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Energy Security Strategy, Policy
and Public Participation in China

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Energy Security Strategy, Policy and Public Participation in China

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ABSTRACT

This paper focuses on the laws, regulations and policies of energy security and public participation in energy area.

In the first part, the article introduced the current situation in the realm of energy security, author demonstrated the three in-depth definitions of “energy security” that were energy supply security, energy economy and energy ecological security respectively. The contents of energy supply security include enhancing efficiency, promoting the diversity of energy types, promoting Strategic energy reserve and strengthening transportation security. As to Energy economy security, China is trying to response to the monopoly in energy market and administrative price guide. The law of energy ecological security is in sporadic, China is trying to coordinated development between development of energy and ecological environment.

In the second part, the author gives the detailed introduction about the public participation in the area of energy in China. the first is the public participation in enacting comprehensive or special energy plans; the second is the public participation in environmental impacts assessment of plans and construction projects; the third is the public participation in administrative licensing in energy area; the fourth is the public participation in pricing and price adjustment of energy products; the fifth is the public interest litigation.

KEYWORDS

Energy policy and strategies; Energy security; Public participation

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Introduction

Energy is fundamental for the survival and development of human society. It has become the one of the dominating factors in domestic economic growth because of the influence of Industrial Revolution.¹ China is in the stage of accelerated industrialization and urbanization. In order to achieve the goal of sustainable development, it is necessary to adjust the mode of economic growth, which greatly relies on the transformation of energy utilization.

Energy utilization refers to both the amount and efficiency of energy use. It is no denying that China is one of the world's leading consumers of energy. "Statistics showed that China accounted for 20% of the world's energy consumption in 2011, whereas it provided only 10% of GDP." (Ye, R.S., 2012, p. 6) According to the report completed by World Economic Forum and Accenture Management Consulting Company, China just ranks 74 in industrial energy efficiency all over the world (Sun, Y.X., 2013). Given this situation, China has the responsibility to save energy and increase energy efficiency, and legislations and policies play a significant role in the process.

1. Status Quo of China's Energy security regulation, strategies and policies

To response the situations of China's growing serious energy security and climate change, the Chinese government has formulated a number of government programs and strategies to assist the function of the law and guide enforcement in practices. In addition to the traditional energy law system, below interprets the energy security, respectively, from the

¹ For example, "the development of industrial economy in western countries is closely related with oil. From the beginning of 1950s, their economies were booming. The United States achieved a 4.3% increase; Italia increased by 7.6%; France increased by 9.1%... An important reason of it is the consumption of cheap oil in quantity." (*Economic Growth and Petroleum Security*, 2013).

perspective of energy supply security, economic security and ecological security by mean of analyzing the status quo of China's energy security laws and government statutory documents.

1.1 Addressing the security of energy supply

Based on the circumstance that reinforcing international cooperation and formatting the diversification of energy imports pattern, for the sake of China's energy expenditure and energy dependence on foreign, the competent authorities prescribed numerous guides to action, mainly included development of boosting efficiency of energy use, varying energy types as well as establishing a rational strategic energy reserve system.

1.1.1 Enhancing efficiency

Although, in terms of improving the efficiency of energy use, China have corresponding provisions in the energy legislation, the state enacted the 1997 Energy Conservation Law² that only formulated conserving and improving efficiency of energy use in productive processes. Energy conservation law amended in October 2007 that in accordance with different industries to set up the energy-saving regulations, involving industrial, construction and transportation, public institutions, as well as key units, aimed at more efficient use of energy. In addition, the revised Energy Conservation Law is no longer just a framework of norms, but clear obligations among the various administrative departments to strengthen the enforcement of the Energy Conservation Law. In order to encourage private capital investment in the field of energy saving, 2007 Energy Conservation Law also particularly took incentives mechanism into accounts.

Overall, compared with 2007 energy conservation and 1997 Energy Conservation Law, illustrated that 2007 energy conservation law laid more emphasis on the role of market mechanisms in the field of energy saving and aimed at effective administrative approach to ensure energy security.

² (《节约能源法》Jie Yue Neng Yuan Fa) [*Energy Conservation Law*] (Amended by the National People's Congress, Oct 28, 2007) (China), available at <http://www.gov.cn/flfg/2007-10/28/content_788493.htm> (last accessed 27 Jan 2015).

Equally important, the 12th Five-Year Guideline for National Economic and Social Development³, abbreviated as 12th Five-Year Plan that related to the reasonable control of the total energy consumption, when it comes to China's energy key tasks in next 5 years. Additionally, The State Council Information Office released *the 2012 China's energy policy White Paper* (Energy White Paper) that mentioned the targets, including implementing total quantity control energy and intensity control, striving to build energy-efficient production and consumption system and gearing up reconstructions of economic and consumptive pattern, accelerating the construction of energy-efficient countries and conservation-oriented society. Similarly, the 2012 Energy White Paper concerned about improving clean low-carbon fossil energy, raising the proportion of non-fossil energy, and vigorously facilitating the clean use of coal.

