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The Role of the Independent Regulator in Tanzania's Natural Gas and Petroleum Sectors

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About the Authors...



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Abstract

This paper describes the role of the Energy and Water Utilities Regulatory Authority ("EWURA"), Tanzania's newly established multi-sector regulatory authority, with respect to the regulation of petroleum and natural gas.¹ EWURA's purview with respect to the natural gas and petroleum sectors encompasses Tanzania's upstream petroleum and natural gas activities and the nation's downstream petroleum market.

Tanzania's Energy Resources

Tanzania is rich in natural energy resources, most notably natural gas and hydropower, but also: biomass; coal; geothermal; solar power; and wind power. This broad potential remains largely undeveloped, however: firewood still provides up to 90% of Tanzania's energy consumption; 3% is derived from hydro-electricity and the remaining 7% comes from imported petroleum products. Already, with gross revenues in excess of US\$ 600 million, the downstream petroleum industry is the largest single commercial activity in the country and the largest contribution of Government revenues (US\$ 220 million annually).

Legal Basis for Tanzania's Independent Regulator

When EWURA was established in 2001, the Government of the United Republic of Tanzania (GoT) anticipated that the petroleum and gas sectors would be regulated by an entity separate and apart from the water and electricity sectors. For that reason, as originally drafted, the EWURA Act limited the Regulator's role to the regulation of transmission and distribution of natural gas. Later, when the government recognized the benefits of multi-sector regulatory institutions – e.g. cost savings, insulating multiple sectors from regulatory capture and cross-fertilization of ideas that is inherent in multi-disciplined authorities - the EWURA Act was amended to expand EWURA's jurisdiction granting EWURA full regulatory powers over the Petroleum and Natural Gas Sectors.

¹ EWURA, established by the EWURA Act (2001) is Tanzania's independent regulatory authority for the electricity, natural gas, petroleum and water sectors. It commenced operations in 2006 as per Government Order 19 (10 February 2006).

The petroleum and natural gas sectors comprise two kinds of activities:

- **Upstream** – exploration, production and occasional export of crude oil and natural gas; and
- **Downstream** – (i) import, export, inland transportation of crude oil, natural gas and refined petroleum products; (ii) refining of crude oil; (iii) compression and liquefaction of natural gas; and (iv) transportation, storage, wholesale and retail distribution of petroleum products, including liquefied petroleum gas.

The Liberalized Market

In order to establish a diversified and competitive market, the supply of petroleum products in Tanzania has been liberalized and restructured. Now, the oil and gas industry requires only activity-specific operating licenses and the establishment and enforcement of technical regulations to protect public health, industrial safety and the environment.

EWURA, in relation to the regulation of the petroleum sector, has and exercises the following specific powers and functions: (a) to issue, renew, suspend or cancel licenses and or permits under this Act; (b) to monitor petroleum quality and standards; (c) to initiate and conduct investigations in relation to safety and quality of services given to a consumer; (d) to conduct studies necessary for administrative and or management purposes in respect of the petroleum sector; (e) to give directions consistent with this Act to any person granted a license or permit under this Act; (f) to charge and collect fee and levies (including any regulatory levy) from the petroleum sector charged in accordance with the EWURA Act; (g) to prescribe and cause to be published in the Gazette and in at least one Kiswahili and one English newspaper technical and safety standards of services; (h) to monitor the environmental impact in respect of the petroleum sector; and (i) to perform such other functions which are incidental or ancillary to the functions stipulated under the section.

Permits, Licenses and Registration Process

The most important function of a regulator for the downstream petroleum sector operating under a liberalized supply system is to issue permits and licenses. Before granting a permit or license, EWURA will be required to ensure that the applicant (as one of many participants in the chain of supply) has the financial and technical ability to contribute to a continuous, safe and commercially viable supply of petroleum products at competitive prices and in quantities and qualities as required by the consumers. The applicant will therefore be required to undertake to comply with laws, regulations and technical standards, as well as established commercial rules of the trade that guarantee fair competition with respect to storage and transport facilities as well as both wholesale and retail distribution.

If the relationship between the wholesaler and retailer of petroleum products involves tying arrangements or abuse of a dominant position, there may be scope for regulatory review of more than just matters of product quality, or compliance with applicable environmental or health and safety legislation.

Third Party Access (“TPA”) to Infrastructure Facilities

Restrictions or limitations of the rights of owners to the exclusive use of their installations and facilities are incompatible with the theoretical concept of a free and competitive supply system. In a country like Tanzania with a large number of product depots in Dar es Salaam and

upcountry, the principle of inter-company hospitality has been well established. Given that EWURA is, in law and fact, the competition Regulator for all of its regulated sub-sectors; it will be incumbent upon EWURA to develop rules and regulations on competition matters and to make resources available to ensure compliance by the sub-sector's regulated entities.

