

# EVOLUTION OF ENERGY REGULATION IN SOUTH AFRICA



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**Muzi W. Mkhize**

- What is Energy Policy?
- What is Economic Regulation?
- Policy & Regulation Interface
- Evolution of Energy Policy in South Africa
- Evolution of the Energy Regulation in South Africa
- Factors Influencing Change

- The concept of energy policy first appeared in the latter half of the 20<sup>th</sup> century in industrialised countries

Energy Policy is the manner in which a given entity (often governmental) has decided to address issues of energy development including energy production, distribution and consumption. The attributes of energy policy include legislation, international treaties, incentives to investment, guidelines for energy conservation, etc.

*Energy policy must respond (preferably, proactively) to safeguard energy security. Energy policy changes are informed by anticipated and actual changes in the PESTEL factors. Foresight and responsiveness / decisiveness are key.*

- Regulation is generally defined as legislation imposed by a government on individuals and private sector firms in order to regulate and modify economic behaviours.

Economic Regulation aims to provide stability; protect customers from the abuse of market power; facilitate competition; guard customers and operators against political opportunism; and provides incentives for service providers to operate efficiently and make the needed investments.

*The regulatory mandate is derived from the policy and legislative framework. Hence, the regulatory regime should always appropriately respond to changes in the policy and legislative framework whilst continually providing feedback thereto.*

- One of the basic problems of regulation is to overcome asymmetries that may exist between:
  - The Government (Policy Maker) and the Regulator; as well as
  - The Regulator and the Regulated Entities
- It is important to ensure that the actions of Government and the Regulator match the long term interests of the country's citizens.
- To ensure this alignment, countries adopt laws, rules and policies for regulation and Government institutions that encourage regulation under the law, as well as independence, transparency, legitimacy, predictability and credibility of the regulatory system.
- These laws, rules and policies are crucial in instilling investor and consumer confidence.

- The Apartheid Regime's energy policy remained largely under a shroud of secrecy as it sought to bust sanctions and beat trade embargoes imposed against it.
  - However, there were published Acts, with the last White Paper on Energy Policy published in 1986.
- The energy policy blueprint for the democratic South Africa is the White Paper on Energy Policy of 1998, which encapsulates the resultant fundamental shifts and significant changes in the energy policy context.
- Objectives of the White Paper on Energy Policy of 1998:
  - Increased access to affordable energy services
  - Improved energy governance
  - Stimulating economic development
  - Managing energy-related environmental impacts
  - Securing supply through diversity (energy mix)
- Subsequent Acts, Regulations and Rules, which constitute the legal framework for the energy sector, all seek to achieve the objectives of the White Paper on Energy Policy of 1998 in the respective subsectors.
- Other policy documents, strategies and plans followed, further expanding the policy framework to enable the implementation of the White Paper on Energy Policy of 1998.

- One of the significant policy documents, is the White Paper on Renewable Energy Policy of 2003:
  - *Over-arching objective was to create energy security by diversifying the energy supply and carriers*
  - *Universal Access to safe, reliable and affordable energy*
  - *Less reliance on fossil fuels*
- Other policies:
  - *National Development Plan (NDP)*
  - *Electricity Pricing Policy (EPP)*
  - *National Climate Change Response White Paper*
  - *Energy Security Master Plan – Liquid Fuels*
  - *Integrated Resource Plan (IRP)*
  - *National Biofuels Strategy*
  - *New Growth Path*
  - *Green Economy Accord*
  - *Cleaner Fuels Roadmap*
  - *Free Basic Electricity Policy (FBE)*
  - *Free Basic Alternative Energy Policy (FBAE)*

- Some of the relevant Acts
  - *Petroleum Products Act, 1977 (Act No. 120 of 1977)*
  - *Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)*
  - *Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)*
  - *Gas Act, 2001 (Act No. 48 of 2001)*
  - *Gas Levies Act, 2002 (Act No. 75 of 2002)*
  - *Petroleum Pipelines Act, 2003 (Act No. 60 of 2003)*
  - *Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), as amended*
  - *Petroleum Pipelines Levies Act, 2004 (Act No. 28 of 2004)*
  - *National Energy Regulator Act, 2004 (Act No. 40 of 2004)*
  - *Petroleum Products Amendment Act, 1977 (Act No. 58 of 2004)*
  - *Electricity Regulation Act, 2006 (Act No. 4 of 2006)*
  - *National Energy Act, 2008 (Act No. 34 of 2008)*
  - *Competition Act, 2000 (Act No. 39 of 2000), as amended*