1.1.2 Promoting the diversification of energy types

Owing to exploiting and utilizing renewable energy rationally, *2005 Renewable Energy Law*⁴ was enacted which filled blank in this field. Subsequently, the State Council and relevant government departments issued a series of policies for the implementation. Renewable Energy Law concentrates on the basic principles of the energy use and the basic system in exploitation, which provided that rights and obligations in the process of the development and utilization of renewable energy on the state, enterprises and individuals, particularly the responsibilities of government, such as providing the basic conditions, the census of resources, planning, industry guidance and technical support; marketing and applications, price management and cost-sharing and economic measures for the development

³ The release of the *Twelfth Five-Year Guideline for National Economic and Social Development* in March 2011 marked the beginning of China's Twelfth Five-Year Plan (12th FYP) period (2011–2015). The government authorities continually grant national propriety in Energy conservation. Releasing new energy conservation policies and programs have been announced by many central ministries in accordance with the 12th FYP.

⁴ (《可再生能源法》 Ke Zai Sheng Neng Yuan Fa) [*Renewable Energy Law*] (Amended by the National People's Congress, Dec 26, 2009) (China), available at <<http://www.chinalaw.gov.cn/article/xwzx/fzxw/200503/20050300027138.shtml> (2005)> (last accessed 27 Jan 2015).

and utilization of renewable energy,⁵ which reflects resolution with regard to diversification of energy structure to deal with the security of energy supply crisis. In addition, to strengthen the exploration and development of domestic resources, to develop coal and conventional oil and gas resources safely and efficiently, to accelerate exploration and exploitation of shale gas, hydropower and wind energy, solar energy, coalbed methane and other renewable energy sources, involved in *Energy 12th Five-Year Plan*.

With the same essence, August 6th, the National Energy Board organizations formulated the *12th Five-Year Plan* in the renewable energy (hereinafter referred to *renewable energy planning*) that Hydro, wind, solar and biomass, respectively, classified into four thematic planning ,which indicated that China’s development of renewable energy would enter a new stage of large-scale.

1.1.3 Strategic energy reserve

In spite of the fact that there are no specialized legal systems of energy reserves in the China, likewise, there are no substantive provisions on energy reserves in a single law, ⁶as early as 1996, the National People's Congress laid down *the National Economic ninth five-year plan*, proposed that trying to establish national strategic oil reserve and safeguarding national energy security.⁷ Instantaneously, 2011 *Energy 12th Five-Year Plan* further indicated that speeding up the construction of transportation facilities regarding energy storage and enhancing the capacities of reserve emergency support, while the 2012 Energy White Paper re-emphasized that China’s security of energy supply energy would be based on domestic resources which should focus on perfecting the energy reserves of the emergency response system to control energy external dependence, reasonably.

Admittedly, the local government began to establish the endemic energy strategic reserve system when the national energy reserve program was officially launched.

⁵ Li Yanfang, Yue Xiaohua, “on the Establishment of China’s renewable Energy Legal System”, in *Energy Law Research Report* (Law Press China, 2012) 64.

⁶ Zhang Jianhong, *Researching on China’s Energy Legal System* (Intellectual Property publishing House, 2012) 92.

⁷ Huang Jing, *China's Energy Security Issues - Legal and Policy Analysis* (WuHan University Publishing House, 2008) 341.

Nevertheless, China's strategic energy reserve is still in the initial stage, regardless of national energy reserve system or commercial reserves.

1.1.4 Transportation Safety

To tackle poor reliability on China's energy transport path, the 2012 Energy White Paper pointed out that "expanding range of international energy cooperation channels vigorously and raising the standard of imports and exports". Above all, China expects that intensifying energy development and cooperation of energy-exporting countries and regions, such as Russia, Africa and so on, apart from the Middle East, through strategy on imports of diversifying the energy sources and pragmatic diplomacy to realize.⁸

Secondly, China also beneficially participated in the country alliance concerning major energy supplier and states around transport pathway to protect the stability of the energy supplies. Meanwhile, China joined in the cooperation Electricity Working Group in Mekong region and the ASEAN 10 +3 energy activities, which in-depth promote regional energy cooperation; involved in a special working group in energy cooperation of the Shanghai Cooperation Organization and hold Sino-Arab Energy Cooperation forum to broaden expansion of regional multilateral energy cooperation, horizontally. What's more, China has joined hand with the crucial ally (such as OPEC, ASEAN, the League of Arab States, the five-nation energy ministers conference), a collaborative organization (as G8Summit), coordinating organization (such as the Congress of the World Energy Charter, the Gulf Cooperation Council) as well as dialogue organization (international Energy Forum), by which China open up dialogue and co-hosted energy Conference with the membership of these alliances to take part in the international energy community.⁹

Ultimately, China succeeds in completing the first aircraft carrier, 2012 Liaoning that is to build a mighty ocean escort Navy to defend the country's territorial waters security, and to supervise the security of oil transported.

⁸ Ling Jue, *Changes in Energy Prices and Economic Security* (Shanghai University of Finance and Economics press, 2009) 336.

⁹ Xu Ying, "the Prospects and Status Quo Of China's Participation in International Energy Organization", (2010) *12 Modern International Relations* 47, 48.

