



# An overview of legislative and institutional approaches to China's energy development

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## ABSTRACT

Legislation and institutions are two important components of energy development. To better understand and improve energy development in China, a comprehensive examination of its energy legislation and institutions is essential. This paper highlights the major challenges confronting energy legislation and institutional approaches; as well, it explores possible alternatives in relation to future energy development in China. The paper concludes that shortcomings vis-a-vis structure, content, auxiliary legal documents, and clarity are the main barriers obstructing the efficacy of China's energy law systems. Lack of a unified national energy administration and the ineffectiveness of the country's energy institutions could prove major institutional hindrances to China's energy sector development. In future, the following legislative and institutional approaches should be adopted: (1) formulation of the basic energy law and specific laws should proceed without further delay; (2) the development of auxiliary legal documents should proceed without delay; (3) improving the effectiveness of energy legislation should proceed without delay; (4) setting up a unified national energy administration; and (5) enhancing institutional development.

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## 1. Introduction

Energy plays an important role in achieving sustainable development for many of the world's nations. In the 21st century, energy supply and consumption, food crises and climate change are among the issues of major concern to the international arena. After nearly 60 years of development since 1949, China's energy sector has achieved remarkable success. It has made significant contributions to the national economy, social welfare and the basic energy needs of the Chinese people. In 2004, China became the world's second largest energy producer and consumer (Chui, 2006; The State Council Information Office, 2007; Wang et al., 2008; Yang, 2008).

However, today China's energy sector is confronting a number of obstacles in energy reserves, population numbers, domestic and global environmental issues. It is also constrained by industrial and economic structures, financial resources, technologies, management systems, and consumers' culture of energy wastage. In light of China's astonishing socioeconomic growth, its rapid urbanisation and its focus on improving the people's living standards, there seems little doubt that future energy development will present an enormous challenge to all of China's communities including governments, industries and individual citizens.

In 2007, the State Council published its long-term national energy strategy, the basic premises of which include giving

priority to conservation, relying on domestic resources, encouraging diverse patterns of development, relying on science and technology, protecting the environment and increasing international cooperation for mutual benefit. The aim is to build a stable, economical, clean and safe energy supply system, one that will support sustained economic and social development with sustained energy development (Ye and Wu, 2006; The State Council Information Office, 2007).

A major prerequisite of the national energy strategy is having in place the relevant legislation, policies, plans, standards, institutions, along with other relevant measures. This is because human behaviours and socioeconomic relations that occur in energy production, sale, and consumption need to be adjusted and regulated using legal tools. Energy laws and regulations, which regulate the systemic selection and arrangement of energy strategy, represent a much stronger restrictive force than other measures (Ye and Wu, 2006). Government energy institutions are charged with the task of implementing national energy strategies, laws, policies, plans and other management measures. In case of China, however, without appropriate energy institutions the country will be unable to achieve successful energy development irrespective of whether it has perfect energy legal systems, energy strategies and policies. Thus, suitable and effective energy institutions will greatly influence and determine China's future energy development.

The author of this paper takes the initiative to (a) review China's energy-related legislation and institutional approaches;

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(b) identify their major weakness and (c) recommend alternatives for their future improvement. It is anticipated that the paper will provide the international community with a better understanding of China's energy issues and make a useful contribution to China's energy development.

## 2. Existing energy laws and regulations

Based on different energy resources, China's energy legislation can be classified as six sub-systems: (1) coal industry laws, (2) oil-natural gas laws, (3) electric power laws, (4) nuclear energy laws, (5) renewable energy laws, and (6) energy conservation laws (Ye and Wu, 2006). China's energy law system consists of nine major components which are described as follows:

