

关于加快《电力法》修改的几点想法 Primary Thoughts on Accelerating Amendments to the Electricity Law

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Preface

现行电力法颁布于1995年12月28日，1996年4月1日正式实施，结束了我国电力工业在此前无法可依的历史，使电力工业进入了依法办电、依法管电、依法用电的新时期。

修订电力法的客观原因和时代要求：现行电力法法律基础已经发生了较大变化，有关法律条款已经不能适用新情况、新形势的需要，新的社会关系的出现需要立法来调整。

The existing electricity law was issued in 1995, 12/28, the first law on the electricity industry.

Reasons and necessity of amending the electricity law:

Changing the legal basis, the existing legal items are unable to meet present problems, different market conditions, and sector relationships.

为什么要修改电力法

Why?

- 我国电力工业发展迅速。截至今年9月底，全国发电装机容量已达6.47亿千瓦，全国绝大部分地区电力供需总体基本平衡，结束了电力供应紧张的状况。
- 几次改革执法主体几经变化
 - 国务院：电力工业部--国家经贸委--国家电力监管委员会，其它有关部门
 - 地方政府：电力局--经济综合主管部门，电监会派出机构，其它有关部门
 - 政企合一--政企分开

• 现行电力法制定时处于电力管理体制政企合一时期，一些权利义务设定不平衡，法律责任条款不完备。

Electricity shortages have been less serious compared to past years.

Major regulators and players have changed:

State Council: Ministry of Electricity, State Economic and Trade Commission, State Electricity Regulatory Commission, others.

Local government: Bureau of Electricity, Economic Administrative Departments, SERC agencies, others.

Government enterprise → separation of government and enterprise

Existing law was drafted and approved when government was intertwined with enterprise.

电力法修改有关情况

Relevant Conditions

- 《电力法》修改列入2003年的立法计划。
- 组织了由有关部门和企业领导、专家组成的工作班子开始工作。
- 主要是体制性的、机制性的几个问题难以达成共识。2003年没有完成立法计划，应当认识清楚进展缓慢的原因。

- 对确立什么样的监管体制没有清晰的框架
- 电力市场如何建立也没有结论
- 关于普遍服务监管没有形成共识
- 工作机制有问题

Amending the Electricity Law was included in the lawmaking plans for 2003

Due to difficulties, the work was not completed in 2003. The following were not sufficiently established/specified:

Regulatory framework/structure

How to structure the electricity market

How to standardize services/management

Operational mechanisms

修订《电力法》应当坚持正确的指导思想和原则

Guidelines and Principles

- 修订《电力法》，必须体现政府机构改革、电力体制改革已经取得的重要成果，使立法进程与改革进程相适应。
- 应当坚持电力市场化改革的方向。十七大提出要“深化垄断行业改革，引入竞争机制，加强政府监管和社会监督”。在修改中应当坚持现实性和前瞻性相结合的原则，将符合电力发展和改革的客观要求的有关内容，以法律的形式确定下来。

• The amendment should reflect the key achievements of institutional reform and electricity mechanism reform

• We need to stick to a market driven electricity reform

修订《电力法》应当坚持正确的指导思想和原则

Guidance and Principles

- 应当体现社会主义市场经济体制下政府管电方式的转变。必须依法、合理地划分宏观经济管理部门和电力监管机构的职责。
- 应当体现几年来电力体制改革的新成果。实行厂网分开竞价上网，初步形成了区域电力市场的基本框架，电力投资体制改革、电价改革、输配分开、主辅分开等都取得积极进展。
- The amendment should reflect changes of government management about the electricity sector under social marketing economy system.
- The amendment should reflect new achievements of the electricity mechanism reform in recent years.

修订《电力法》应当坚持正确的指导思想和原则 Guidelines and Principles

- 应当理顺与节能法、能源法、电力监管条例等法律、法规的关系，形成完备的电力法规体系，减少法律冲突。
 - 《电力监管条例》已经于2005年5月颁布实施。
 - 今年上个月刚刚颁布的修改后的《节能法》。
 - 2006年6月开始起草《能源法》，征求意见目前已经开始向有关征求意见。现在又在酝酿下一轮政府机构改革，实行大部制。
 - 其它有关法律法规。
- Should be harmonized with the Energy Conservation law, Energy Law, Electricity Regulations and Laws, to reduce conflicts.
- The Electricity Regulatory Rules were promulgated in May 2005.
- The Energy Conservation Law was just approved.
- Drafting of the Energy Law has been taking place since 2006. It relates to energy administrative structure institutional reform.
- Other laws and regulations.

修订《电力法》应当坚持正确的指导思想和原则 Guidelines and Principles

应当把电力监管体制的建立纳入整个行政管理体制改革统筹考虑。

- 电力监管体制的建立和职能的配置不是单电力行业本身的事情，涉及到整个政府的行政体制改革。
- 必须作出统筹的系统的制度安排，形成适应市场经济的新的政府管制机制，不能形成新的职能交叉、扯皮。
- 建议把电力管理体制的改革作为行政职能“三分制”改革进行试验，横向上按照政策、执行来界定有关部门的职能。

Electricity regulatory system reform should not be separate from general government institutional reform.