1.2 Response to the monopoly in energy market and administrative price guide

China's lack of competition in the energy market, inefficient enterprises and underpowered technological innovation, which cause unfair allocation of resources and consuming vast social wealth, triggered from the monopoly in energy market and governmental price instruction.¹⁰The authorities desire to fix this situation and point out “propelling the reform with respect to the electricity, coal, oil, natural gas, and other key category, rationalize energy pricing mechanism to encourage private capital to invest the field of energy, to grant propriety to promote technological progress and to advance the stage of scientific and technical equipment”, in *the National Energy 12th Five-Year Plan*; the 2012 Energy White Paper provides that giving the market mechanism to play a indispensable the role in energy pricing ,accelerating the reformation of key areas and links and creating institutional mechanisms that help to promote sustainable usage of energy. Homogenously, in *2012 Government Work Report* that Enacted by the State Council, which emphasize that China would push forward the reform of electricity rate steadily, carry out transformation in resident tariff progressively and consummate the pricing mechanism of hydropower, nuclear power and renewable energy. The government would also rectify subsistent price relationship in the coal and electricity gradually, and impelling the reform oil price and natural gas.

In respect of prospection and exploration of natural gas, 1998 *mineral resources exploration block regulation* stipulate the 25,000 units blocks are the maximum features in exploration projects of oil and gas, whereas in the practice, after the reorganization of the China National Petroleum Corporation (CNPC) and Sinopec Group those two major oil companies and China National Offshore Oil Corporation (CNOOC) possess the absolute majority of the exploration blocks. ¹¹

¹⁰ Tang Ming, “From monopoly to competition mechanism is the reform trend of the development in the electric power industry”, in *Energy Law Research Report* (Law Press China, 2012) 285-286.

¹¹ Chen Shouhai, “Legal Regulation of Monopoly in China's Natural Gas Industry”, in *Energy Law Research Report* (Law Press China, 2012) 336.

Besides, on account of the three major oil companies have identical shareholders, State-owned Assets Supervision and Administration Commission of the State Council (SASAC), which means there is no real competition between there of them. Monopoly in regard of the oil and gas on upstream and downstream domains do not change in essence, still subsisting market monopolies and administrative price guides.

Even though National Development and Reform Commission(NDRC)issued 2009 *the Management Approach of Oil Prices (Trial)* as the first specialized administrative regulation with regard to domestic oil prices ,the approach designed to standardize domestic transparency and rationalization of oil pricing as well as promoted oil prices with the international market. Yet China's structure of refined oil price remains passive standards, in the practice,¹²resulting from the reason that the approach is still in pilot phase and have not formulated liabilities ,even if the approach achieved certain results, it doesn't play a part in the purpose of the protection of consumers' interests, beneath government-led administrative pricing and susceptible information transparency.

1.3 Energy ecological security situation

As the China's Energy Basic Law is still in the formulation process, the content of energy ecological security was in sporadic provisions of energy slip laws. Through *the Energy Basic Law (Draft)* and other legislation related to energy security as well as government normative documents, introducing China's current status of resolving the issues in term of energy security as well as policy of drawing climate change under background of energy security.

1.3.1 Relevant Laws

The draft establishes a philosophy of coordinated development between development of energy and ecological environment, which conduct the basic notion in the development and utilization of clean energy, energy conservation, and ecological environmental compensation.

¹² Wang Yong, "Ponder on Deepening the Reform of China's Refined Oil Prices: Analysis on Reasons and Countermeasures of China's Refined Oil price fluctuations", (2009) 2 *Price Theory and Practice* 30, 30.

Given development and utilization of clean energy, the article 37 in the draft stipulates that the state encourage utilizing new energy alternative to traditional energy, renewable energy instead of fossil energy and low-carbon energy rather than high-carbon energy. By way of the development and utilization of new energy substitutes for traditional fossil energy to reduce greenhouse gas and environmental pollution produced by consumption of traditional fossil energy. In addition, article 42 in the draft provided that establishing the compensation mechanism on energy ecological environment; the seat of government where energy development and conversion of processing project located should make the planning of pollution control and ecological restoration; enterprises perform Energy development and processing conversion shall assume the obligation for pollution control and ecological protection; instituted a compensative mechanism of ecological environment in the energy exploitation and utilization.

Other legislations including the *Environmental Protection Law*, *Solid Waste Pollution Prevention Law*, *Air Pollution Prevention Law* and *Cleaner Production Promotion Law* on energy ecological security are confirming a starting point of environmental protection to boost energy efficiency, the development of new energy and governmental procurement guide instruct energy use and consumption patterns in order to comply the purpose of low-carbon energy consumption,

1.3.2 Administrative statutory documents

Chinese government has already obtained awareness of significances of energy ecological by degree, referring to development of China's energy keystone is to enhance the efficiency of energy conversion by *Energy 12th Five-Year Plan*.¹³

Furthermore, the China's 2012 Energy White Paper ¹⁴also mentioned that China's future energy policy contains protection of environment that the development and utilization of

¹³ The state council issued the energy development "twelfth five-year" plan on January 1, 2013 formally by, according to overall judgment of economic and social development trend by the "twelfth five-year" period, while in accordance with requirements of the "twelfth five-year" plan, considering safety, resources, environment, technology, economy and other factors and clarifying the main goal of the 2015 energy development. Available at <Chinese government website: http://www.gov.cn/zwgk/2013-01/23/content_2318554.htm>.

coordinating energy resource and ecological environmental protection by exploitation with preservation, when actively cultivating a model of energy exploitation in accordance with the requirements of ecological civilization.

