

中国《能源法》起草的新进展

New Progress in Research and Drafting of the Energy Law in China

叶荣泗

中国法学会能源法研究会 会长
《能源法》起草专家组 副组长

2007.11.16 天津

Ye Rongsì

President of Energy Law Academy,
China Law Society
and Deputy Chief of the expert team
for the drafting of the Energy Law

2007.11.16 Tianjin

1

主要内容

Agenda

- 《能源法》的研究起草进程
- 《能源法》的定位和设计思路
- 《能源法》（征求意见稿）的框架和主要内容
- Progress in the research and drafting of the Energy Law
- The positioning and design idea of the Energy Law
- The framework and major contents of the Energy Law (draft for soliciting opinions)

2

《能源法》的研究起草进（1） Progress in the research and drafting of the Energy Law (1)

- 《能源法》的立法研究开始于20世纪80年代初期。
- 2005年初开展“中国能源法律体系研究”课题，提出尽快起草综合性能源法的建议，做了铺垫和准备。
- 2005年9月，国务院主要领导批示立即研究起草能源法。
- 2005年12月初国务院同意国家能源办、国家发展改革委、国务院法制办上报的《能源法》起草工作方案。
- The Legislation research for China's comprehensive Energy Law Began in early 1980s.
- At the beginning of 2005, "China Energy Law system Research" was conducted, and a proposal to draft a comprehensive Energy Law as soon as possible was put forward.
- In Sep. 2005, main leaders of the State Council indicated to conduct the research and drafting of Energy Law as soon as possible.
- In early Dec. 2005, the State Council ratified the Energy Law drafting plan submitted by National Energy Office together with the National Development and Reform Commission as well as Legislative Affairs Office of the State Council.

3

《能源法》的研究起草进（2） Progress in the research and drafting of the Energy Law (2)

- 2006年1月24日，由全国人大、国务院有关部门和中央编办等15部委组成的《能源法》起草工作组成立。同年3月《能源法》起草专家组成立。
- 2006年11月初，完成工作稿（大纲）。
- 2007年7月初，完成工作稿。
- 2007年10月初，完成讨论稿。
- 2007年10月中旬，完成征求意见稿。
- 预计2008年初可以向国务院报出送审稿。
- On Jan. 24, 2006, the Energy Law's drafting team was formed, which is composed of 15 ministries, commissions and offices, including NPC, relevant departments of the State Council, and the Central Organization Establishing Committee Office.
- From March 2006 to mid-Oct. 2007, the expert drafting team for the Energy Law was founded, a working draft was finished, and a draft of the Energy Law for soliciting opinions was formed.
- It is expected that a reviewing version will be submitted to the State Council in early 2008.

4

《能源法》的研究起草进（3） Progress in the research and drafting of the Energy Law (3)

--坚持民主立法科学立法
-- democratic and scientific legislation ideas are followed

- 在起草过程中，十分注意发扬民主，研究吸收各方面有益建议和意见，保障各界和人民群众通过多种途径参与能源法立法过程。数千计专家参加各种讨论。
- 2006年上半年，通过互联网征集到公众2000多人反映的1000多条建议和意见。
- 2007年4月27日在北京举办中国能源法国际研讨会。
- 2007年7-9月，工作稿形成后先后召开4次有各省市综合经济部门及部分能源企业参加的征求意见会。马凯主任亲自参加了第一次会议并作重要讲话。加上能源办领导主持召开的三次起草专家组讨论会，共有近200位领导和专家参加该稿的研讨和修改。
- 10月中旬形成的《能源法》（征求意见稿），已发各地、各有关单位，正准备通过媒体公布全文，供社会各界和广大公民讨论和提出修改意见，同时欢迎国际社会提出意见和建议。
- During review, public opinions were studied and adopted, thus guaranteeing public participation in Energy Law legislation. Almost 1000 experts attended various discussion meetings.
- In early 2006, 1000 proposals from the public were submitted via Internet.
- On April 27, 2007, the International Workshop on China's Energy Law was held in Beijing.
- From July to Sep. 2007, 4 meetings for soliciting opinions were held. Nearly 200 leaders and experts participated in discussion and modification, including Director Ma Kai, energy companies, and econ depts from all provinces and cities.
- In October, a draft of the Energy Law was distributed to local govts and relevant orgs. Relevant agencies are preparing to publish the draft of the Energy Law.

