

Electricity Governance Initiative – South Africa

**Benchmarking best practice and promoting accountability in the electricity sector:
A comparison of processes for incorporating public comment into electricity governance**

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Electricity Governance Initiative

The Electricity Governance Initiative (EGI) is a collaborative global initiative of civil society, policymakers, regulators, and other electricity sector actors to promote the open, transparent, and accountable decision-making processes that are a necessary part of a socially and environmentally sustainable energy future. The EGI is led jointly by the World Resources Institute and Prayas Energy Group (India). The National Institute of Public Finance and Policy (India) was centrally involved in development of the EGI Toolkit, a set of detailed assessment indicators, and implementation of the pilot phase of assessments in a number of South and South-East Asian countries. EGI is a partnership for sustainable development registered with the UN Commission on Sustainable Development.

Policymakers, regulators and citizens all over the world are grappling with the challenges of providing access to clean, reliable and affordable electricity, and addressing major environmental challenges including climate change. Improved transparency and public participation in the development of policy and regulation can help manage trade-offs between environmental, social, and financial considerations, and also identify points of convergence of these public interests. Building on global experiences, EGI has initiated a new effort to improve governance of electricity in South Africa (EGI-SA) by analysing government and regulatory capacity to create the right conditions for the promotion of social equity, energy efficiency and renewable energy, in line with the requirements of sustainable development and public interests.

During 2008-9, EGI-SA undertook a systematic assessment of decision-making processes in the electricity sector in South Africa. A research consortium was established, consisting of a partnership of civil society groups, including the Energy Research Centre at the University of Cape Town, Sustainable Energy Africa, Earthlife Africa, WWF-SA, the Green Connection, the International Labour Resource and Information Group (ILRIG), and independent researchers, and co-ordinated by Idasa's Economic Governance Programme. The assessment report is due to be published during October 2009.

Renewable energy is a new concept for South African decision makers. While renewable energy is gaining its share of the world's energy mix, South Africa has been very slow to follow this trend. One of the challenges in implementing measures to fast-track renewable energy uptake is that decision makers are unfamiliar with the technology and international best practice regulatory and policy systems that promote renewable energy. Civil society tends to have access to expertise and information. From a governance perspective, are South African decision makers regarding such civil society expertise as an opportunity or a threat?

This brief provides a comparison of two processes, examining the public consultation process that was followed and comparing the extent to which issues raised by the public were taken into account. The brief draws on the policy indicators and case studies prepared for the Electricity Governance Initiative – SA 2009.

The two processes were:

1. Public hearings undertaken by the national Parliamentary Portfolio Committee on Minerals and Energy in considering the proposed National Energy Act (2008).
2. Public hearings undertaken by the National Energy Regulator of South Africa (NERSA) in considering the proposed Renewable Energy Feed-In Tariff (REFIT) 2008/09.

The research identified a number of elements of quality (criteria) against which the portfolio committee could be assessed. In terms of the indicator for general capacity, it scored high in terms of the elements of quality: access to knowledge, knowledge enhancement, financial resources and authority. However, the ability of the portfolio committee to take environmental issues into account was scored low in terms of the elements of quality: relevant expertise, designated point person, dedicated financial resources, knowledge enhancement on environmental issues.

The effective functioning of the portfolio committee was assessed according to eight elements of quality:

Element of quality	Assessment of portfolio committee
Disclosure of interests	Members are required to state their financial interests but not any specific links with the electricity industry.
Active committee	The committee meets regularly. It is supposed to produce reports but there is a significant backlog.
Reasoned reports	The committee does not produce reports that provide reasons for its actions.
Proactive committee	The committee proactively called for electricity industry players to appear before it.
Public consultation	The committee called for public hearings on the National Energy Bill.
Transparency of submissions	Limited copies of presentations were available at the hearings.
Transparency of committee reports	Reports and recommendations of the committee were not made public.
Reporting by executive	The (then) Department of Minerals and Energy (DME) reports to the committee.