As for *2012 the Government Work Report*¹⁵ stressed that the future direction of energy security is to urge energy conservation and protection of environment, optimize the energy structure need to drive clean and efficient use on traditional energy, and elevate the efficiency in development of nuclear power, likewise, constructively explore and develop hydropower and shale gas to hike the specific gravity of the new energy and renewable energy. Additionally, undergird the capacity of framing the mechanisms that in response to extreme weather events and adapting with respect to climate change.

In addition to macro-regulations in the various government programs, *2011 China's Policies and Actions for Addressing Climate Change Information Office of the State Council White Paper* (Addressing Climate Change White Paper) proposed the main objectives that conjoining the adaptation of climate change and energy development: (a) to strengthen the

14 The news office of the state council issued a white paper for China's energy policy (2012). Introduced the Current Energy Development, Policies and Goals of Energy Development and All-round Promotion of Energy Conservation, Vigorously Developing New and Renewable Energy, Promoting Clean Development of Fossil Energy and Improving Universal Energy Service, Accelerating Progress of Energy Technology, Deepening Institutional Reform in the Energy Sector as well as in the field of Strengthening International Cooperation in Energy II. Policies and Goals of Energy Development, (d) Protecting the environment. The state encourages fostering the concept of environment-friendly and low-carbon development, coordinates the development and use of energy resources with the protection of the eco-environment while paying equal attention to both, and actively fosters an energy development pattern that meets the requirements of ecological civilization.

Available at <http://www.gov.cn/zwggk/2012-10/24/content_2250617.html>.

Unofficial English translation at <http://news.163.com/12/102421/8EK4EN1600014JB5.html>.

15 REPORT ON THE WORK OF THE GOVERNMENT delivered at the Fifth Session of the Eleventh National People's Congress on March 5, 2012, Wen Jiabao, Premier of the State Council. iii .Major Tasks for 2012, 4. Accelerating the transformation of the pattern of economic development, (b) We will improve and upgrade the industrial structure. (C) We will conserve energy, reduce emissions, and protect the ecological environment. The key to conserving energy and reducing emissions is to save energy, We will optimize the energy structure, promote clean and efficient use of traditional energy, safely and effectively develop nuclear power, actively develop hydroelectric power, tackle key problems more quickly in the exploration and development of shale gas, and increase the share of new energy and renewable energy in total energy consumption.

Unofficial English translation at <http://www.hjenglish.com/new/p356033/>.

legal system and strategic planning; (b) to accelerate economic restructuring; (c) to optimize the energy structure and the development of clean energy; (d) to implement continuously the projects of energy-saving ;(e) to gradually establish a carbon emissions trading market. ¹⁶

2. Public participation in energy area

After 70s of 20th Century, Deregulation and enhancing public participation in energy area became the common trend all over the world. After the reform and opening-up, China also pays more and more attention on public participation in energy area. Nowadays, China has already set several procedures for public participation in different level and stage by related energy acts and regulations.

“The public” is a wide concept in energy area, it includes but not limited to experts, natural or legal persons, residents, NGOs. They participate in different decision making process, administrative and judicial proceeding. Public participation in energy area generally includes following contents: the first is the public participation in enacting comprehensive or special energy plans; the second is the public participation in environmental impacts assessment of plans and construction projects; the third is the public participation in administrative licensing in energy area; the fourth is the public participation in pricing and price adjustment of energy products; the fifth is the public interest litigation.

2.1 Public participation in enacting comprehensive or special energy plans

China has an integrated plan system in energy area. Generally speaking, the enactment and executing of plans are consistent with the arrangement of five-year plan. The up-to-date energy comprehensive plan is the <12th Five-Year Plan for Energy Development>, which was issued by the State council in the beginning of 2013. This plan is enacted according to the requirements of <12th Five-Year Guideline for National Economic and Social Development> and it is the guideline of energy development from 2011-2015. Under the overall guideline, China has many more specific plans related to energy industry, renewable energy and energy

¹⁶ *The Central People's Government of the People's Republic of China*, available at <http://www.gov.cn/jrzq/2011-11/22/content_2000047.htm> (last accessed 04 December 2012).

conservation, like <12th Five-Year Plan for Oil and Chemical Industry Development>, < 12th Five-Year Plan for coal industry development>, < 12th Five-Year Plan for renewable energy development> and < 12th Five-Year Plan for energy conservation and emission reduction>.

The State council promulgated <Several Opinions of the State Council on Strengthening the Administration of Enacting National Economic and Social Development Plan> on October 22, 2005, which establishes the public participation system and expert consultation system.¹⁷ Article 8 stipulates that the State will build and improve public participation system in enacting national plans and the department in charge of enacting plan should open the draft to public or held a hearing for comments, except involve the state secrets. Article 9 stipulates, “The State will adopt expert consultation system. The development and reform department under the State Council and Province (Autonomous Region, Municipality) should set up Plan Expert Committee which includes experts from different area and take their comments seriously in the process of enactment. After finish the draft, the development and reform department should arrange experts study the draft in depth. When studying National, Provincial (Regional, Municipal) Special Plan, the experts from areas outside of plan area should be no less than one third of total number. Experts should provide research report after Studying.”

