

Sustainable Energy Briefing 7: National Energy Bill

In September 2004, Cabinet approved the release of the Draft National Energy Bill (NEB) for public comment¹. This welcome and somewhat overdue piece of legislation, will give effect to a number of the provisions of the White Paper on Energy Policy for South Africa of 1998 (WPEP), including the establishment of a National Energy Advisory Committee (NEAC) and requirements for sound energy planning, development and use. The following objectives of energy policy are laid out in the 1998 White Paper:

1. Increasing access to affordable energy services,
2. Improving energy governance,
3. Stimulating economic growth,
4. Managing energy-related environmental impacts, and
5. Securing supply through diversity.

Concerns regarding the Draft NEB

The main areas of civil society concern regarding the September 2004 draft relate mostly to the first, second and fifth objectives of energy policy:

1. Affordability is mentioned only once, in an introductory characterisation of planning, and is not carried through as an essential aspect of access;
2. Extensive powers are vested in the minister without requirements that would ensure transparency, accountability and consideration of the inputs of stakeholders – leaving such issues purely to the discretion of a minister does nothing to improve energy governance;
3. The small size of the NEAC does not allow for broad stakeholder representation – improving energy governance and diversity of supply requires addressing the dominance of vested business interests that to date enjoy greater access to officials and the Ministry than emerging sub-sectors and civil society;
4. Provisions do not take advantage of this important and unique opportunity to address the on-going trend for business-as-usual in energy development, a particularly serious oversight regarding the programme of research.

While intentions of the NEB are commendable, it is limited in alignment with government's stated objectives of poverty alleviation and job creation. Social and environmental concerns and opportunities are overshadowed by the domination of the economy by energy-intensive mining and commodities industries based on low-priced energy. The Bill is not sufficiently rigorous to ensure a change from the current focus on short term economic growth, which neglects other objectives and inclusive analysis of macro-economic impacts and long-term sustainability.

In light of the tension between many of South Africa's energy policy objectives, a systematic and participatory process for ranking priorities and identifying key strategic choices would be of great value. Specific areas where the NEB could be strengthened are addressed in greater detail below, with a view to achieving the best legislation possible.

Copies of the draft National Energy Bill can be downloaded from www.dme.gov.za

Status of the National Energy Bill

Post 1994, the policy formulation process embraced by the Government of National Unity actively pursued consultation with all stakeholders. This new approach was centred on the principles of transparency, building public confidence, clarity of accountability, clear and accessible communication of policy as well as the integration of policy processes. In light of the complexity of causal policy inter-linkages, a problem-solving approach was also proposed.

The NEB is an outcome of the process that started with a Green Paper (policy discussion document or draft), which was the subject of stakeholder consultations and document refinement before the approval of the White Paper on Energy Policy for South Africa by parliament in 1998. In September 2004, Cabinet approved that the Draft NEB be circulated for public comment. The draft was then published in the Government Gazette. Currently amendments are being made and these include strengthening the energy efficiency and renewable energy components of the Bill. According to DME officials, the Bill has not been to the State Law Advisors for establishing whether or not it is in conflict with other legislation nor has it been to the Minerals and Energy Parliamentary Portfolio Committee.

Strengthening the NEB

Objects of the Act (Chapter 2)

These should be useful as a benchmark against which performance of the department and ministry may in future be evaluated. The issue of affordability of energy services is not addressed, but would fit well in 2(e). to read: “provide for the universal and *affordable* access to appropriate forms of energy...”.

National Energy Advisory Committee (NEAC) (Chapter 3)

The establishment of the NEAC should strengthen the role of stakeholders in policy development and implementation. With only 10 members the NEAC is likely to be dominated by business interests. More seats are needed to provide for broad representation of civil society and ensure that poverty reduction, job creation and long-term implications are highlighted in the NEAC’s deliberations. Explicit provision for covering the full costs of participation is also desirable.

Provisions are needed requiring a minimal level of formal response by the minister to issues raised or recommendations made by the committee. A minimum number of meetings should be specified – no less than 3 annually. Reports of the NEAC should routinely be made publicly available, with the important provision in section 8 (9) applicable, i.e. if information is to be withheld from the public as “confidential, proprietary or commercial sensitive”, a detailed justification should be required, with the burden of proof resting with the party that wishes to withhold the information or exclude the public from a meeting.

National Energy Database and Information System (Chapter 4)

Informed policy development and implementation depends on accurate and comprehensive data that is provided on time. Section 13 (1) should make provisions to allow for independent verification of data

to be provided, (e.g. powers for inspection of records). It is not clear why section 15(2) provides that limitation on information “must apply” under certain conditions, rather than making this a possibility that would need justification.