The reforms should be a systematic regulatory arrangement, meeting the requirements of the government administrative responsibilities for a market economy.

We recommend taking the electricity regulatory system as a pilot of the "Three Divisions" reform, to distribute the responsibilities of government agencies horizontally.

修订《电力法》应当坚持正确的指导思想和原则 Guidelines and Principles

- 对法律责任做出更加细化的规定，做到主体的责、权、利相一致。

结合现实中出现的规划责任无法追究、义务主体不履行法定义务情形，与已经设立的法定义务相对应，对法律责任做出更加细化的规定，防止出现违反法定义务没法追究责任的情况出现。

Regarding increasing the specificity of legal responsibilities, get the responsibility benefits in line

In reality there are entities that do not meet obligations and planning responsibilities. We need to make more specific regulations, to prevent disobedience of the law.

修改电力法要确立的几个基本制度

Mechanisms to be Established for Electricity Law Revision

- 理顺现行政府管理电力的体制
 - 特别需要明确发展改革部门宏观调控职能和电力监管机构实施监管的关系。
 - 应淡化“主管部门”，按照各自的职责实施监督管理。
- Improve Mechanisms of Utility Sectors Management
 - Relationships between the reform sector and supervision agencies should especially be adjusted
 - We can take responsibility for achieve effective supervision and management

修改电力法要确立的几个基本制度

Mechanisms to be Established for Electricity Law Revision

- 明确电力市场框架

我国应该建立什么样的电力市场，应该充分借鉴国外的成功经验，与我国的国情和几年来进行电力市场试点、建设的实践结合起来。既要强调国情，同时也要承认电力系统的共有属性。必须对电力市场的建设作出系统的、深入的研究，不能停留在大的原则、基本概念上。

- Framework of Electricity Market

Combining international experience with China's conditions, we can figure out what kind of electricity market should be established in China through electricity market reform pilot programs.

修改电力法要确立的几个基本制度

- 建立关于电力普遍服务机制
 - 电力行业是提供基础产品和服务的产业。这个特点决定了国家应当提供普遍服务。
 - 如何设计电力普遍服务机制，必须在电力法起草中明确，体现出社会进步。

Mechanisms to be Established for Electricity Law Revision

- Broad Services in the Utility Sector
 - Utility sector is for basic production and the service of society.
 - We need to make it clear in the electricity law how to design the mechanisms.

修改电力法要确立的几个基本制度

- 要明确电价形成机制
- 《电价改革方案》：
 - 发电上网价格由买卖双方根据市场需求自主确定；
 - 终端销售电价随着市场发育逐步放开；
 - 输配电价由监管机构根据政府价格主管部门制定的电价政策和电价核定原则，进行审核并严格监管。

Mechanisms to be Established for Electricity Law Revision

- To work out the mechanics of electricity pricing
- Plan of electricity pricing reform
 - Electricity grid price should be decided by the market
 - Electricity price for end users will not be controlled as the market develops
 - Transfer utility prices will be decided by the supervision agencies

修改电力法要确立的几个基本制度

- 要明确电力安全监督管理体制
- 国务院授权电监会具体负责电力安全监督管理，安全监管局负责综合管理。

Mechanisms to be Established for Electricity Law Revision

- Supervision and management mechanisms for electricity safety
- Authorized by the state council, the state electricity regulatory commission will be responsible for management of electricity utility's safety, the safety supervision bureau responsible for comprehensive management

修改电力法要确立的几个基本制度

- 对电力行业协会的地位、作用作出相应的规定
- 国务院《全面推进依法行政实施纲要》提出“凡是公民法人和其他组织能够自主解决的，市场竞争机制能够调节的，行业组织或者中介机构通过自律能够解决的事项，除法律另有规定的，行政机关不要通过行政管理去解决”。

Mechanisms to be Established for Electricity Law Revision

- Positions and rules of the electricity industry association
- Key points of administrative promotion based on the law: we need to rely on citizens and organizations to solve the problems

对下一步工作的建议

- 推动符合电力市场化改革方向的修订稿尽快出台，反对不符合改革方向的修订稿。
- 加强研究，形成对《电力法》有关问题的统一认识。坚持速度服从质量。

Suggestions on Next Steps

- Promote the publishing of a revised draft in line with utility marketing reform
- To form a common concept of the electricity law and related issues

对下一步工作的建议

- 改变修订组织工作
- 为了防止在电力法修改中体现部门利益，阻碍改革的推进，建议由全国人大或国务院法制办组织班子进行修改。
- 梳理《电力法》完善补充的重点内容
- 按照电力体制改革的总体目标和电力工业发展的长远要求，以及当前新要求、新问题基础上，调整补充增加一些内容，删除一些过时的规定。

Suggestions on Next Steps

- Change organizing system of electricity law revision
- The Office of Legal Affairs and NPC or the State Council can take this responsibility
- Go through the major contents of amendment to the electricity law
- According to the general target of electricity regulatory system reform and electricity industry development, the law should be amended.