According to the articles above, China has established public participation system and expert consultation system in the area of planning. For example, when drafting Eleventh Five-Year Plan, National Development and Reform Commission (NDRC) expose the draft to public and openly solicit public comments from October to December 2015, anybody can submit advices to NDRC by website, email or mail.¹⁸ Besides that, many expert committees was established in the past several years. National Development and Reform Commission (NDRC) built National Development Plan Expert Committee in 2005. It includes 46 experts

¹⁷ (《国务院关于加强国民经济和社会发展规划的编制工作的若干意见》Guo Wu Yuan Guan Yu Jia Qiang Guo Min Jing Ji He She Hui Fa Zhan Gui Hua De Bian Zhi Gong Zuo De Ruo Gan Yi Jian) [*Several Opinions of the State Council on Strengthening the Administration of Enacting National Economic and Social Development Plan*] (Promulgated by the State Council, Oct 22, 2005) (China), available at <http://www.gov.cn/zwqk/2005-10/26/content_84417.htm> (last accessed 15 Jan 2015).

¹⁸ NDRC establish Eleventh-Five Year Plan Expert Committee, available at http://www.gov.cn/gzdt/2005-10/25/content_83705.htm (last accessed 15 Jan, 2015)

from different area now and they played important role by consultation during enacting 12th-Five Year Plan.¹⁹ Other experts committees for specific energy area were built under certain department, agencies or industry associations. For instances, Expert Committee for Planning and Consultation of Coal Industry, which has 46 experts, is been set up under China National Coal Association.²⁰

2.2 Public participation in EIA of plans and construction projects

China established the Environmental Impacts Assessments System (EIA) on 2002. According to EIA system, all energy plans and construction projects need to comply with EIA procedure. Public participation system is an important part of EIA system. Thus, public participation in EIA system becomes an indispensable part of energy public participation system.

Laws and regulations stipulate EIA public participation system includes <Environmental Impacts Assessment Law> (EIAL)²¹, <Environmental Protection Law> (EPL)²², <Regulation on Environmental Impact Assessment of Planning> (REIAP)²³ and <Temporary Measures on Public Participation of Environmental Impacts Assessment> (TMPPEIA)²⁴. These laws and regulations establish the public participation system in EIA of plans and Projects.

¹⁹ *National Development Plan Expert Committee discuss the draft of Twelfth-Five Year Plan*, available at <<http://news.cnfol.com/110215/101,1277,9318688,00.shtml>> (last accessed 15 Jan 2015).

²⁰ *Expert Committee for Planning and Consultation of Coal Industry*, available at <<http://www.coalchina.org.cn/detail/14/10/11/00000077/content.html?path=14/10/11/00000077>> (last accessed 15 Jan, 2015).

²¹ (《环境影响评价法》 Huan Jing Ying Xiang Ping Jia Fa) [*Environmental Impacts Assessment Law*] (Promulgated by Standing Committee of the National People's Congress, Oct 28, 2002) (China), available at <<http://www.people.com.cn/BIG5/huanbao/55/20021029/853066.htm>> (Last accessed 18 Jan 2015).

²² (《环境保护法》 Huan Jing Bao Hu Fa) [*Environmental Protection Law*] (Amended by Standing Committee of the National People's Congress, April 24, 2014) (China), available at <http://www.npc.gov.cn/huiyi/lfzt/hjbhfxzaca/2014-04/25/content_1861320.htm> (last accessed 18 Jan 2015).

²³ (《规划环境影响评价条例》 Gui Hua Huan Jing Ying Xiang Ping Jia Tiao Li) [*Regulation on Environmental Impact Assessment of Planning*] (Promulgated by the State Council, Aug 12, 2009) (China), available at <http://www.gov.cn/zwqk/2009-08/21/content_1398541.htm> (last accessed 18 Jan 2015).

²⁴ (《环境影响评价公众参与暂行办法》 Huan Jing Ying Xiang Ping Jia Gong Zhong Can Yu Zan Xin Ban Fa) [*Temporary Measures on Public Participation of Environmental Impacts Assessment*] (Promulgated by Ministry of Environmental Protection, February 14, 2006) (China), available at <http://www.zhb.gov.cn/gkml/zj/wj/200910/t20091022_172384.htm> (last accessed 28 Jan 2015).

