

China's Energy Law Draft and the Reform of its Electricity Supply Sector

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China is reforming its electricity supply industry under the guidance of the No.9 document published in 2015. However, such reform has not been supported by new legislation until now. China unveiled an Energy Law draft in April 2020 for public consultation. It is widely regarded as an attempt to provide a legal foundation for ongoing energy sector reforms. This paper introduces the legislative background to China's Energy Law and then identifies the weaknesses of the April 2020 Energy Law draft from the perspective of international experience.

The newly published Energy Law draft has incorporated many of the reform principles in the No.9 document and will set the legal framework for future electricity reform. After giving a summary of the Energy Law draft and its legislative background, this paper suggests some potential improvements in the Energy Law as currently drafted as well as suggesting some possible future amendments to the current Electricity Law and Renewable Energy Law.

A clear positive aspect of the Energy Law draft is its support for market-oriented reform in the energy sector. The requirement to separate monopoly businesses from competitive businesses as well as different pricing mechanisms is aligned with best international practice. Required third party access and appropriate pricing of environmental externalities are also supported by the new Energy Law and existing Environmental Laws.

However, as we suggest many provisions can be improved based on international experience. The final version of the Energy Law could: create a competitive horizontal market structure with the use of the Antimonopoly Law; incorporate the principle of a market mechanism for allocating transmission capacity; apply incentive regulation to regulated energy network companies; create a level playing field for both private and foreign investors; put the regulated customers' demand in the wholesale market and reimburse the potential revenue losses;

establish an independent regulatory institution as a credible commitment to the promotion of private investment incentives; encourage grid companies and renewable producers to adopt the most cost-effective options for connection; and make more use of the pricing of environmental externalities.

The current 1995 Electricity Law should also be updated once the Energy Law comes into force. The difference between the Electricity Law and the Energy Law is that the former can be more detailed and specific to electricity.

A new Electricity Law could: make specific provisions for unbundling transmission, distribution and retail business of the Grid companies; underpin a comprehensive move towards merit order based economic dispatch; encourage interprovincial trading through wide-area power market arrangements; include detailed provisions for spot and ancillary markets and for efficient power transmission capacity allocation; and facilitate the participation of demand-side and renewable sources in the spot market.

The Renewable Law also needs to be updated to reflect the replacement of the feed-in tariff regime. Renewable energy needs to bear some portion of the grid connection cost. For the Environmental Laws, it is time to push forward with a national carbon emission permit market based on the experience of existing carbon market pilots.

The Draft Energy Law is welcome and has highlighted many important aspects of China's future energy reforms. With ongoing reforms taking place there is a need for China to complete the updating of its energy law system.

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