The portfolio committee met four out of the eight elements of quality, indicating an overall score of medium.

The score, however, needs to be qualified. For example, although public consultations were held, it was not clear who was listening as observations by participants at the hearings indicated that many committee members did not attend both days of the hearings. Other indicators of good governance assessed the quality of the debate and concluded that most civil society organisations could only attend the day of their presentation. The organisations that had the resources to follow and potentially influence the final drafting of the legislation were large corporates and the larger trade unions.

The NERSA hearings process was then assessed according to seven elements of quality and a similar table was constructed:

Elements of quality	Assessment of NERSA public hearings
Disclosure of interests	Nothing available on the NERSA website. No disclosure required.
Active committee	The NERSA board meets regularly and reports are published on its website.
Reasoned reports	Reports are available on the website and notification is sent to interested parties. The timeframe may be longer than two weeks.
Pro-active committee	NERSA proactively investigated the REFIT.
Public consultation	NERSA called for public hearings and incorporated such expertise into its results.
Transparency of submissions	No process for providing documents. But these were available from the coordinators.
Transparency of committee reports	The second layer of public consultation through the advisory committee provides further transparency in the decision-making process.

NERSA met five out of the seven elements of quality, indicating an overall score of medium-high.

NERSA has greater capacity to understand the issues presented to it. This may partly be explained by the different functions of the two institutions. The NERSA board is familiar with the electricity sector and may have higher levels of technical expertise, although the field of renewable energy is not one of its particular areas of expertise. The difference was that NERSA has staff with expertise in taking detailed notes in order to analyse the presentations made to the board. It appears that this level of expert assistance increased the capacity of NERSA to effectively assess environmental issues.

NERSA acknowledged the wealth of expertise available to it from the public and used this to enhance the quality of its decision making. NERSA invited a small group of presenters from the public hearings to an advisory meeting to further refine REFIT. In contrast, the portfolio committee relied on the then Department of Minerals and Energy (the government department that had drafted the Bill) to redraft the legislation. No public organisation assistance was requested.

NERSA sent all the presenters and members of the advisory committee the final approved tariff and publicised it in the press. The portfolio committee neither informed presenters of the approval of the final legislation, nor did it circulate copies to those who had made presentations.

Conclusion

NERSA followed a more transparent process, demonstrating a capacity to listen, analyse and respond. The final REFIT was closely aligned with comments from the public.

The public does not know how the portfolio committee made its decisions. This has particular implications for equity in public participation. Only stakeholder groups such as large corporates, government departments and the bigger trades unions (e.g. National Union of Mineworkers (NUM), Congress of South African Trade Unions (Cosatu)) can afford to dedicate personnel to the legislative process. Others make time to present their views at public hearings, but are then unable to follow deliberations on the Bill, or to understand the logic of how the final draft was arrived at. The lobbying of Parliament to ensure stakeholder views are taken into account is therefore largely possible only by bigger organisations. The National Energy Act appears to demonstrate this. For example, NUM's submission rejected the initial draft Bill's proposed model for an energy agency and the final Act reflects this preference.

The limited public consultation approach taken by the portfolio committee may be a reason for the dilution in focus on renewable energy in the National Energy Act, potentially retarding progress in this area. The more open, participative process undertaken by NERSA (traditionally experts in fossil fuel pricing) led to the implementation of a viable REFIT, which is internationally recognised as an effective measure to develop the renewable energy sector.

In conclusion, NERSA's willingness and capacity to engage constructively and in-depth with public concerns resulted in an increased quality of decision making. Parliament was willing to consult but lacked the capacity to meaningfully engage, resulting in legislation that fails to promote renewable energy or incorporate feedback from stakeholders. To strengthen the democratic processes of public engagement in Parliament, increased resources need to be made available to build capacity of both parliamentarians and research staff. Such capacity should not duplicate knowledge and expertise available in civil society, but be used to meaningfully engage with local knowledge to strengthen transparent and effective decision making.