes difficult to obtain accurate information on actual costs. (b) Incentives for efficient utilization of electricity are weak. (c) Incentives for the distribution utility to extend supplies to unserved areas and consumers with low levels of consumption do not exist. (d) Incentives for the distribution utilities that receive an implicit cross-subsidy to purchase economical power from distributed generators also do not exist. 	<p>The efficiency cost of continuing with uniform national tariffs is extremely high and would undermine the ability of the power sector to increase access, improve reliability, and reduce costs. The social objective of providing cheap, subsidized power to low-income consumers can be better addressed by means of a life-line tariff (see Point TP3).</p>

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	Recommendation	Rationale
	<p>(e) Subsidies to low-income end-users are inefficiently targeted, leading to a misallocation of resources.</p> <p>A progressive shift to nonuniform regional tariffs should be considered immediately. A more detailed study may be appropriate. It is recommended that a nationwide average bulk-supply generation and transmission tariff be adopted for a transition period, allowing the main components of the end-user tariff to be kept equal across the nation. Since generation and transmission account for a large majority of overall costs, the differences in retail tariffs would reflect only the different distribution costs. The distribution margin could be based on actual costs, leading to differentiated regional tariffs that strengthen incentives for efficiency and minimize the distortions noted above.</p>	
TP3	<p>Establishing an Efficient National Lifeline Tariff Policy</p> <p>Lifeline tariffs are an efficient and easy mechanism to provide subsidized power to low-income consumers. It is important, however, to establish the lifeline level at an appropriately limited level of electricity consumption. A level of 30 to 50 kWhrs per month is the suggested maximum lifeline consumption threshold. A higher threshold would serve as a disincentive to efficient consumption and may also provide unnecessary subsidies to higher income consumers.</p>	<p>An efficient national lifeline tariff policy would achieve the Government's social objective of subsidizing low-income and rural consumers.</p>

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	Recommendation	Rationale
<p>4. Rural Electrification – (RE)</p>	<p>RE1</p> <p>Establishing a Separate Agency for Rural Electrification Funding, Monitoring, and Implementation Support</p> <p>As the power sector is gradually restructured, with increasing functional and corporate separation of the sector activities, it will be necessary that the rural electrification planning and implementation support functions currently performed by an integrated EVN be consolidated within a single entity. There are two options:</p> <ol style="list-style-type: none"> 1. Establish a separate rural electrification agency. 2. Create the agency within the residual EVN structure, perhaps as part of the transmission company. <p>Given that there is likely to be no appropriate way to link the rural electrification funding, monitoring, and implementation functions within the residual EVN (that is, transmission company), it is appropriate to consider Option 1 – a separate agency. The separate agency could be composed of existing EVN staff working on rural electrification to provide the required technical and planning capacity. It is important, however, that the rural electrification agency be defined in the Law as an agency that is separate from EVN.</p> <p>It is suggested that a study be undertaken to evaluate and decide the organization, structure, and functions of such a rural electrification agency.</p>	<p>It is important that the functions of funding, monitoring, and supervising the implementation of rural electrification programs are not compromised in any way when the power sector is restructured. International experience has shown that separate rural electrification agencies are an effective and efficient mechanism to perform necessary funding and supervisory activities in an unbundled and commercial sector.</p> <p>The actual construction of rural electrification grids and supply should, however, remain a function of the distribution companies.</p>

4

Review of the Draft Law

Introduction

4.1 This chapter contains observations, comments and suggestions based on our review of the fourteenth draft of the Law and three draft Decrees – concerning tariffs, the establishment of the regulatory agency, and licensing.⁴ The licensing Decree was recently drafted for the first time, while the others are presently undergoing redrafts, which we have not yet seen. Hence, some of our comments concerning the latter may need to be revised.

4.2 This review is intended to provide a basis for future changes to the draft Law and Decrees. While this review is not exhaustive, reasons for a specific suggestion or view have been provided where necessary. The nature of this chapter is to identify a number of issues that raise questions and cause concern. We would like to state at the outset that because the note has been focused primarily on critical commentary, it does not adequately acknowledge the substantial amount of thought and high-quality work that has gone into the various drafts. In addition, it should be noted that the fourteenth draft contains many improvements over the twelfth, which was the last one reviewed; to our knowledge, no thirteenth draft was circulated.

4.3 The comments may be broken down into relatively few categories. In some instances, the comments reflect different points of view about drafting and statutory language rather than differences about basic principles. These will be the easiest to resolve and, in some instances, may not be substantive at all.

4.4 In other instances, there may be agreement on what is or is not a question of basic principles. Often, the disagreements concern whether the principles should be written into the Law; but the harder questions, we think, are those in which the principles themselves are questioned. The evolving role of State Management is an example. We can only reiterate that the principles in the Law must be consistent with the objectives of the Law or the two will clash and progress will be constrained.

The Electricity Law in the Reform Process– The Importance of Clarity

4.5 The purpose of the Electricity Law (the Law) and the associated Decrees is to allow for, and to facilitate the implementation of, major changes in the power sector. Clearly, Vietnam cannot reform the sector without a change in law; but the Law itself will not be enough. Reform and restructuring have to be seen as lengthy, complicated processes that will require a well-crafted strategy, long-term commitment, and strong institutional capacity within both Government and the regulatory agency. This is an important lesson from other countries.

4.6 The legal environment that is pertinent to reform of the power sector is not limited to the Law and Decrees, but also to the laws associated with property rights, contracts, and the operation of companies, to note a few examples. These are not reviewed here, but clearly need careful consideration by the Government.

4.7 For reform to be successful in the long term, consistent and fair application of the laws is essential. It is this continuity that will provide the greatest comfort to the sector's stakeholders, both domestic and foreign. No one doubts that this is Vietnam's intention. But that is the long term. In the short term, before either the Government or the regulator has a track record, one has only the Law, the Decrees, and Government's articulation of its intended policies. In the short term, the structure and details of the Law and the Decrees have an extraordinary importance. Because one can look only to these documents – and cannot compare and contrast them now to several subsequent years of decisions and actions – it is particularly important to get them right. The written law is always important, of course, but never more so than when it is not yet possible to juxtapose the words of a statute with later actions taken pursuant to them. Vietnam is not unique in this regard.

Balance between the Law and the Decrees

4.8 In any country, a balance must be struck between a law and its associated decrees. The law should be seen as the more firm and long lasting, whereas the decrees, being designed to implement the law, require some degree of flexibility over time. In other words, it is essential that the law contain the basic principles that will guide implementation; but, as circumstances change, so too must the approach to implementation. There is no hard line that distinguishes between what is and what is not a basic principle, although in most cases it will be quite clear. Consider the following example: Articles Five and Six of the Tariff Decree make it clear that tariff applications will be filed at three-year intervals, but with annual adjustments to cover some exogenous variables, such as foreign-exchange fluctuations. The *principle* is that there is a preference for multi-year tariffs and adjustments; but the choice of a three-year period should be open to change in light of later experience. Thus, the choice of the three-year

time frame belongs in the Decree. However, the *principle* – the preference for multi-year tariffs – belongs in the Law.