On the level of Energy Plan EIA, norms related to public participation include: (1) Article 11 of EIAL stipulates, “In case a program may cause unfavorable environmental impacts or directly involve the environmental interests of the general public, the organ that works out the special programs shall, prior to submitting the draft of the programs for examination and approval, seek the opinions of the relevant entities, experts and the general public about the draft of the report about the environmental impacts by holding demonstration meetings or hearings or by any other means, except it is provided by the state that it shall be kept confidential. The drafting organ shall take the opinions of the relevant entities, experts and the general public about the draft report of environmental impacts into careful consideration, and shall attach a remark whether the opinions are adopted or refused to the report of environmental impacts to be submitted for examination and approval.”²⁵ (2) Article 13 of REIAP stipulates, “As to the special planning which may have bad environmental impact and directly involve the environmental interests of the general public, the planning preparation organ shall, prior to submitting the draft of planning for examination and approval, openly solicit the opinions of the relevant entities, experts and the general public on the environmental impact report through questionnaire, symposia, discussion meetings, hearings, etc., unless it is required to keep it confidential according to law. If there is any significant difference between the opinions of the relevant entities, experts and the general public and the conclusion to the environmental impact assessment, the planning preparation organ shall make further discussions through discussion meetings, hearings, etc. The planning preparation organ shall attach to the environmental impact report, which it submits for examination, a statement about the adoption and rejection of public opinions as well as the reasons therefore.”²⁶ Article 26 of REIAP stipulates, “When the planning preparation organ makes a follow-up assessment of the environmental impact of planning, it shall solicit the opinions of the relevant entities, experts and the public through questionnaire, on-site visits, symposia, etc.”²⁷

²⁵ Above n 21, at article 11.

²⁶ Above n 23, at article 13.

²⁷ Ibid, at article 26.

On the level of Energy Construction EIA: Article 21 of EIAL stipulates, “Unless it is provided by the state that it is necessary to keep confidential, for the construction projects which may impose significant environmental impacts and for which it is necessary to work out a report of environmental impacts, the construction entity shall, before submitting the construction project for examination and approval, seek the opinions of relevant entities, experts and the general public by holding demonstration meetings, hearings or by any other means. The report of environmental impacts submitted by the construction entity for examination and approval shall include an explanation of why the opinions of relevant entities, experts and the general public is accepted or rejected.”²⁸ In this article, the time of public participation is “before submitting the construction project for examination and approval”. Article 21 of EPL, which was amended in 2014, shift the public participation time to enactment stage. It stipulates that, “For a construction project for which an environmental impact report is required by the law, when preparing such a report, the construction employer shall provide an explanation to the public that may be affected, and fully solicit their opinions.”²⁹ Besides that, the new norm stipulates the information disclosure responsibility of approval department. Article 21 stipulates, “After receiving the environmental impact report for a construction project, the department approving the environmental impact assessment documents for construction projects shall disclose the full text of the report, except the part involving any state secret or trade secret; and if it discovers that public opinions have not been fully solicited regarding the project, the department shall order the construction employer to solicit public opinions.”³⁰

2.3 Public participation in administrative licensing in energy area

Considering huge sums investment and economic safety, all energy projects need to comply with licensing system. In order to prevent damaging others’ interests or rent seeking, China sets up public participation system in licensing system.

²⁸ Above n 21, at article 21.

²⁹ Above n 22, at article 21.

³⁰ Ibid.

<Administrative License Law> is the basic law in administrative licensing area. It stipulates hearing procedure for public participation. For a hearing as provided for the implementation of administrative license in any law, regulation or rule, or for any other licensing matters of great importance to the public interests that the administrative organ considers it necessary to hold a hearing, the administrative organ shall announce it to the public and hold a hearing.³¹ Where an administrative license is of direct significance to the interests of the applicant or others, before the administrative organ makes a decision about the administrative license, it shall inform the applicant or the interested party of the right to request for a hearing. Where the applicant or interested party applies for a hearing within 5 days from the day when it is informed of such right, the administrative organ shall organize a hearing within 20 days. As to the expenses, the applicant and interested party shall not pay for the expenses arising from the administrative organ's organization of the hearing.³²

The procedures of hearing shall proceed according to the following steps: (1) The administrative organ shall notify the applicant and interested party of the time and place of the hearing 7 days before it is held, and shall announce it to the public where necessary; (2) The hearing shall be held openly; (3) The administrative organ shall designate a person to host the hearing, the person shall not be from the persons who are responsible for the examination of the application for administrative license, where the applicant or interested party considers that the host or hostess of the hearing is of direct interest to the matters under administrative license, it shall be entitled to apply for withdrawal; (4) While holding a hearing, the persons who are responsible for the examination of an application for administrative license shall provide proofs, reasons for the examination opinions, the applicant and the interested party may produce evidence, defend and conduct cross-examinations; (5) Transcripts shall be made for a hearing. The attendees of the hearing shall sign their names on or affix their seals to the

³¹ (《行政许可法》Xin Zheng Xu Ke Fa) [*Administrative License Law*] (Promulgated by Standing Committee of the National People's Congress, Aug 27, 2003, effective July 1, 2004) (China), Article 46, available at <http://news.xinhuanet.com/zhengfu/2003-08/28/content_1048844.htm> (Last accessed 19 Jan 2015).

³² Ibid, at article 47.

transcripts after they have confirmed them as inerrant. The administrative organ shall make a decision on the administrative license according to the transcripts of the hearing.³³

China is carrying out administrative licensing reform. Energy project licensing is an important part of it. Wu Xinxiong, chief of National Energy Administration (NEA), required NEA promote energy project hearing procedure reform. For major projects of coal, electricity, oil and gas, nuclear power, renewable energy, technology, energy administration needs to hold hearing periodically.³⁴Public participation in energy licensing will be more and more robust in the future.