5

《能源法》定位与设计思路（1） The positioning and design idea of the Energy Law (1)

--《能源法》的定位
--The positioning of "Energy Law"

- 共识--能源领域的基础性法律。
- 温总理要求以《能源法》为龙头完善能源法律体系。
- 《能源法》所设计的制度和规范要能体现对能源单行立法起到统领作用。
- “占位子”与“留口子”：
 - 能源领域的重大问题、全局性问题、综合性问题、战略性问题，以及单行法没有规定而且解决不了的问题，由《能源法》来调整；
 - 其他的一些问题由单行法来调整。
- Common recognition -- a basic law in energy field.
- PM Wen Jiabao required to perfect the Energy Law system around the Energy Law.
- The system designed by the Energy Law should reflect its leadership for separate energy legislations.
- "Take seats" while "leave spaces":
 - The Energy Law should settle critical issues, such as overall significance, comprehensive issues, and strategic issues in the energy field. It should also solve issues that are not and can't be regulated by separate laws;
 - Other issues will be settled by separate laws.

6

《能源法》定位与设计思路 (2) The positioning and design idea of the Energy Law (2)

-- 《能源法》核心理念 --The core idea of "Energy Law"

- **保障能源安全;**
- **提高能源效率;**
- **注重能源环保。**

■ **Secure energy safety;**

■ **Improve energy efficiency;**

■ **Focus on energy environmental protection.**

■ **基点是:**

- 贯彻落实科学发展观;
- 立足中国实际;
- 借鉴国际经验;
- 坚持改革开放;
- 反映能源自身规律;
- 设计合适的法律制度。

■ **Basic points:**

- to follow scientific development view;
- to be based on China's realistic situation;
- to learn from international experiences;
- to hold on reform and opening-up;
- to honor energy's own rules;
- to design a suitable legal system.

7

《能源法》定位与设计思路 (3) The positioning and design idea of "Energy Law" (3)

--设计思路 --The design idea

- “全面涵盖” 能源领域一切行为与活动
- 所有能源种类;
- 能源全流程活动与管理;
- 发展与改革。

■ “突出重点”

- 以综合制度为主, 结合能源开发利用流程;
- 以解决整个能源领域的重点问题为主;
- 重要法律制度以突出需要进入《能源法》的重点制度为主。

■ “注重协调”

- 协调单行能源立法, 加强能源各行业之间的法律政策协调
- 注意与有关资源法、环境法、财税法、科技进步法、物权法、反垄断法、突发事件应对法等诸多法律的衔接协调, 不冲突、不替代, 基本不重复, 力求在围绕解决能源领域重大问题上有所创新。

■ “Full coverage” of all actions and activities in energy field

- All energy types;
- Total processes of energy activity and management.

■ Development and reform

■ “Highlight of key points”

- A comprehensive system, in combination with energy exploitation and utilization process;
- Addressing energy field's key issues;
- Stress key sub-systems necessary to enter the Energy Law.

■ “Focus on coordination”

- Coordinate single energy legislation to enhance law and policy coordination between all sectors of energy field
- Coordinate with related laws, in order to ensure no duplication and to achieve innovation in addressing the energy field's critical issues.

8

《能源法》(征求意见稿) 框架和内容 (1)

--章节设置 -- chapters and sections

- 《能源法》(征求意见稿) 共设15章132条。
- 包括总则、能源管理、能源战略与规划、能源开发与加工转换、能源供应与服务、能源节约、能源储备、能源应急、农村能源、财税激励与约束、能源科技、能源国际合作、监督检查、法律责任和附则等。

■ “Energy Law (draft for soliciting opinions)” has 132 articles in 15 chapters.

- Including: general principles, energy management, energy strategy, energy exploitation, energy supply and service, energy conservation, energy reserve, energy emergency response, rural energy, finance and tax restraint, energy science and technology, international energy cooperation, supervision and inspection, legal responsibility and supplementary articles.

9

《能源法》(征求意见稿) 框架和内容 (2)

--总则 -- general principles

- **主要规定立法目的、适用范围和8项重大法律原则, 包括节约优先、能源与生态环境协调、保障能源安全、市场配置资源、普遍服务、科技创新、能源国际合作以及能源统一管理原则等。**

■ It mainly sets forth the legislation purpose, application scope and 8 critical law principles, including: priority of conservation, coordination between energy and ecological environment, security of energy safety, resource allocation by the market, widespread service, science and technology innovation, international energy cooperation and unified energy management.

10

《能源法》(征求意见稿) 框架和内容 (3)

--能源管理 -- Energy management

- 主要规定各级政府及其能源主管部门和协管部门职责及其协调机制、能源监管机构职责、能源行业协会作用以及公众参与能源决策等内容, 并着重规定了投资产权、价格机制、进出口管理、信息统计、标准化管理等综合性重大管理制度。

■ It mainly sets forth the responsibilities of, and the coordination mechanism between, governments at all levels, including their energy departments; departments responsible for supervising energy organizations; roles of energy industry associations; and the general public's participation in energy decision-making. It especially sets forth the property rights of investment, import and export management, price mechanism, energy statistics, alarms and forecasts, standardization management as well as other comprehensive critical management systems.