4.9 It is accepted that there will be cases where some ambiguity is inevitable, but this should not be a deterrent to making distinctions when it is clearly possible to do so. It is suggested, therefore, that, in the drafting exercise, explicit decisions be made regarding basic principles and whether these principles should reside in the Law or a Decree. There is no benefit to articulating a basic principle in a Decree only, as the interpretation will be that the Government is reserving its right to make a change and that the principle is not immutable. The drafters should consider what is and what is not a basic principle. Basic principles should be articulated in the Law. They may of course be rearticulated in the Decrees; but if they are only in the Decrees, the interpretation will be that they may be revised. We are cognizant of the fact that Vietnam – as every country – has its own conventions vis-à-vis legal language and drafting. This is an area, however, where some compromise would be useful. At the least, in the decision as to where or when to compromise, the costs of not doing so should be an explicit consideration. The consequences of such interpretations should also be acknowledged and considered. As there is much detail in the draft Decrees, to a large extent the allocation between the Decrees and the Law will be more of a drafting than a conceptual exercise.

Specific Recommendations for Modifying the Fourteenth Draft of the Electricity Law

Recommendation	Explanation	Suggested Language for the Draft
<p>1. State Management functions Defined and Assigned</p> <p>The functions of State Management shall be clearly defined and categorized, and responsibility shall be assigned to separate Government agencies.</p>	<p>In Vietnam, the term <i>State Management</i> is used to describe the Government's different roles/activities in any given sector. <i>State Management</i> functions in the electricity sector are detailed in Articles 51 and 52 of the draft Law. While the manner in which the State Management activities are described therein may be appropriate when the sector is entirely in public hands and no regulator is in place, it is clearly not appropriate when there is a desire to have private investment, clearly defined licensee rights and obligations, regulatory oversight, and an increasingly competitive marketplace. Specifically, it is important that State Management functions be assigned to separate government entities in a manner that does not lead to overlapping responsibilities and unclear accountability or conflicts of interest between responsibilities. (In fact, the need for clear separation of State Management functions was identified as one of the top priorities by Vietnamese officials at the Halong Bay workshop in October 2000.)</p> <p>Based on Vietnam's current conditions, with state ownership dominating the sector, there are three distinct categories of State Management activities: policy, ownership, and regulation. Regulation is a State Management function that should not conflict with policy-making and ownership functions. While the regulatory agency should be accountable and provide</p>	<p><i>Suggested Language for Chapter X, Articles 51 and 52</i></p> <p>Article 51: Contents of State Management of Electricity Activities</p> <p>"State Management of electricity activities consists of:</p> <p>(1) Setting out national energy policies and strategies. This will include:</p> <ul style="list-style-type: none"> (a) Establishing guidelines for national and local power development in accordance with socio-economic development policies for national defense and security; (b) Considering the need for new legislation in the electricity sector; (c) Engaging in international cooperation and bilateral trade agreements related to energy; (d) Organizing, implementing, and maintaining a national statistical database on electricity activities; (e) Such other activities as may be required for the development of policies and strategies. <p>(2) Performance of ownership and management functions related to state-owned enterprises in the electricity sector. This will include:</p> <ul style="list-style-type: none"> (a) Establishing ownership and asset

Specific Recommendations for Modifying the Fourteenth Draft of the Electricity Law

Recommendation	Explanation	Suggested Language for the Draft
	<p>reports on its activities and decisions to designated Ministries (perhaps MOI and/or the Office of Government), it should also have the legal authority to make final decisions. That is, it should be able to do more than make recommendations, which may be modified by other agencies with inherent conflicts of interest and/or less capability to understand and deal with the issues at hand. Put another way, accountability to Government (or a Ministry) does not mean that Government controls the decisionmaking process or the final outcome.</p> <p>We appreciate that the reform of State Management functions is a significant organizational challenge for Vietnam and that these changes will be gradual and have a Vietnamese character to them. A large part of the challenge in the electricity sector lies in separating and allocating these State Management functions to different entities in a manner that ensures both that there will be no conflicts of interest and that decision making will be based on transparent rules and procedures. These are key requirements for the provision of a regulatory environment that gives confidence and comfort to all stakeholders. Articles 51 and 52, as well as Chapter XI, need to be reconsidered carefully based on the foregoing and forthcoming discussions.</p>	<p>(a) Establishing ownership and asset management policies for state-owned companies.</p> <p>(b) Nominating management boards of state-owned companies.</p> <p>(c) Such other activities as may be required for the performance of ownership and management functions.</p> <p>(3) Regulation of electricity activities in accordance with Chapter XI of this Law."</p> <p>Article 52: Allocation of State Management Responsibilities</p> <p>"1. The Government's responsibilities for State Management shall be carried out in a uniform manner across the nation.</p> <p>2. The Ministry of Industry shall be responsible for coordination with Ministries, ministry-equivalent institutions, and institutions under Government control in establishing the national energy and policies and strategies, identified in Article 51, Clause (1)(a).</p> <p>3. The performance of ownership and management functions related to state-owned assets (Article 51(2)) shall be in accordance with the Law on State Enterprises (20/4/1995) and associated Decrees.</p> <p>4. The regulation of electricity activities shall be implemented in accordance with Chapter XI by the Electricity Regulatory Agency created by this Law.</p>

Specific Recommendations for Modifying the Fourteenth Draft of the Electricity Law

Recommendation	Explanation	Suggested Language for the Draft
		<p>5. People's Committees at all levels shall perform the functions of state management of electricity activities in their territories according to provisions of this Law and to any delegation stipulated by the Government."</p>
<p>2. Regulator to be Created as a Separate Decision-Making Entity In view of immediate-term constraints related to capacity and staffing, it is suggested that a transitional period be defined in the Law (of no longer than 12 to 18 months), during which a separate office in MOI would develop regulatory skills and capabilities, before being transferred to a new, separate agency. The creation of a separate regulatory agency and the use of such a transitional strategy would be in line with the consensus that emerged at the participatory workshop at Sapa in March 2001.</p>	<p>The main characteristic of a proper regulatory agency is that it be a decisionmaking body that operates based on clearly articulated procedures and rules and in accordance with overall Government policy (another separate State Management function). The Government will, from time to time (as spelled out in the Law) appoint appropriately selected, qualified members to the regulatory agency's governing board (or Commission). In doing so, the Government entrusts them with the obligation and responsibility to make decisions that balance the interests of consumers, investors, enterprises, and Government. The purpose of creating such a regulatory agency by Law and establishing a clear, transparent decisionmaking process is to achieve an effective decisionmaking process that appropriately balances the important interests of all stakeholders in the sector. A decisionmaking process that is both effective and credible to all stakeholders regarding such matters as licenses, tariffs, and investment is after all a major reason for implementing reforms in the electricity sector -- and also a key reason for preparing a new Electricity Law.</p>	<p><i>Suggested Language for Chapter XI, Articles 53 ...</i></p> <p>Article 53: Establishment of Electricity Regulatory Agency</p> <p>"There is hereby established a public legal entity to be known as the Electricity Regulatory Agency (ERA). The Government shall ensure that the Electricity Regulatory Agency is</p> <p>(b) The Electricity Regulatory Agency shall be created as a separate entity no later than a transitional period of eighteen (18) months from the enactment of this Law. (c) During the transitional period, the Ministry of Industry shall be responsible before the Government to perform, as Government may require, such activities as staff selection, training, and other activities necessary to implement the Electricity Regulatory Agency."</p> <p>Article 54: Objectives and Functions of the Electricity Regulatory Agency</p> <p>"1. Subject to this Law, the ERA shall have the following principal objectives:</p> <p>(a) to create, promote, and preserve efficient industry and market structures, and to</p>