2.4 Public participation in pricing and price adjustment of energy products

Energy products, like coal, natural gas and gasoline, are of great importance to development of the national economy and the people's livelihood. As a result, these commodities execute government-set or guided prices.³⁵ According to Article 23 of <Price Law>, when pricing or adjusting price of energy product, the government should hold hearing to solicit views from consumers, business operators and other quarters to explore the necessity and feasibility.³⁶

According to 23 of <Price Law>, NDRC revised <Measures for Hearing on Government-fixed Prices> (MHGP) in 2008.³⁷ It stipulates the subjects, catalogue of subjects, concrete procedures and liabilities of public hearing.

³³ Ibid, at article 48.

³⁴ "Wu Xinxiong: try out best to boost the level of rule of law in energy administration", available at <http://www.nea.gov.cn/2014-12/18/c_133864005.htm> (last accessed 20 Jan 2015).

³⁵ Article 18 of <Price Law> stipulates, "The government shall issue government-set or guided prices for the following merchandises and services if necessary: The few merchandises that are of great importance to development of the national economy and the people's livelihood; The few merchandises that are in shortage of resources; Merchandises of monopoly in nature; Important public utilities; Important services of public welfare in nature." See (《价格法》 Jia Ge Fa) [*Price Law*] (Promulgated by Standing Committee of the National People's Congress, Dec 29, 1997), Article 18, available at <http://www.gov.cn/banshi/2005-09/12/content_69757.htm> (Last accessed 20 Jan 2015).

³⁶ Ibid, at article 23.

³⁷ (《政府制定价格听证办法》 Zheng Fu Zhi Ding Jia Ge Ting Zheng Ban Fa) [*Measures for Hearing on Government-fixed Prices*] (Promulgated by National Development and Reform Commission, Oct 22, 2008, Effective Dec 1, 2008), available at <http://www.gov.cn/flfg/2008-10/22/content_1127705.htm> (last accessed 19 Jan 2015).

Norms related to subjects of hearing include: (1) A pricing hearing shall be organized by a price department of a government.³⁸ (2) A hearing shall have three to five hearing examiners who are specially assigned to hear the hearing opinions on behalf of the price department.³⁹ (3) The participants of a hearing shall be composed of consumers, business operators, other interested parties in the item under pricing hearing, experts and scholars in the relevant fields and government departments, social organizations and other persons that the price department deems their participation necessary. The number and composition proportion of participants shall be determined by the price department according to the actual situations of the item under hearing, but the number of consumers shall not be less than two fifths of the total number of participants.⁴⁰ (4) The participants of a hearing shall be determined by the following ways: consumers are randomly selected based on their voluntary signing up for the hearing, and the price department can also entrust consumers' organizations or other mass organizations to recommend them; business operators and other interested parties related to the item under hearing are randomly selected based on their voluntary signing up for the hearing, and the price department can also entrust industrial organizations and other governmental departments to recommend them; and experts, scholars, persons from governmental departments and social organizations and other persons shall be invited by the price department. The price department can set down the requirements for being hearing participants in light of the actual situations of the item under hearing.⁴¹

Norms related to objects of hearing: The fixing of the prices of public utilities, public welfare services, commodities under natural monopoly and other government guiding prices or government-fixed prices that concern the vital interests of the people shall be subject to pricing hearing.⁴²

Norms related to procedures of hearing include: (1) A pricing hearing shall be proposed by: the price department, if the pricing authority is a price department (either solely or jointly

³⁸ Ibid, at article 6.

³⁹ Ibid, at article 7.

⁴⁰ Ibid, at article 9.

⁴¹ Ibid, at article 10.

⁴² Ibid, at article 3.

with other department) or a people's government at the city or county level; or the said department to the price department, if the pricing authority is any other department.⁴³ (2) The price department shall, 30 days before a hearing is held, announce the number of participants, auditors and news media, the way for determining which participants, auditors and news media are allowed to participate in the hearing and the way for signing up for the hearing via governmental website or news media.⁴⁴ (3) The price department shall, 15 days before a hearing is held, announce the time and location of the hearing, the main points of the pricing hearing plan and a list of the participants and hearing examiners of the hearing via governmental website or news media.⁴⁵ (4) The price department shall, 15 days before a hearing is held, serve the following materials upon the participants of the hearing: a hearing notice; the pricing hearing plan; the pricing cost supervision and examination conclusion; the agenda of the hearing; and the hearing disciplines.⁴⁶ (5) A hearing can be held once and for all or by several times. A hearing shall proceed in accordance with the following procedure: the chairperson of the hearing announces the subject matter under hearing and the hearing disciplines and introduces the participants and hearing examiners; the proposer of the pricing hearing plan gives a presentation of the plan; the pricing cost supervisor states the pricing cost supervision and examination conclusion and the relevant situations; the participants of the hearing state their opinions and make inquiries about the pricing hearing plan; and the chairperson delivers a summing-up speech.⁴⁷ (6) A pricing authority shall take the hearing opinions into full consideration before making a pricing decision. If, after the pricing authority modifies the pricing hearing plan according to the hearing opinions, the price department may hold another hearing when necessary or solicit the public opinions by any other way.⁴⁸ (7) After a pricing authority makes a pricing decision, it shall make public the

⁴³ Ibid, at article 15.

⁴⁴ Ibid, at article 18.