- (1) *Constitution*. According to the Constitution, energy-related provisions are the legal basis of China's energy laws. Some principles in the Constitution, such as “*managing (the) nation based on laws*” and “*advocating conservation*” also play as important guiding roles in the country's energy legislation.
- (2) *Energy laws*. There are two types of energy laws in China, which are basic energy laws, the *Energy Law* (in process) and special laws, such as the *Law on Electric Power* (1996). The energy laws are formulated either by the National People's Congress (NPC) or the Standing Committee of the NPC.
- (3) *Legal administrative energy regulations* are energy-related legal documents formulated by the State Council. There are two types of legal energy regulations: the first are formulated based on existing laws and with detailed provision. Therefore, they are necessary for implementing the country's energy laws; the second are the temporary and trial legal regulations, which are used to deal with any new issues in energy development or in energy fields that are not covered by existing energy laws.
- (4) *Administrative energy regulations* are energy-related administrative documents formulated by relevant ministries and organisations under the direction of the State Council. These administrative regulations, which bridge specific gaps in the energy legislation, have become very useful elements of China's energy legal system.
- (5) *Local energy legal regulations and administrative regulations*. Local energy legal regulations are legal documents formulated by Provincial (autonomous regional or authorised municipal) People's Congresses or their Standing Committees. Local energy administrative regulations are legal documents formulated by Provincial (autonomous regional or authorised municipal) governments based on energy laws and national as well as local legal regulations.
- (6) *Energy-related provisions in other laws*. In China's legal system, many laws and regulations have energy-related provisions; for example, the *Water Law* (1988) and the *Criminal Law* (2002).
- (7) *Energy standards* are special components of the energy legal system. They are divided into national, professional, local, compulsory and recommended standards.
- (8) *International energy treaties*. International organisations have developed many energy-related international treaties including conventions and protocols. Following ratification by the Standing Committee of the NPC, they will be implemented as other domestic energy laws and regulations.
- (9) *Other regulated documents* include official notices, orders, comments, energy legal interpretations and many others which are made by ministries, committees or agencies of the State Council (Ye and Wu, 2006).

To date, China has formulated a number of energy laws, legal administrative energy regulations, administrative energy regula-

tions, local energy legal regulations and administrative regulations, and energy standards. As well, it has ratified nine energy-related international treaties (see Appendix 1). Meanwhile, the *Energy Law*, the *Circular Economy Law*, the *Law on the Protection of Oil and Natural Gas Pipelines and Regulations on Energy Conservation of Buildings* are in the process of being formulated. At the same time, as regards energy legislation, active efforts have been made concerning oil, natural gas and the crude oil markets; and nuclear energy development (The State Council Information Office, 2007).

As China's basic energy law, the *Energy Law* is intended to guide and coordinate other laws in China's energy sector. It will cover all forms of primary energy including coal, oil, natural gas, renewable and nuclear energy as well as secondary energy, i.e. electricity, thermal power and petroleum products. It will overlay specific energy laws such as the *Renewable Energy Law*, the *Energy Conservation Law* and the *Electric Power Law* and their associated regulations and measures.

The purposes of the *Energy Law* are to (1) standardise the development, use and administration of energy; (2) create a stable, economical, clean and sustainable energy supply and service system; (3) increase energy efficiency; (4) ensure energy security; (5) promote the development of a resource efficient and environmentally friendly society; and (6) promote the co-ordinated development of energy, economy and society. A consultation process considering the *Energy Law* (Draft), conducted by the Office of the National Energy Leading Group, closed on 1 February, 2008. The *Energy Law* is targeted to come into force in 2009.

## 3. National energy institutions

Since the establishment of new China in 1949, the country's energy institutions at the national level have experienced several major reshuffles. In October 1949, the Ministry of Fuel Industry was established to manage the Coal Mine Bureau, the Oil Bureau and the Electrical Industry Bureau. In 1954, in a bid to strengthen the Central Government's management of economic development, the Ministry of Fuel Industry was replaced by the Ministry of Coal Industry, the Ministry of Oil Industry, and the Ministry of Electric Power Industry. With administrative powers heavily concentrated in the Central Government, many government agencies rapidly expanded. This was not, however, particularly advantageous for the effective management of economic development. In 1958, the Central Government handed some powers to China's local governments. The Ministries of Electric Power and Hydro Conservancy were merged, creating the Ministry of Hydro Conservancy and Electric Power (National Electric Power Corporation, 2001).

From 1961 to 1964, there was little restructuring of the energy institutions at the national level; staff members were greatly reduced. During the Cultural Revolution, many of the Central Government's administrative powers were relegated to local governments. Many Central government agencies were either revoked or merged. As a result, in 1970 the Ministry of Fuel and Chemical Industry was formed based on the merger of the Ministry of Coal Industry, the Ministry of Oil Industry, and the Ministry of Chemical Industry. In 1975, the Ministry of Fuel and Chemical Industry was replaced by the Ministry of Coal and the Ministry of the Oil and Chemical Industry (National Electric Power Corporation, 2001).

In the period that marked the end of the Cultural Revolution and the opening up of Economic Reform, China's energy institutions have undergone more frequent and deep restructuring in order to keep pace with the country's burgeoning socioeconomic growth and meet the energy needs of the Chinese people. In 1978,

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