Specific Recommendations for Modifying the Fourteenth Draft of the Electricity Law

Recommendation	Explanation	Suggested Language for the Draft
	<p>Decision-Making vs. Recommendation-Making Regulatory Agency</p> <p>As currently conceived in the fourteenth draft of the Law, the regulatory agency would make some final decisions (concerning the issuance and enforcement of licenses, for example), but in other important areas would be a recommendation-making agency providing advice and recommendations on specific issues to a higher authority which will make the final decision. For example, it is evident from a review of the Tariff Decree (Article 2) and the Law that the Government (through the Prime Minister) provides final approval for consumer tariffs recommended by the regulatory agency. However, the regulatory agency is in turn made responsible to the State Pricing Committee in developing these consumer tariff recommendations. The tariff decree also requires the regulatory agency to set generation, transmission, bulk power supply, and distribution tariffs based on the Government's decision on consumer tariffs. The possible confusion and uncertainty regarding tariff-setting standards and principles applied by these different agencies is clear to see. First, it is not evident that the State Pricing Committee is required to use the same tariff principles, standards, and procedures applicable to the regulatory agency. Second, it is also possible that the Government may make final consumer decisions based on considerations that are not</p>	<p>ensure the proper utilization of resources for the provision of electricity services;</p> <ul style="list-style-type: none"> (b) to maximize access to electricity services by promoting and facilitating consumer connections to distribution systems in both rural and urban areas; (c) to ensure that an adequate supply of electricity is available to consumers; (d) to ensure that the prices charged by licensees are sufficient to allow the licensees to finance their activities and to allow for reasonable earnings for efficient operation; (e) to ensure safety, security, reliability, and quality of service in the production and delivery of electricity to consumers; (f) to ensure that regulation is fair and balanced for licensees, consumers, investors, and other stakeholders in the electricity sector. <p>2. For the furtherance of the objects referred to in Clause 1, the ERA shall perform the following functions:</p> <ul style="list-style-type: none"> (a) Promote and implement competition and private sector participation when and where feasible; (b) Establish or, as the case may be, approve appropriate operating codes and safety, security, reliability, and quality standards; (c) Establish appropriate consumer rights and obligations regarding the provision and

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	<p>the same as either the regulatory agency or the State Pricing Committee. It should be evident that this procedure for decisionmaking on an issue as important as electricity tariffs is unlikely to yield satisfactory results. We should also add that this sort of entity would not be a power-sector regulator as the term is used elsewhere.</p> <p>We are cognizant of and appreciate that in Vietnam, given its history and traditions, the <i>immediate</i> realization of a truly autonomous decisionmaking body would be difficult – even if this were required by law. It is most likely that, in the near term, until the Agency has a track record, the commissioners would inform and consult with senior Government officials and Ministers before making major decisions. Importantly, however, regardless of any such consultations, these decisions would be those reached by the Regulatory Agency through a transparent, rules-based process, with the Regulatory Agency taking responsibility for the decision. If this is not so, the legitimacy and credibility of the Regulatory Agency would be at risk, creating a host of problems--not least increasing the difficulty of diversifying the ownership of sector entities, which is a key Government policy objective. There is a need for Vietnam to break with tradition in the establishment of a decisionmaking Regulatory Agency, just as it has made the break with regard to the organization of the power sector</p>	<p>use of electricity services;</p> <p>(d) License and regulate persons and entities engaged in the generation, transmission, distribution, and supply of electricity;</p> <p>(e) Aid and advise stakeholders in matters relating to electricity generation, transmission, distribution, and supply of electricity;</p> <p>(f) Advise consumers regarding the efficient use of electricity;</p> <p>(g) Advise Government, as the Government may require, on matters related to electricity systems and services;</p> <p>(h) Participate internationally, as may be required, in matters related to electricity services;</p> <p>(i) Arbitrate and mediate disputes among licensees;</p> <p>(j) Issue guidelines on such matters within its authority as it determines would be in the public interest;</p> <p>(k) Undertake such other activities as may be required to fulfill its responsibilities pursuant to this Law.</p> <p>3. In the discharge of its functions, the ERA shall consult from time to time, to the extent it considers appropriate, such persons, groups of persons, or entities who are likely to be affected by the decisions or orders of the ERA.</p>

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	<p>itself. Both are important; and neither is sufficient on its own.</p> <p>The Issue of Regulatory Agency Location</p> <p>Issues concerning the location of the Regulatory Agency are proving to be a challenge to address. For a variety of reasons, the discussion has become focused on whether the Regulatory Agency should be within an existing body (such as MOI) or within a yet-to-be-created body, such as the National Energy Committee. As this discussion has sometimes overlapped with the concept of regulatory-agency accountability, it is useful to first make the distinction between location and accountability.</p> <p>Accountability to Government means that the Agency is responsible or answerable for its activities, how it spends its budget, and so on; this is important for all Government agencies. A regulatory agency is typically accountable to institutions such as parliament and/or specific ministries. Regulators are also accountable, albeit in a different way, to the public (consumers) and investors (enterprises).</p> <p>In practice, accountability is achieved through such means as:</p> <ul style="list-style-type: none"> (a) submitting annual reports on its activities and expenditures to the relevant ministry; (b) adopting procedures that allow for and facilitate the participation of both interested parties and the public; 	<p>including, but not limited to consumers, licensees, Government, potential investors, and other interested parties.</p> <p>4. To achieve transparency and accountability in the functioning of the ERA, the ERA shall</p> <ul style="list-style-type: none"> (a) Publish annual reports of its budget, use of funds, and activities for review by the Government; (b) Ensure that all decisions and orders of the ERA: <ul style="list-style-type: none"> (i) contain the basis for the decision or order; (ii) be properly recorded in writing; (iii) be accessible to the public at reasonable times and places. (c) Provide such other reports and information concerning its finances and activities as the Government may require."

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	<p>(c) providing explanations and justification of its decisions to all stakeholders -- Government, consumers, and enterprises -- by putting its decisions, including the evidence relied upon and the rationale, in writing;</p> <p>(d) appointing, by Government, of a governing board (for instance, commissioners) of the Regulatory Agency;</p> <p>In summary, accountability of the tegulator is not achieved by its 'location' within one ministry or another. Rather, accountability stems from, <i>inter alia</i>, reporting on its activities and expenditures, and justifying and publishing its written decisions. Hence, accountability and location should be treated as separate concepts.</p> <p>It would not serve Vietnam's long-term interest to locate the Regulatory Agency within MOI, or a future policy-coordination entity such as the National Energy Committee. In both instances, the Regulatory Agency's functions would conflict with the policy and ownership roles of MOI and NEC and would undermine the necessity to establish the Agency as a decisionmaking entity.</p> <p>The Strategy for the Next Draft of the Electricity Law</p> <p>The immediate question is how the establishment of the Regulatory Agency should be addressed in the next draft of the Electricity</p>	