⁴⁵ Ibid, at article 19.

⁴⁶ Ibid, at article 20.

⁴⁷ Ibid, at article 22.

⁴⁸ Ibid, at article 26.

pricing decision and whether the major opinions of the hearing participants are adopted and why via government website or news media.⁴⁹

2.5 Public interest litigation

Energy has close relationship with environmental protection and natural resources reservation. When energy construction project injure public interest by environment pollution or ecological damage, a NGO can commence a public interest suit in the court.

In 2012, Standing Committee of the National People's Congress amended <Civil Procedure Law> (CPL) and added public interest civil litigation. Article 55 stipulate, "For conduct that pollutes environment, infringes upon the lawful rights and interests of vast consumers or otherwise damages the public interest, an authority or relevant organization as prescribed by law may institute an action in a people's court."⁵⁰ In 2014, Standing Committee of the National People's Congress amended <Environmental Protection Law> (EPL). Article 58 stipulates, "For an act polluting environment or causing ecological damage in violation of public interest, a social organization which satisfies the following conditions may institute an action in a people's court: (1) It has been legally registered with the civil affairs department of the people's government at or above the level of a districted city. (2) It has specially engaged in environmental protection for the public good for five consecutive years or more without any recorded violation of law. A people's court shall, according to the law, accept an action instituted by a social organization that satisfies the provision of the preceding paragraph."⁵¹

According to the provisions of CPL and EPL, Supreme People's Court, Ministry of Civil Affairs and Ministry of Environmental Protection issued <Notice of the Supreme People's Court, the Ministry of Civil Affairs and the Ministry of Environmental Protection on Implementing the Environmental Civil Public Interest Litigation System> on December 26,

⁴⁹ Ibid, at article 27.

⁵⁰ (《民事诉讼法》Min Shi Su Song Fa) [*Civil Procedure Law*] (Amended by Standing Committee of the National People's Congress, Aug 31, 2012, effective Jan 1, 2013), Article 55, available at <<http://www.iolaw.org.cn/showLaws.asp?id=31495>> (last accessed 20 Jan 2015).

⁵¹ (《环境保护法》Huan Jing Bao Hu Fa) [*Environmental Protection Law*] (Amended by Standing Committee of the National People's Congress, April 24, 2014) (China), Article 58, available at <http://www.npc.gov.cn/huiyi/lfzt/hjbhfxzaca/2014-04/25/content_1861320.htm> (last accessed 18 Jan 2015).

2014.⁵² Then Supreme People's Court issued < Interpretations of Supreme People's Court on Several Issues concerning the Application of Law in the Trail of Cases involving Environmental Civil Public Interest Litigation> on January 6, 2015.⁵³ These two judicial interpretations stipulate the concrete procedures of public interest litigations. According to the law and Legal Interpretation, Friends of Nature, a Beijing environmental non governmental organization, file the first environmental civil public interest suit against four people in Nanping Intermediate people's Court. It declares that those four people destroy the forest on the top of Hulushan Mountain by mining. It requires them take the responsibility to clean the mining site and repair the forest.⁵⁴

Conclusion

China is trying to promote its energy security, including energy supply security, energy economy security and energy ecological security. This target requires enhancing the role of government in energy area, which will cause overregulation and corruption easily. To conquer this potential tendency, the role of public participation in energy area should be valued. China is developing and perfecting public participation in enacting comprehensive or special energy plans, environmental impacts assessment of plans and construction projects, public participation in administrative licensing in energy area, public participation in pricing and price adjustment of energy products and public interest litigation. The public will play more and more important role in the future.

⁵² (《最高人民法院、民政部、环境保护部关于贯彻实施民事公益诉讼制度的通知》Zui Gao Ren Min Fa Yuan, Min Zheng Bu, Huan Jing Bao Hu Bu Guan Yu Guan Che Shi Shi Min Shi Gong Yi Su Song Zhi Du De Tong Zhi) [*Notice of the Supreme People's Court, the Ministry of Civil Affairs and the Ministry of Environmental Protection on Implementing the Environmental Civil Public Interest Litigation System*] (Promulgated by Supreme People's Court, Ministry of Civil Affairs, Ministry of Environmental Protection, Dec 26, 2014), available at <http://www.zjebp.gov.cn/root14/xxgk/fggz/fl/201501/t20150107_317014.html> (last accessed 22 Jan 2015).

⁵³ (《最高人民法院于审理环境民事公益诉讼案件适用法律若干问题的解释》Zui Gao Ren Min Fa Yuan Guan Yu Shen Li Huan Jing Min Shi Su Song An Jian Shi Yong Fa Lv Ruo Gan Wen Ti De Jie Shi) [*Interpretations of Supreme People's Court on Several Issues concerning the Application of Law in the Trail of Cases involving Environmental Civil Public Interest Litigation*] (Promulgated by the Supreme People's Court, Jan 6, 2015), available at <<http://www.court.gov.cn/zixun-xiangqing-13025.html>> (last accessed 22 Jan 2015).

⁵⁴ "Environmental Public Interest Litigation has updated from 'who claim' to 'how to claim'", available at <<http://legal.people.com.cn/n/2015/0113/c188502-26377719.html>> (last accessed 21 Jan 2015).