11

《能源法》(征求意见稿) 框架和内容 (4)

--能源战略与规划 -- Energy strategic and planning

- 主要规定“国家能源战略是筹划和指导国家能源发展, 保障能源安全的总体方略”, “能源规划是实施国家能源战略的行动方案”。同时规定了能源战略与规划的指导思想、制定依据、内涵、协调衔接、法律效力和编修程序、实施与监督等。

■ It mainly sets forth that “National energy strategy is the overall strategy that plans and directs national energy development and secures energy safety” and that “energy planning is the action plan that implements national energy strategy”. Meanwhile, it sets forth the guiding principles, on which the law was created, such as, the legal structure, drafting and modifying procedures, enforcement and supervision for energy strategy and planning.

12

《能源法》（征求意见稿）
框架和内容（5）
--能源开发与加工转换

The framework and major contents of the Energy Law (draft for soliciting opinions) (5)
-- Energy development and processing for conversion

- 主要规定能源开发与加工转换原则、能源资源所有权、资源开发项目和加工转换业务准入、能源资源保护、清洁能源和替代能源开发、民用核能开发与厂址保护、能源基地建设、企业安全环保义务、生态补偿和核废物处理等内容。
- Sets forth the principles for energy exploitation, processing for conversion, ownership of energy resources, entry into resource exploitation projects, and processing for conversion business, the development and utilization of nuclear energy for civil use, and the processing of nuclear waste disposal among others.

13

《能源法》（征求意见稿）
框架和内容（6）
--能源供应与服务

The framework and major contents of the Energy Law (draft for soliciting opinions) (6)
-- Energy supply and service.

- 主要规定能源供应原则、供应市场主体、供应业务准入、供应基础设施建设与保护、输送管网开放、能源普遍服务、能源用户义务等。
- Sets forth the principle for energy supply, the main body of supply market, the entry into supply business, the construction and protection of supply infrastructure, the opening-up of transportation pipes and networks, universal service of energy, and the obligations of energy users.

14

《能源法》（征求意见稿）
框架和内容（7）
--能源节约

The framework and major contents of the Energy Law (draft for soliciting opinions) (7)
-- Energy conservation

- 主要规定节约优先国策的实施、优化产业结构和消费结构节能、技术节能、管理节能、重点领域节能、节能保障措施和节能市场机制等。
- Sets forth energy conservation by optimizing industry structure and consumption structure, energy conservation by technology, the management of energy conservation, energy conservation in key fields, the market mechanisms for energy conservation, and the safeguard measures for energy conservation.

15

《能源法》（征求意见稿）
框架和内容（8）
--能源储备

The framework and major contents of the Energy Law (draft for soliciting opinions) (8)
-- Energy reservation

- 主要规定能源储备管理、储备分类、产品储备、石油储备建设与管理、资源储备、储备动用以及地方能源产品储备等。
- Sets forth the energy reserve management, the reserve types, the product reserve, the resource reserve, the reserve utilization, and local energy product reserve.

16

《能源法》（征求意见稿）
框架和内容（9）
--能源应急

The framework and major contents of the Energy Law (draft for soliciting opinions) (9)
-- Energy emergency response

- 主要规定应急范围、应急事件分级与认定、应急预案、应急启动、应急处置原则、应急措施授权条件与约束、应急保障重点、相关主体义务、应急善后等。
- Sets forth the scope of emergency responses: event classification, pre-planning, execution, guiding principles, conditions and restraints, key security areas, and post-handling.

17

《能源法》（征求意见稿）
框架和内容（10）
--农村能源

The framework and major contents of the Energy Law (draft for soliciting opinions) (10)
-- Rural energy

- 主要规定农村能源发展原则、农村能源规划实施、农村能源保障、农村能源消费结构优化、边远农村电力扶持、农村生物质能源发展、农村节能、农村能源科技服务体系建设等。
- Sets forth principles regarding the development, planning, and enforcement of rural energy.
- Additionally outlines the consumption structure, the electricity support for remote rural areas, and the development of rural biomass energy.

18

《能源法》（征求意见稿）
框架和内容（11）
--财税激励与约束

The framework and major contents of the Energy Law (draft for soliciting opinions) (11)
-- Encouragement and restraint in finance and tax

- 主要规定能源支出预算制度及预算支出范围、政府投资范围、能源发展专项资金、能源税收激励与约束、能源资源税费、能源消费税以及税收政策的适用等。
- Sets forth the energy expense budget system, the special funds for energy development, the government purchase of energy conservation, and taxation policy application.