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	<p>Law. There is a view in Vietnam, which acknowledges the need to create the Regulatory Agency as a separate entity, but feels that establishing it within MOI would be an appropriate interim solution. The rationale offered is that this would not require the immediate creation of the separate agency, but would, instead, allow for a more gradual and incremental transition to it. While this approach has merits, our view is that using MOI as the vehicle for a smooth transition to a separate regulatory agency may be problematic and difficult to achieve in practice. The general concern with interim solutions is, of course, that they may become permanent, particularly in the absence of a clear way forward. The specific concern in this instance is that, even if one assumes that MOI may be reasonably well positioned for the role while the sector is basically state owned, the opposite is the case when ownership and management become diversified. In our view, taking this interim solution would pose substantial risks. The better approach, therefore, would be to create the entity to house the regulator at the same time that the Regulatory Agency is established.</p> <p>We accept that continuing the policy discussion on the location of the Regulatory Agency might delay the finalization of the Electricity Law. Our preference, which we have stated several times, is that the fifteenth draft of the Law</p>	

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Recommendation	Explanation	Suggested Language for the Draft
	<p>provide for the creation of a separate Regulatory Agency. This is the proper vehicle for the implementation of Vietnam's long-term development policy.</p> <p>In the circumstances, however, we recognize that one could, instead, specify a clear transitional period, ideally no longer than 12 to 18 months, during which a separate office in MOI would develop regulatory skills and capabilities, before being transferred to a separate agency. If accepted, this interim period and the activities to be undertaken during the transition process should be defined in the Law. If not, the concerns that the interim arrangement would become permanent would be exacerbated. In addition, having a specified time period in the statute would avoid the need for a change in law to effectuate a change in location. Simply put, this would not be a good idea.</p>	
<p>3. Recognize Private Ownership Explicitly</p> <p>The law should state more specifically that private-sector management and control (via equity ownership) is permitted for activities other than transmission and dispatch. (But see Recommendation 4).</p>	<p>Article 4 encourages individual and institutional investment in the sector. Article 5 gives the State control over transmission and dispatch. Article 5 should also state that domestic and foreign private-sector individuals and institutions may have ownership and management control over power-sector activities other than transmission and dispatch. However, as pointed out in Recommendation 4, the Law should permit private ownership of transmission in some selected circumstances.</p>	<p><i>Suggested Language for Article 5, Clause 1:</i></p> <p>“Domestic and foreign individuals and institutions shall be permitted to have ownership, including majority ownership, and management control of generation, distribution, and bulk and retail supply.”</p>

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Recommendation	Explanation	Suggested Language for the Draft
	(The accompanying language should be coordinated with that in Recommendation 4.)	
<p>4. Permit Ownership of Special Purpose Transmission Lines</p> <p>Private-sector ownership of certain transmission lines and associated equipment (such as from an IPP to the grid) should be explicitly allowed. (This should be coordinated with Recommendation 3.)</p>	<p>Private ownership of transmission lines – particularly interconnections from plants to the main grid -- are likely to be quite useful and beneficial. The connection of an IPP to the grid by an independent transmission company is one such possibility. It will not be a good idea for one to consider a major evacuation line from a generating station to be part of generation; nor should the only viable option for the provision of the transmission line be the principal transmission licensee. Licenses for such transmission can be given to the private sector for a limited purpose: to construct and maintain the line. System operation would remain with the principal licensee. As we see it, the primary objective of the Vietnamese Government is to retain operational control of the system. If so, that objective can be satisfied without requiring state ownership of each and every transmission asset.</p>	<p><i>Suggested Language for Article 5:</i></p> <p>“Notwithstanding Clause (...Reference to recommendation 3), independent transmission facilities may be constructed, owned, operated, financed, and maintained by domestic or foreign individuals or institutions, subject to agreements, if any, with other licensees or consumers or both, and subject to a license from the Electricity Regulatory Agency. The licensee shall not have responsibilities for any system operation or dispatch, unless the license specifically grants such responsibilities.”</p>
<p>5. Government Financing of Social Obligations</p> <p>The Law should be explicit that the cost of the Government’s social obligations will be financed from the Government’s budget.</p>	<p>It must be clear that investments in, for example, rural, mountainous, and island areas that are required to meet the Government’s social obligations, but which are not commercially viable, will be financed by Government. If there is any likelihood that licensees will be required to undertake this financing, either directly or indirectly, this will</p>	<p><i>Suggested Language for Article 5, Clause 2:</i></p> <p>“The cost of Government’s social obligations in any area shall be financed by subsidies paid from the Government’s budget. Licensees shall not be required to finance such social obligations either directly or indirectly, through such mechanisms as lowering the rate of return on licensee investments. For the purposes of</p>

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	<p>make it difficult to diversify ownership.</p> <p>It should be noted that the Tariff Decree has provisions of concern in Article 25 (a), allowing for a subsidy to be provided by lowering the licensee's allowed rate of return and, hence, reducing its revenue requirement and tariffs. It goes almost without saying that the possible implications for the diversification of ownership where there may be a unilateral determination to reduce returns are likely to be substantial. If this policy is retained, it will – at the very least -- further enhance the need for Government comfort to be provided to investors. This approach to the provision of subsidies to certain customers is simply improper.</p>	<p>this Law, the cost of social obligations is the amount needed to cover all costs, including a reasonable rate of return, over and above that which can be recovered from the consumers through tariffs.”</p>
<p>6. Competitive Bidding for New Supply</p> <p>It should be explicit in the Law that competitive bidding is required whenever long-term PPAs are a means for acquiring power.</p>	<p>Article 5, Clause 1 is quite clear that it is intended that a competitive environment be created. It should also be clarified that competitive bidding will be required for long-term contracts, as this will be a benefit to consumers.</p>	<p><i>Suggested Language for Article 5</i> “Where power is acquired under a long-term agreement, such as a Power Purchase Agreement, by any bulk or retail supply licensee, the Electricity Regulatory Agency shall require that the power be purchased in an open, transparent, and competitive manner, subject to its review. However, if the Electricity Regulatory Agency determines that the electricity market is sufficiently competitive, or that for other reasons the circumstances do not require such a review, it may fashion an alternative process, if any, that, in its judgment, is proper.”</p>

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<p>7. Remove Reference to the Term "Road Map"</p> <p>The reference to a "road map" in Article 5, Clause 4 should be removed.</p>	<p>There is a problem with the requirement in the law of a "road map," which is a document (or product) rather than a process. The imperative is for the Government to make some decisions in the interim concerning the implementation of reforms. These decisions could be in the form of guidelines, issued as the reform process evolves. Furthermore, the term "road map," while useful for discussions within an informed group of experts, is not a commonly used term.</p>	<p><i>Suggested Language for Article 5, Clause 4:</i></p> <p>"The Government shall provide guidelines and direction as may be required for the implementation of the management and organizational reforms in the power sector identified in Clauses 1 and 2 of this Article."</p>
<p>8. Change the Terms "Utility" and "Utilities" to "Company" and "Companies"</p> <p>The terms "utility" and "utilities" used when referring to separate licensees are ambiguous and should be changed to "company" and "companies."</p>	<p>Chapter II of the draft Law proposes to license "electric utilities." There is no concern of substance with the drafters' evident intent, but this terminology is not common where there are licenses. The problem is that the term "utility" is often construed to be an organization that is vertically integrated with a statutory set of responsibilities. The question inevitably arises as to whether, for example, a distribution licensee would have responsibilities in addition to its license responsibilities because it is also a "utility." The problem is not one of substance; it could be resolved – and ambiguity avoided – if distribution "companies" rather than distribution "utilities" were licensed. In other words, any company that engages in "Electric Activities," as defined in Article 3, would need a license.</p> <p>The law would then refer to the present "distribution utility licensees" simply as "distribution licensees." This change would be</p>	

