

DRAFT GUIDELINES FOR ENERGY REGULATION AND REGULATORY PRACTICE

(by the Programme Committee of the World Forum on Energy Regulation)

Premise: Why this document? During the World Forum on Energy Regulation's preparatory phases, the Programme Committee considered a few practical outcomes for the Forum. One of the outcomes which received support was the issuance of a set of guidelines or standards for energy regulatory practice. Energy markets are regulated by regulators, but how should regulators regulate their activity? What about independent regulation and regulators? What lessons can experiences relating to energy market liberalisation and regulation provide? Are there principles or conducts that regulators of different states and regions can share? The importance of these questions led the Programme Committee to prepare a set of draft guidelines for energy regulation and regulatory practice which energy regulatory associations or regulatory authorities may wish to amend and adopt, depending upon their regional or local realities, institutional history and interplay.

The draft guidelines which follow are based upon broad consensus. They do not pretend to be exhaustive, nor do they pretend to be the only set of guidelines one could put forward. Rather, these draft guidelines are intended to stimulate the debate and promote further effort, also with a view to the special needs of developing markets and countries. The ultimate goal is to enhance the credibility and legitimacy of the regulatory process and procedures while providing consumers, governments and investors with appropriate comfort levels.

Draft guidelines:

1. Independence. The energy regulator should be wholly independent of the electricity and gas industry and other vested interests. The regulatory authority should be a distinct administrative institution from the executive branch, and independent or interdependent from the executive branch in its procedures and decision-making process. An element of independence refers to commissioners, members, heads of the regulatory authority being appointed by transparent methods for fixed mandates. Another element refers to the budget, resources and funds which necessary to the

energy regulator so that he or she may discharge his functions as assigned. Schemes can be designed to construct and review an independent budget.

2. Minimum set of functions. Regulatory independence should be accompanied by a clearly specified minimum set of regulatory functions. Should circumstances require it, regulatory independence can be combined with a specified regulatory contract that must be negotiated by political authorities.

In general, the scope of regulatory responsibilities should include all or subsets of the following:

- fixing or approving terms and conditions for use, connection and access to national electricity and gas networks and infrastructure, including transmission and distribution tariffs;
- fixing or approving conditions, or changes in conditions, to reflect costs related to interstate or international transport of electricity and gas;
- defining the rules governing the management and allocation of interconnection capacity;
- exercising general surveillance and supervision of electricity and gas market structures and contracting, including power exchanges and different types of trading hubs as well as monitoring the supply and demand balance and the accounting separation rules, ensuring that there is no restriction of competition;
- monitoring and investigating system investment, including that associated with public service obligations as well as security of supply and, where necessary, monitoring investment tendering procedures;
- fixing or approving standards and codes for service quality;
- having a role in granting and writing concessions;
- having a role in conducting and overseeing auctions and resource acquisitions;
- having a role in monitoring the development of new technologies and energy services when there is a potential impact on the market;
- settling disputes in matters relating to tariffs, prices, quality of service, network access, including the unbundling of cross border trade;
- ordering concerned parties to maintain obligations or behaviours, imposing administrative fines for the breach of such obligations.

3. Impartiality. Energy regulators have an obligation, through their institutional, social, professional and financial behaviour to demonstrate their independence from energy industry and other vested interests. Particularly, energy regulators should not allow family, social or other relationships to influence their official conduct or judgment, they should be unswayed by partisan interests, public clamour, or fear of criticism. They should afford to every person who is legally interested in a proceeding, or his or her lawyer, full right to be heard according to law and rules.
4. Dispute resolution and individual cases. The energy regulator should be able to resolve disputes concerning licenses, tariffs, prices, quality of service and consumer protection, including arbitrates between energy market participants and cases of denied third party access. Expert panels and groups can be appointed to examine the issues. Also, the energy regulator should have a role in dealing with individual cases. Concerned parties should be given the opportunity of fair treatment and advocacy. Mechanisms for appeals should be identified. The energy regulator should maintain order and decorum in proceedings and audits, should be patient, dignified and courteous with litigants and witnesses with whom the regulatory authority deals in an official capacity, and should require similar conduct of lawyers, staff and others subject to the regulatory authority's direction and control.
5. Diligence and ethics. The energy regulator should be faithful to his or her mission and constantly strive to improve his competence in regulatory principles. He or she should diligently discharge his administrative responsibilities, and maintain professional confidence in staff officials. The energy regulator should not own any stock or securities or other financial interests in any company whose activities fall within the scope of the regulatory authority. The energy regulator should not use the prestige of office to advance private interests, he or she should refrain from financial and business dealings that tend to reflect adversely on his official duties, exploit his position, or involve him in frequent transactions with persons and entities likely to come before the regulatory authority.
6. Transparency and simplicity. Process and procedures should allow the information and participation of stakeholder interests. Consultation, rule-making documents and public hearings should be prepared and held to ground and develop decisions.

Access to transcripts, record-keeping, and the publication of reports and public meetings help improve and maintain credibility of energy regulators. Their language should be simple and understandable. Confidential information should be clearly defined. Annual reporting requirements may streamline relations with other branches of the public administration, the legislative branch and other independent authorities. The establishment of a public document room is a recommended practice.

7. Predictability and flexibility. The energy regulator should strive to establish a predictable regulatory environment, while adopting a flexible approach to regulatory issues. Continuing and progressive action is advisable to increase investor confidence. Regulatory approaches might vary depending upon function, institutional context and case. In their decision-making about energy markets and networks, regulators should consider the advantages and disadvantages of structural regulation against conduct or behavioural regulation. Regulation by contract could also be a practical approach to overcoming political or economic constraints while advancing market liberalisation and promoting energy investment.

Critical interfaces refer to the relations between state regulation or regulators on one hand, and supranational or federal energy regulation and regulators on the other. Interactions between energy market regulators and financial market regulators, as well as interactions between energy market regulators and competition or antitrust authorities represent a new frontier. Co-operation and information mechanisms should be in place to ensure coherence between ex-ante and ex-post action, and to promote and maintain free energy trade and competitive energy markets.

8. Appeals. The appeals process arising from energy regulators' decisions should go to an administrative court or judicial body. A robust appeal system is a guarantee of accountability for energy regulators, consumers, stakeholders and investors. Regulators' decisions should be subject to review where there is an alleged illegality in the decision-making process and procedures. Such illegality can stem from a lack of jurisdiction, infringement of the addressee's right to be heard, misuse of power, or a lack of proportionality between the purpose of the decision and the effect upon the addressee.

9. Benchmarking. Energy regulators should motivate and explain their decisions. Their performance should be evaluated to show that their action and decisions are cost-effective and bring benefits which can be shared by stakeholders in the short and in the long-term. Means include multi-year benchmarking of the regulatory authority by external experts and peer reviews. Regulatory impact assessments can be performed to assess how rules and standards are implemented and to display the value of a course of action taken while making comparisons with alternative routes. Regulatory impact assessments may become the best approach to protect energy regulators from political interferences and to provide consumers, stakeholders and other administrations involved with a logic for their decisions.

10. Public service obligations. While adhering to their respective set of functions and code of conduct, energy regulators should comply with public service obligations. These obligations include security of supply, the protection of low-income customers, emergency recovery, the supply of isolated areas and special groups, and environmental and safety concerns. They also encapsulate goals related to resource utilisation, fuel and supply route mixes, energy efficiency and demand-side management, and technological progress and overall economic development. Usually, policy frameworks and objectives are defined by the executive and legislative branches, while energy regulators are responsible for defining and adopting the most appropriate market-based regulatory tools and measures for their implementation.

The Chairs