19

《能源法》（征求意见稿）
框架和内容（12）
--能源科技

The framework and major contents of the Energy Law (draft for soliciting opinions) (12)
-- Energy science and technology

- 主要规定能源科技发展方针、能源科技投入、能源科技创新体系、能源科技重点领域、能源科技成果推广应用、能源科技奖励、能源教育与人才培养、能源科普等。
- Sets forth guidelines for developing energy science and technology, the investment in energy science and technology, the innovation system for energy science and technology, and the key fields of energy science and technology.

20

《能源法》（征求意见稿）
框架和内容（13）
--能源国际合作

The framework and major contents of the Energy Law (draft for soliciting opinions) (13)
-- International energy cooperation

- 主要规定能源合作方式、境外和境内能源合作、能源贸易合作和运输合作、能源科技教育合作、能源安全合作等。
- It mainly sets forth energy cooperation methods, energy cooperation at home and abroad, cooperation in energy trade and transportation, cooperation in energy science and technology education, cooperation in energy safety, and etc.

21

《能源法》（征求意见稿）
框架和内容（14）
--监督检查

The framework and major contents of the Energy Law (draft for soliciting opinions) (14)
-- Supervision and inspection

- 主要规定人大监督、行政层级监督、社会监督、主管部门和监管机构的现场检查权和获取资料权、必要的行政强制措施、高耗能企业信息强制公开等。
- Sets forth the NPC supervision, the administrative supervision, the social supervision
- Proposes the authority of competent departments and supervisory organizations in the on-site inspection and material acquiring
- Outlines the necessary administration measurements and mandatory disclosure of information on high energy consumption enterprises.

22

《能源法》（征求意见稿）
框架和内容（15）
--法律责任

The framework and major contents of the Energy Law (draft for soliciting opinions) (15)
-- Legal responsibility

- 主要规定政府责任、特殊能源企业责任、一般能源企业责任、能源用户责任、非法行为处罚、刑事责任、国家赔偿与民事责任、行政救济等。
- It mainly sets forth the responsibilities regarding governments, special energy companies, common energy companies, energy users, punishment for illegal behavior, state compensation and administrative remedy.

23

《能源法》（征求意见稿）
框架和内容（16）
--附则

The framework and major contents of the Energy Law (draft for soliciting opinions) (16)
-- Supplementary articles

- 主要规定法律冲突处理、术语解释和法律生效时间。
- Sets forth methods to handle law conflicts, term explanations, and effective dates of the law.

24

《能源法》（征求意见稿）
框架和内容（16）
--附则

The framework and major
contents of the Energy Law
(draft for soliciting opinions) (16)
-- Supplementary articles

- 将“鼓励发展新能源和可再生能源，支持清洁、低碳能源开发利用，推进能源替代，控制污染物和温室气体排放，促进能源与生态环境协调发展”列入总则。
- 规定改善能源结构，提高能源效率，“鼓励发展水电、核能、天然气、风电、太阳能、地热能、生物质能等清洁能源，逐步提高清洁能源在能源结构中的比例”。
- 规定大力推进“以新能源替代传统能源，以可再生能源替代化石能源，以低碳能源替代高碳能源”，“先开发应用替代石油、天然气的新型燃料”；
- Addresses the development of new energy resource and renewable energy, support of R&D in low-carbon alternative energy, and reducing pollutants and GHG emission.
- Seeks to optimize energy mix by improving energy efficiency and supporting the development of clean energy in order to increase the percentage of clean energy in the energy consumption mix.
- Addresses efforts to promote the transfer from conventional energy to new energy, and prioritizes the R&D of new energy resources substituting oil and nature gas.

25

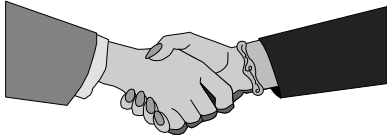
《能源法》（征求意见稿）
框架和内容（16）
--附则

The framework and major
contents of the Energy Law
(draft for soliciting opinions) (16)
-- Supplementary articles

- 规定将“能源清洁、综合利用技术”和“节能减排技术”等列为财政重点支持和科技重点推广的领域；
- 规定“国家根据所缔结或加入的国际条约行使相关权利，履行相关义务”。
- 能源节约章和其他章中不少规定与此密切相关。
- Includes clean energy, comprehensive energy utilization technology and energy saving, and pollutants reduction technologies.
- China will respond to its responsibility regulated by international agreements, China signed.
- There are more related regulations in this chapter of energy saving and others.

26

Thank You !



27