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Recommendation	Explanation	Suggested Language for the Draft
	<p>more in line with legislation in other countries and, hence, would be more easily understood by investors and their advisors.</p>	
<p>9. Simplified Licensing for Small Systems Special licenses and licensing arrangements for small systems in rural, mountainous, and island areas should be available. A simplified license would be preferable to exemptions.</p>	<p>Small systems, because they not only small but often remote, may find the obligations of the major licensees too burdensome, as well as inapplicable. The Electricity Regulatory Agency should be able, <i>inter alia</i>, to issue such systems simplified licenses, with simplified reporting requirements, a simplified application process, and a simplified approach to tariff setting.</p> <p>In these circumstances, a simple license is preferable to an exemption with conditions, which would be very much like a license, but without the Law's protections against arbitrary amendment or revocation. After all, to an investor or service provider, the loss of an exemption would be as devastating as the loss of a license. Moreover, if the Law provides more protections for an investor with a license rather than an exemption, arranging financing will be easier with a license.</p>	<p><i>Suggested Language for an Additional Clause 3 to Article on Conditions for Obtaining a License:</i></p> <p>“Notwithstanding Clauses 1 and 2, the Electricity Regulatory Agency may establish simplified licenses and license requirements and simplified procedures for license applications and other matters for small systems, including those in rural, mountainous, and island areas.”</p>
<p>10. Licensing Load Dispatch Load dispatch should be a licensed activity.</p>	<p>When the ownership of power sellers (IPPs) and power purchasers is diversified, there needs to be a proper way to resolve disputes regarding such matters as the order of dispatch of power plants and power curtailments in times of shortage. An entity that is state owned and</p>	<p><i>Suggested Language to Supplement Article 15, Obligations of Transmission Utilities:</i></p> <p>“(1) Subject to such terms and conditions as the Commission may fix in the license, a transmission license shall authorize the licensee to do any one or more of the</p>

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	<p>unlicensed, such as the National Load Dispatch Center (Article 17), will be a problem for the private sector, particularly while Government has a majority ownership interest in any generation or distribution. The following suggested language would not require a separate license for dispatch (system operation) while it is a bundled function, but would allow the regulator to license the function when, in its judgment, a license may be required.</p>	<p>following as may be specified in the license</p> <ul style="list-style-type: none"> (a) To carry on grid construction, operation, and maintenance of transmission facilities within Vietnam; (b) To carry on system operation including, but not limited to the following: <ul style="list-style-type: none"> (i) generation scheduling, commitment, and dispatch; (ii) transmission scheduling and generation outage co-ordination; (iii) transmission congestion management; (iv) power pooling; (v) international transmission co-ordination; (vi) procurement and scheduling of ancillary services and system planning for long term capacity; (vii) such other activities as may be required for reliable and efficient system operation. (c) To operate a power exchange including: <ul style="list-style-type: none"> (i) energy accounting and settlement; (ii) establishing and maintaining standards and protocols for the setting of electricity prices; (iii) publishing prices and other market information; (iv) such other activities as may be required for a reliable and efficient power exchange. (2) Should it determine that it is in the public interest, the Electricity Regulatory Agency may require that the functions

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		<p>identified in subsection (1)(a), (b), and (c) be separately licensed. If any of the functions identified in the foregoing are at any time provided by a separate company or other entity, that company or entity must obtain a license.”</p>
<p>11. Licensing Generation in Special Export Zones Generation and electricity sales in industrial and export zones should require a license.</p>	<p>Under Article 21, large capacity end-users can purchase power directly from generation licensees; self-generation without sales is exempt from a license requirement (Article 38) as long as the size of the power plant is below the level that will be set from time to time by MOI. Both of these Articles will have the effect of removing industrial load from the system, which will have a financial impact as long as industry cross-subsidizes the other consumers. Generation and associated sales in industrial or export zones will have the same effect, and may also include small and medium industry. Therefore, careful thought should be given to these combined policies, at least while industrial tariffs provide inter-consumer cross-subsidies.</p> <p>As the fourteenth draft is now constituted, third-party electricity sales in industrial or export zones are not specifically permitted, unless the end-user is a “large capacity end-user” as may be identified from time to time by MOI pursuant to Article 21.</p>	<p><i>Suggested Language to be Added to Article 21:</i> “Generation and associated sales of electricity in industrial or export zones to entities that are not large-capacity end-users may be allowed only if the Electricity Regulatory Agency determines that there will not be an adverse impact on other customers. If such sales are allowed, it shall be a licensed activity and one or more licenses will be required, as the Electricity Regulatory Agency may determine.”</p>

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<p>12. Clarify Provisions for License Amendment</p> <p>The Law's provisions for the amendment and modification of licenses should be clarified.</p>	<p>The provisions for amendments and modifications will be very important to investors, whether domestic or foreign. No investor will want his or her obligations to be changed, particularly if the added obligations are either not remunerative or are beyond his or her capabilities. However, although the law and decree recognize these concerns, there is a specific suggestion for some enhancements to the draft below in our Comments on the Law. Briefly stated, the proposed change would clarify that the licensee would be entitled to recover the costs associated with the new responsibilities, including the proper rate of return.</p>	<p><i>Suggested Language to be Added to Article 43:</i></p> <p>“For purposes of this Article the term “in accordance with the capability” shall mean that it is within the management capability of the licensee and that the licensee shall be entitled to recover all costs, including a reasonable rate of return, for the additional expenditures required to satisfy the amended or modified license responsibilities.”</p>
<p>13. Specify Multi-year Tariff Adjustments in Law</p> <p>The law should express a preference for multi-year tariffs rather than the specific requirement of three-year tariffs; the specific details (number of years) should be in a decree.</p>	<p>It is better to specify the principle of multi-year tariff adjustments rather than impose a specific three-year tariff adjustment better. The exact number of years between adjustments would best be in the decree; alternatively, it could be left to the discretion of the regulator. There may be, in the future, a need (or desire) to have, say, five-year tariffs for some or all distribution utilities. Anything other than three years (for any utility) would not be possible (given the fourteenth draft) unless the law itself were to be changed.</p>	<p><i>Suggested Language for Article 46, Clause 1:</i></p> <p>“Electric utilities shall establish a multi-year tariff and annual tariff adjustments to submit to the Electricity Regulatory Agency. The duration of the multi-year tariff shall be determined from time to time by decree (alternate: by the Electricity Regulatory Agency).”</p> <p>(Note: It should also be clarified that Article 46 does not apply to PPA-derived tariffs.)</p>
<p>14. Ensure Adequate Protection against License Revocation</p>	<p>All investors recognize that there are instances in which performance may be so inadequate</p>	<p><i>Suggested Language to be Integrated into Article 46:</i></p>