Energy supply, optimisation and utilisation (Chapter 5)

Integrated Energy Planning

Integrated Energy Planning (IEP) has been studied and debated extensively internationally and locally but it is poorly reflected in section 16. The list of issues to be taken into account would be more consistent with stated macro-economic policy goals if social equity and employment were added under 16 (2). IEP should also be consistent with the National Environmental Management Act (1998) thus a rigorous approach will include the principles popularly referred to as: Cradle to Grave Responsibility; Public Participation and the Polluter Pays Principle.

A twenty-year time horizon, which has been used in IEP to date, does not encompass more than half the lifespan of the majority of energy infrastructure and thus some consideration should be given to the longer term prospects for the sector. This would be consistent with the policy objective, under supply (7.1.1 of WPEP): to “achieve environmental sustainability in both the short and long-term usage of our natural resources”.

Given that data collection and scenario work should be on-going, that capacity is to reside with staff and that developments in the energy sector continue to gather pace, particularly with regard to fuel costs, production of a plan should be more frequent than every five years. An inclusive process is an important means for giving effect to the objectives of IEP and managing resistance of key stakeholders. The NEB should therefore specify that the plan will be released as a report that will be available for the public to comment on before finalisation.

Renewable Energy

The Bill is consistent with the White Paper on Renewable Energy Policy, but does not give effect to or support realization of broader energy policy including “ensuring that an equitable level of national resources is invested in renewable technologies, given their potential and compared to investments in other energy supply options” (WPEP 7.7). There has been a gradual retreat from renewable energy policy commitments and the target¹, which has been revised downwards over the years, is now worded to suggest that it is about 10 times^{SE Brief 6} greater than the actual commitment.

The provisions are somewhat ambiguous (section 17. (3)(c) could be seen as fairly open-ended), but the Bill seems to favour quotas for renewable energy and not to allow for a ‘feed-in tariff’, which option should not be excluded in such legislation. Amendment of 17 (3)(e) to read “may prescribe standards *and/or tariffs* for renewable energy” would keep this option open, even if it is never used. If the many proponents of a rate-of-return tariff for renewable energy are correct, its exclusion here would be a barrier to implementing existing policy.

Energy Efficiency

This section is probably the most comprehensive in giving effect to policy. It is hoped that on-going revision of this section will not in any way weaken powers to prescribe codes and standards. Powers to

impose penalties for non-compliance to such codes and standards need to be added, with fines significantly greater than the costs of compliance.

Energy Access by Households

Substantial re-phrasing can be anticipated here, including reference to ‘energisation’ - an approach that starts with assessment of energy service needs, rather than emphasising the number of grid connections made. The list of issues to be taken into account (section 20 (2)), should include affordability, as well as the benefits of decentralisation, particularly for rural areas.

International Obligations

Wording suggests that meeting international obligations will be constrained by availability of resources, whereas such constraints of developing countries are recognised in such agreements. This section should indicate that approval of Clean Development Mechanism (CDM) projects by the Designated National Authority requires a finding that the activity assists South Africa in achieving sustainable development (as agreed under the UNFCCC). It should also recognise obligations under the African Union, including implementation of the recently ratified African Energy Commission (AFREC).

Energy Research (Chapter 6)

The energy research and technology development programme that the minister is required to institute must ensure “that an equitable level of national resources is invested in renewable technologies”(WPEP 7.7). Additional considerations to guide the use of research and development resources and focus efforts on realising policy priorities should include:

- take into account direct job creation potential of technologies;
- recognise and elaborate the potential for community participation in energy development;
- support local manufacture of renewable energy technologies;
- support decentralisation and diversification;
- support improved energy security at the local level;
- recognise and must avoid imposition of burdens on future generations.

Conclusion

The NEB is a step forward in implementing policy and makes many essential provisions, but it does not fully realize or reflect the intentions expressed in the 1998 White Paper and other policy documents, particularly those relating to environmental health and access to essential services, such as the Bill of Rights. In particular the provisions for integrated energy planning, research and development priorities and public participation and reporting could be strengthened.

A piece of legislation should not be built on trust in the minister, as the incumbent will change far more frequently than the law. The NEB should provide for effective interaction with all stakeholders and specify the modes of accountability. Given the time-consuming challenge of promulgating legislation, adoption of the Bill in its current form would involve missed opportunities.

¹ See Sustainable Energy Briefing 6: PAMS Study