Standardized Product Specifications

The establishment and maintenance of optimum petroleum product specifications is a trade-off between considerations of (a) supply; (b) utilization; and (c) protection of health, safety and the environment. The products sold must conform to standards of toxic or environmentally damaging air emissions on combustion.

In order to encourage the bulking of imports and to maximize the efficient use of the country's existing storage capacity, Tanzania's liberalized import regime should establish a standard fungible, minimum quality for each imported product.

Because Tanzania is both a transit country for several landlocked countries and is itself served in the Lake Region by the Mombassa-Lake pipeline connection (transiting through Kenya), there are also strong incentives to achieve regional harmonization of products specifications.

Contingency Plans and Emergency Intervention

EWURA, in order to ensure the continuity of oil supply should be prepared to take measures to counteract the adverse effects of any disruption of that supply that might arise as a result of: (a) problems in the coastal supply points and transport corridors; or (b) accidents, natural disasters, political unrest, foreign trade restrictions, sabotage or even by negligence or willful misconduct of individuals.

One of the purposes of the "Petroleum Emergency Supply Plan" ("PESP"), as described in the PSA, is to ensure the best use of the country's existing product stocks in the event of a national or international supply crisis. That plan must include a petroleum allocation and rationing program and a national body to implement it. That body would also be responsible for monitoring the domestic and international markets in order to anticipate any situation that might lead to a shortage of refinery products. The National Petroleum Information System, comprising data obtained from the oil marketing companies is an important tool in the domestic monitoring function.

The present level of minimum stock maintained by the petroleum sector in Tanzania is approximately 20 to 30 days of consumption.

Price Monitoring Mechanism

Even in liberalized petroleum markets, it is important for governments to effectively monitor product pricing. A government can use its pricing data to strengthen liberalization and foster competition by publishing clear, standardized monitoring results. This will assist market participants in gaining access to relevant information prior to making a purchasing decision.

An effective petroleum product price monitoring mechanism should include the following essential elements:

- Regular surveys of service station pump prices prevailing in the main population centers of Tanzania;
- Regular comparisons of movements in petroleum product prices at different points in Tanzania's supply/distribution chain with price movements of comparable product grades in international/regional reference markets;
- Regular comparisons of movements in, and absolute levels of, consumer prices in Tanzania with those of neighboring countries with the tax-included in ex-tax basis for each set of prices clearly defined; and
- Regular publication of pump price survey results in local newspapers.

In order to measure the adequacy of domestic pump prices, the Regulator must develop a formula for each of the main products, which, adhering to the principle of import parity tends to simulate the cost of supply that would prevail in Tanzania under optimum conditions of supply and transportation. In principle, the mechanism will also serve as a reasonable proxy for a decontrolled price, particularly in respect of price movements over time.

Petroleum Information System and Central Register

A well-organized and comprehensive information system serves as an effective instrument of control and enforcement. Energy related policy decisions as well the planning of medium and long-term supply require reliable data about:

- National and international markets;
- Sales data and transport capacities; and
- Other industry activities and investments.

One of EWURA's principal Petroleum sector functions will be to regularly collect and publish comprehensive sector information (e.g., sector statistics and information regarding local and international markets) from licensed operators.

The present situation in Tanzania demonstrates the importance of establishing a clear obligation on the part of the private and public sectors to provide information and to define in sufficient detail the extent to which (and in which formats) such information should be delivered.

In EWURA, monitoring and enforcement will be carried out by five Regional Field Inspectors under the subversion of a Chief Inspector. A Technical Assistant will initially assist in organizing and supervising quality control measures and tests by outside laboratories and later in the design and operation of a mobile laboratory unit, recommended for acquisition by the Unit during the second year of operation. This laboratory will be required for petroleum product quality control and the inspection of petroleum retail stations and storage facilities.

Taking into account the existing regulatory and institutional situation, the EWURA Act definitely fills a vacuum. Now, there are no legal, practical or political impediments to EWURA's assuming full responsibility for the generation, implementation and enforcement of technical standards for the protection of public health and industrial safety in the petroleum and natural gas sectors.

Since March 2006, IP3 has been supporting EWURA through its Regulatory Advisor Project, which has provided resident economic and legal advisors as well as on-site training to assist EWURA in its establishment, development and the building of institutional capacity to undertake its regulatory program. This Project was contracted-for by Tanzania's Presidential Parastatal Sector Reform Commission with funding provided by the UK's Department for International Development.

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