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<p>More protection is required in the Law regarding license revocation.</p>	<p>that revocation may be required. But before they invest, they need to know what procedure will be followed and that they will be treated fairly.</p> <p>It is evident that there is recognition that a fair process for evaluating and deciding upon such matters must be developed. The draft law (Article 43), however, would leave these procedures to be delineated in a Decree. It is our view that these procedures should be written into the Law, given their importance to investors and, hence, to the goal of diversifying ownership. Even though investors understand that there are circumstances in which performance has been so inadequate that the licensor must have the authority to revoke a license or impose other strong penalties, they properly require protection against the possibility of unfair procedures and would, also properly, take more comfort from having those provisions in the Law rather than in a Decree. Suggested drafting language is provided in our Comments on the Law below.</p>	<p>“(1) Upon:</p> <ul style="list-style-type: none"> (a) receiving a complaint from any consumer, consumer association, or any association of traders or industrialists; (b) receiving a complaint from any company or person involved in the generation, transmission, distribution, or supply of electricity; (c) its own initiative; <p>The Electricity Regulatory Agency may inquire into the conduct or functioning of any licensee in carrying out its obligations under the Law, Decrees, or the terms and conditions of the license.</p> <p>(2) Subject to this section, and after an inquiry, including an opportunity for the licensee to show cause as to why the license should not be cancelled, the Electricity Regulatory Agency may cancel any license if in its opinion:—</p> <ul style="list-style-type: none"> (a) The license was issued through fraud or the misrepresentation or non-disclosure of a material fact by the licensee; or (b) The licensee has willfully or unreasonably violated Articles 13, 14, 15, 16, 18 of this Law; or (c) The licensee has failed to comply with any term or condition of the license, the breach of which is expressly declared by such license to render it liable to

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		<p>cancellation;</p> <p>(d) The financial position of the licensee is such that the licensee is unable to fully and efficiently discharge the duties and obligations imposed on it by its license</p> <p>Provided that the Electricity Regulatory Agency must determine that the licensee will not be able to cure its financial problem within a reasonable time, given the circumstances.</p> <p>(3) Before canceling a license as per Clause 1, the Electricity Regulatory Agency shall notify the licensee in writing of its intention to cancel the license concerned and the reasons for doing so, and may allow the licensee an opportunity to explain or to demonstrate that circumstances have changed such that cancellation may no longer be warranted.</p> <p>(4) If, at the end of the inquiry and of any further opportunity to be heard, as per Clauses 2 and 3, the Electricity Regulatory Agency is satisfied for any reason specified in Clause 2 that it is in the public interest that the license concerned should be revoked, then the Electricity Regulatory Agency may, by notice in writing to the licensee, cancel the license or take such other action as it considers appropriate.</p>

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		<p>(5) Notwithstanding Clauses 2, 3, and 4, instead of revoking a license, the Electricity Regulatory Agency may allow the license to remain in force subject to such further terms and conditions as it may deem necessary to impose, and such terms and conditions shall form part of the license.</p> <p>In the event that the Electricity Regulatory Agency decides to cancel a license, it shall serve on the licensee a notice of cancellation fixing the date on which the cancellation shall take effect, and the Electricity Regulatory Agency shall make such interim arrangements in regard to the undertaking of the licensee for maintaining continuity in the provision of electricity service as the Electricity Regulatory Agency may consider appropriate."</p>

Endnotes

- ¹ Energy Sector Management Assistance Program; a bilateral donor and World Bank-funded agency.
- ² The Objective Oriented Project Planning methodology is described in detail in the Unido publication *Quality Management of Development Cooperation*, Part 2, "The Method" (Unido, Vienna 1997). Also, Part 1 ("Principles and Concepts") and Part 3 ("How to Assess the Quality of Service Proposals") are worth reading.
- ³ Each participant was given three votes, enabling them to cast a vote of three points for the most important problem, a vote of two points for the second most important problem, and a vote of one point for the third most important. These points were indicated on small post-it stickers that could be attached to the problem cards. The total points on each problem card were added up. One additional point was also added for each individual vote (that is, post-it sticker). This methodology, made it possible to identify the problems participants considered to be the most relevant.
- ⁴ The formal titles of the draft Decrees are: "On the Establishment and Approval of Electricity Tariff" (Tariff Decree); "On the Organization and Operation of Electricity Regulatory Directorate of Vietnam" (Regulatory Decree); and "On Issuance of License for Electricity Activities."

Joint UNDP/World Bank
ENERGY SECTOR MANAGEMENT ASSISTANCE PROGRAMME (ESMAP)

LIST OF REPORTS ON COMPLETED ACTIVITIES

<i>Region/Country</i>	<i>Activity/Report Title</i>	<i>Date</i>	<i>Number</i>
SUB-SAHARAN AFRICA (AFR)			
Africa Regional	Anglophone Africa Household Energy Workshop (English)	07/88	085/88
	Regional Power Seminar on Reducing Electric Power System Losses in Africa (English)	08/88	087/88
	Institutional Evaluation of EGL (English)	02/89	098/89
	Biomass Mapping Regional Workshops (English)	05/89	--
	Francophone Household Energy Workshop (French)	08/89	--
	Interafrican Electrical Engineering College: Proposals for Short- and Long-Term Development (English)	03/90	112/90
	Biomass Assessment and Mapping (English)	03/90	--
	Symposium on Power Sector Reform and Efficiency Improvement in Sub-Saharan Africa (English)	06/96	182/96
	Commercialization of Marginal Gas Fields (English)	12/97	201/97
	Commercializing Natural Gas: Lessons from the Seminar in Nairobi for Sub-Saharan Africa and Beyond	01/00	225/00
	Africa Gas Initiative – Main Report: Volume I	02/01	240/01
	First World Bank Workshop on the Petroleum Products Sector in Sub-Saharan Africa	09/01	245/01
	Ministerial Workshop on Women in Energy	10/01	250/01
Angola	Energy Assessment (English and Portuguese)	05/89	4708-ANG
	Power Rehabilitation and Technical Assistance (English)	10/91	142/91
	Africa Gas Initiative – Angola: Volume II	02/01	240/01
Benin	Energy Assessment (English and French)	06/85	5222-BEN
Botswana	Energy Assessment (English)	09/84	4998-BT
	Pump Electrification Prefeasibility Study (English)	01/86	047/86
	Review of Electricity Service Connection Policy (English)	07/87	071/87
	Tuli Block Farms Electrification Study (English)	07/87	072/87
	Household Energy Issues Study (English)	02/88	--
	Urban Household Energy Strategy Study (English)	05/91	132/91
Burkina Faso	Energy Assessment (English and French)	01/86	5730-BUR
	Technical Assistance Program (English)	03/86	052/86
	Urban Household Energy Strategy Study (English and French)	06/91	134/91
Burundi	Energy Assessment (English)	06/82	3778-BU
	Petroleum Supply Management (English)	01/84	012/84
	Status Report (English and French)	02/84	011/84
	Presentation of Energy Projects for the Fourth Five-Year Plan (1983-1987) (English and French)	05/85	036/85
	Improved Charcoal Cookstove Strategy (English and French)	09/85	042/85
	Peat Utilization Project (English)	11/85	046/85
	Energy Assessment (English and French)	01/92	9215-BU
Cameroon	Africa Gas Initiative – Cameroon: Volume III	02/01	240/01
Cape Verde	Energy Assessment (English and Portuguese)	08/84	5073-CV
	Household Energy Strategy Study (English)	02/90	110/90
Central African Republic	Energy Assessment (French)	08/92	9898-CAR
Chad	Elements of Strategy for Urban Household Energy The Case of N'djamena (French)	12/93	160/94