*And secondary legislation made thereunder.*

- In 1958, the enactment of the Electricity Act led to the creation of the Electricity Control Board (ECB)
- The mandate of the ECB was to oversee the operations of Eskom, however with no powers over Municipalities.
  - *ECB had a supervisory role over Eskom*
  - *ECB was not a separate legal entity: staff were civil servants on secondment with funding from Government*
- In 1987, a new Eskom Act and a new Energy Act were introduced and the Electricity Act was amended while the ECB continued to exist.
  - *The Energy Act established the National Energy Council (NEC), which was abolished in 1991 and its staff got transferred to DME.*
  - *ECB then fell under the NEC.*
- In 1994, the Electricity Act was again amended (effective 1 March 1995), resulting in the establishment of the National Electricity Regulator (NER) as successor to the ECB:
  - *Electricity supply Industry (ESI) [both Eskom and Municipalities] regulated by NER*

- The Electricity Amendment Act, 1995 (came into operation on 4 October 1995) and made NER a juristic person
  - *Provision for CEO, Powers to appoint staff, funding through licence fees*
  - *Powers and mandate of NER were derived from the Electricity Act, White Paper on Energy Policy on 1986, administered by the Department of Minerals and Energy*
- Object of NER:
  - *Exercise control over the ESI to ensure order in the generation and efficient supply of electricity*
- Functions of the NER:
  - *Issue licenses*
  - *Determine prices/conditions for electricity supply*
  - *Settle disputes*
  - *Collect information*
  - *Perform inspections*
  - *Advise the Minister on any matter relating to the ESI*

***NB: Fuel Prices are regulated by the Department of Energy in terms of the Petroleum Products Acts, 1977 (Act No. 120 of 1977), as amended.***

- 3 Main subsectors – Acts governing these subsectors empower the Minister to, amongst others, establish a regulatory authority for each:
  - *Electricity (existing Regulator – NER)*
  - *Petroleum Infrastructure (no existing Regulator)*
  - *Piped-gas (no existing Regulator)*
- However, it was deemed prudent (feasibility study undertaken by the DME) to have a single energy regulator for SA.
- This led to the creation of the National Energy Regulator of South Africa (NERSA), established in terms of the National Energy Regulator Act, 2004 (Act No. 40 of 2004) [NERA Act]. NERSA expanded on the discontinued NER.
- NERSA is responsible for the regulation of the following:
  - *Electricity Industry: Electricity Regulation Act, 2006 (Act No. 4 of 2006)*
  - *Petroleum Pipelines Industry: Petroleum Pipelines Act, 2003 (Act No. 60 of 2003)*
  - *Piped-Gas Industry: Gas Act, 2001 (Act No. 48 of 2001)*

*Besides the ERB of Zambia, all regulators in the region were conceived as electricity regulators.*

- Basis for NERSA decisions: relevant legislation as well as published Government policy.
- Objectives of NERSA:
  - *Promote energy supply that is certain and secure for current and future user needs;*
  - *Create a regulatory environment that facilitates investment in energy infrastructure;*
  - *Promote competition and competitiveness within the energy industry;*
  - *Promote regulatory certainty within the energy industry;*
  - *Promote accessible and affordable energy for all citizens; and*
  - *Establish and position NERSA as a credible and reliable regulator.*
- Function of NERSA:
  - *Issuing of licences and setting pertinent conditions;*
  - *Setting and/or approving tariffs and prices;*
  - *Monitoring and enforcing compliance with licence conditions;*
  - *Dispute resolution including mediation, arbitration and the handling of complaints;*
  - *Gathering, storing and disseminating industry information;*
  - *Setting of rules, guidelines and codes for the regulation of the three industries;*
  - *Determination of conditions of supply and applicable standards; and*
  - *Registration of import and production activities.*

- The global and local energy landscape is changing quickly as a result of economic shifts and technological advancements:
  - *Renewable energy, electric vehicles, smart grids, battery technology, etc.*
  - *“Game changers” e.g., unconventional oil and gas or the retreat from the use of fossil fuels in some countries further accelerates this change*
  - *Geo-political dynamics*
- Regional cooperation and integration:
  - *In 1998, NER, in collaboration with Energy Regulation Board (ERB) of Zambia, started the Regional Electricity Regulators Association (RERA), which was established on 12-Jul-02 and launched on 26-Sep-02 in Namibia*
  - *RERA transformation to a regional regulatory authority*
- Review of the policy and legislative framework
  - *Competition Amendment Bill, Gas Amendment Bill, NERA Bill, etc.*
  - *Integrated Energy Plan (IEP), Integrated Resource Plan (IRP), Gas Utilisation Master Plan (GUMP), Cleaner Fuels Roadmap, etc.*
- Institutional strengthening and human capital development
  - *Institutional rearrangements*
  - *Responsive to the PESTEL and governance requirements*

# Thank you

Website: [www.nersa.org.za](http://www.nersa.org.za)

Tel: 012 401 4600

Fax: 012 401 4700

Email: [info@nersa.org.za](mailto:info@nersa.org.za)



@NERSAZA



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