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Comoros	Energy Assessment (English and French) In Search of Better Ways to Develop Solar Markets: The Case of Comoros	01/88 05/00	7104-COM 230/00
Congo	Energy Assessment (English) Power Development Plan (English and French) Africa Gas Initiative – Congo: Volume IV	01/88 03/90 02/01	6420-COB 106/90 240/01
Côte d'Ivoire	Energy Assessment (English and French) Improved Biomass Utilization (English and French) Power System Efficiency Study (English) Power Sector Efficiency Study (French) Project of Energy Efficiency in Buildings (English) Africa Gas Initiative – Côte d'Ivoire: Volume V	04/85 04/87 12/87 02/92 09/95 02/01	5250-IVC 069/87 -- 140/91 175/95 240/01
Ethiopia	Energy Assessment (English) Power System Efficiency Study (English) Agricultural Residue Briquetting Pilot Project (English) Bagasse Study (English) Cooking Efficiency Project (English) Energy Assessment (English)	07/84 10/85 12/86 12/86 12/87 02/96	4741-ET 045/85 062/86 063/86 -- 179/96
Gabon	Energy Assessment (English) Africa Gas Initiative – Gabon: Volume VI	07/88 02/01	6915-GA 240/01
The Gambia	Energy Assessment (English) Solar Water Heating Retrofit Project (English) Solar Photovoltaic Applications (English) Petroleum Supply Management Assistance (English)	11/83 02/85 03/85 04/85	4743-GM 030/85 032/85 035/85
Ghana	Energy Assessment (English) Energy Rationalization in the Industrial Sector (English) Sawmill Residues Utilization Study (English) Industrial Energy Efficiency (English)	11/86 06/88 11/88 11/92	6234-GH 084/88 074/87 148/92
Guinea	Energy Assessment (English) Household Energy Strategy (English and French)	11/86 01/94	6137-GUI 163/94
Guinea-Bissau	Energy Assessment (English and Portuguese) Recommended Technical Assistance Projects (English & Portuguese) Management Options for the Electric Power and Water Supply Subsectors (English) Power and Water Institutional Restructuring (French)	08/84 04/85 02/90 04/91	5083-GUB 033/85 100/90 118/91
Kenya	Energy Assessment (English) Power System Efficiency Study (English) Status Report (English) Coal Conversion Action Plan (English) Solar Water Heating Study (English) Peri-Urban Woodfuel Development (English) Power Master Plan (English) Power Loss Reduction Study (English) Implementation Manual: Financing Mechanisms for Solar Electric Equipment	05/82 03/84 05/84 02/87 02/87 10/87 11/87 09/96 07/00	3800-KE 014/84 016/84 -- 066/87 076/87 -- 186/96 231/00
Lesotho	Energy Assessment (English)	01/84	4676-LSO
Liberia	Energy Assessment (English) Recommended Technical Assistance Projects (English) Power System Efficiency Study (English)	12/84 06/85 12/87	5279-LBR 038/85 081/87
Madagascar	Energy Assessment (English) Power System Efficiency Study (English and French)	01/87 12/87	5700-MAG 075/87

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Madagascar	Environmental Impact of Woodfuels (French)	10/95	176/95
Malawi	Energy Assessment (English)	08/82	3903-MAL
	Technical Assistance to Improve the Efficiency of Fuelwood Use in the Tobacco Industry (English)	11/83	009/83
	Status Report (English)	01/84	013/84
Mali	Energy Assessment (English and French)	11/91	8423-MLI
	Household Energy Strategy (English and French)	03/92	147/92
Islamic Republic of Mauritania	Energy Assessment (English and French)	04/85	5224-MAU
	Household Energy Strategy Study (English and French)	07/90	123/90
Mauritius	Energy Assessment (English)	12/81	3510-MAS
	Status Report (English)	10/83	008/83
	Power System Efficiency Audit (English)	05/87	070/87
	Bagasse Power Potential (English)	10/87	077/87
	Energy Sector Review (English)	12/94	3643-MAS
Mozambique	Energy Assessment (English)	01/87	6128-MOZ
	Household Electricity Utilization Study (English)	03/90	113/90
	Electricity Tariffs Study (English)	06/96	181/96
	Sample Survey of Low Voltage Electricity Customers	06/97	195/97
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Niger	Energy Assessment (French)	05/84	4642-NIR
	Status Report (English and French)	02/86	051/86
	Improved Stoves Project (English and French)	12/87	080/87
	Household Energy Conservation and Substitution (English and French)	01/88	082/88
Nigeria	Energy Assessment (English)	08/83	4440-UNI
	Energy Assessment (English)	07/93	11672-UNI
Rwanda	Energy Assessment (English)	06/82	3779-RW
	Status Report (English and French)	05/84	017/84
	Improved Charcoal Cookstove Strategy (English and French)	08/86	059/86
	Improved Charcoal Production Techniques (English and French)	02/87	065/87
	Energy Assessment (English and French)	07/91	8017-RW
	Commercialization of Improved Charcoal Stoves and Carbonization Techniques Mid-Term Progress Report (English and French)	12/91	141/91
SADC	SADC Regional Power Interconnection Study, Vols. I-IV (English)	12/93	-
SADCC	SADCC Regional Sector: Regional Capacity-Building Program for Energy Surveys and Policy Analysis (English)	11/91	-
Sao Tome and Principe	Energy Assessment (English)	10/85	5803-STP
Senegal	Energy Assessment (English)	07/83	4182-SE
	Status Report (English and French)	10/84	025/84
	Industrial Energy Conservation Study (English)	05/85	037/85
	Preparatory Assistance for Donor Meeting (English and French)	04/86	056/86
	Urban Household Energy Strategy (English)	02/89	096/89
	Industrial Energy Conservation Program (English)	05/94	165/94
Seychelles	Energy Assessment (English)	01/84	4693-SEY
	Electric Power System Efficiency Study (English)	08/84	021/84
Sierra Leone	Energy Assessment (English)	10/87	6597-SL
Somalia	Energy Assessment (English)	12/85	5796-SO
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	Wood Energy/Forestry Feasibility (English)	07/87	073/87
Swaziland	Energy Assessment (English)	02/87	6262-SW
	Household Energy Strategy Study	10/97	198/97
Tanzania	Energy Assessment (English)	11/84	4969-TA
	Peri-Urban Woodfuels Feasibility Study (English)	08/88	086/88
	Tobacco Curing Efficiency Study (English)	05/89	102/89
	Remote Sensing and Mapping of Woodlands (English)	06/90	--
	Industrial Energy Efficiency Technical Assistance (English)	08/90	122/90
	Power Loss Reduction Volume 1: Transmission and Distribution System Technical Loss Reduction and Network Development (English)	06/98	204A/98
	Power Loss Reduction Volume 2: Reduction of Non-Technical Losses (English)	06/98	204B/98
Togo	Energy Assessment (English)	06/85	5221-TO
	Wood Recovery in the Nangbeto Lake (English and French)	04/86	055/86
	Power Efficiency Improvement (English and French)	12/87	078/87
Uganda	Energy Assessment (English)	07/83	4453-UG
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	Energy Efficiency in Tobacco Curing Industry (English)	02/86	049/86
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Zambia	Energy Assessment (English)	01/83	4110-ZA
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Zimbabwe	Power System Efficiency Study (English)	06/83	005/83
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	Power Sector Management Assistance Project (English)	04/85	034/85
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	Charcoal Utilization Prefeasibility Study (English)	06/90	119/90
	Integrated Energy Strategy Evaluation (English)	01/92	8768-ZIM
	Energy Efficiency Technical Assistance Project: Strategic Framework for a National Energy Efficiency Improvement Program (English)	04/94	--
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China	County-Level Rural Energy Assessments (English)	05/89	101/89
	Fuelwood Forestry Preinvestment Study (English)	12/89	105/89
	Strategic Options for Power Sector Reform in China (English)	07/93	156/93
	Energy Efficiency and Pollution Control in Township and Village Enterprises (TVE) Industry (English)	11/94	168/94
	Energy for Rural Development in China: An Assessment Based on a Joint Chinese/ESMAP Study in Six Counties (English)	06/96	183/96
	Improving the Technical Efficiency of Decentralized Power Companies	09/99	222/99
Fiji	Energy Assessment (English)	06/83	4462-FIJ
Indonesia	Energy Assessment (English)	11/81	3543-IND
	Status Report (English)	09/84	022/84
	Power Generation Efficiency Study (English)	02/86	050/86
	Energy Efficiency in the Brick, Tile and Lime Industries (English)	04/87	067/87
	Diesel Generating Plant Efficiency Study (English)	12/88	095/88
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	Biomass Gasifier Preinvestment Study Vols. I & II (English)	12/90	124/90
	Prospects for Biomass Power Generation with Emphasis on Palm Oil, Sugar, Rubberwood and Plywood Residues (English)	11/94	167/94
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	Institutional Development for Off-Grid Electrification	06/99	215/99
Malaysia	Sabah Power System Efficiency Study (English)	03/87	068/87
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	Strengthening the Non-Conventional and Rural Energy Development Program in the Philippines: A Policy Framework and Action Plan	08/01	243/01
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	Energy Assessment (English)	01/92	979-SOL
South Pacific	Petroleum Transport in the South Pacific (English)	05/86	--
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	Coal Development and Utilization Study (English)	10/89	--
Tonga	Energy Assessment (English)	06/85	5498-TON
Vanuatu	Energy Assessment (English)	06/85	5577-VA
Vietnam	Rural and Household Energy-Issues and Options (English)	01/94	161/94
	Power Sector Reform and Restructuring in Vietnam: Final Report to the Steering Committee (English and Vietnamese)	09/95	174/95
	Household Energy Technical Assistance: Improved Coal Briquetting and Commercialized Dissemination of Higher Efficiency Biomass and Coal Stoves (English)	01/96	178/96
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	The Electricity Law for Vietnam—Status and Policy Issues—The Socialist Republic of Vietnam	08/02	259/02
	Energy Assessment (English)	06/85	5497-WSO

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	Priority Investment Program (English)	05/83	002/83
	Status Report (English)	04/84	015/84
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	Small Scale Uses of Gas Prefeasibility Study (English)	12/88	--
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Kazakhstan	Natural Gas Investment Study, Volumes 1, 2 & 3	12/97	199/97
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Poland	Energy Sector Restructuring Program Vols. I-V (English)	01/93	153/93
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		Energy Efficiency Management Technical Assistance to the Comision Nacional para el Ahorro de Energia (CONAE) (English)	04/96	180/96
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	Private Financing for Community Infrastructure	05/02	256/02



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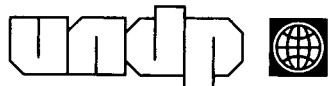
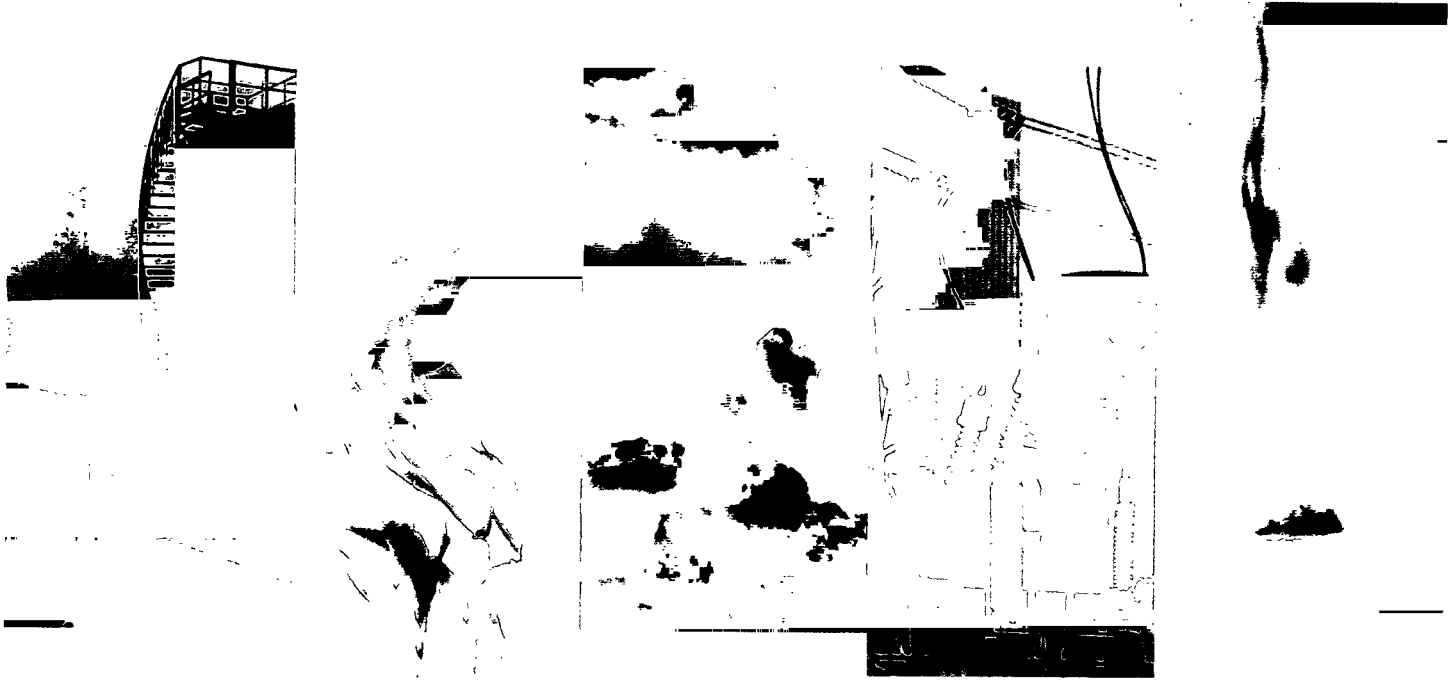
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