

KENYA'S GEOTHERMAL POLICY

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Key words: geothermal regulations, license, Kenya

ABSTRACT

The Geothermal Resources Act, 1982, establishes a series of steps which the geothermal developer must follow. These are (1) the Minister of Energy must first Authorize all resource exploitation; (2) a "geothermal resources license" must be obtained from the Minister to enable the developer to drill, extract, and utilize the resources, and (3) if electricity is to be produced the developer must obtain a license under the Electric Power Act, or if commercial by-products are reclaimed, the geothermal resources license must include a minining lease consistent with the Mining Act.

The Geothermal resources Regulations, 1990, set forth a model license which establishes the basis for negotiating the arrangements for obtaining the rights to the Kenyan Geothermal resources license.

The Model License establishes a schedule of payment for land rental and royalty for the sale of steam or electricity. It provides for the forfeiture of the license in the event of either unauthorized inactivity on the part of the developer or breach of the geothermal laws, regulations or licence,

The Model License mandates a reporting system and establishes an incentive system whereby the Minister of Energy undertakes to secure a number of investment incentives for the licensee.

1. INTRODUCTION:

The legal basis of Kenya's Geothermal Policy is stated in the Geothermal Resources Act of 1982. The Act was written to control the exploitation and use of geothermal resources, to vest the resources in the Government of Kenya, and to provide for connected purposes. The Act defines terms commonly used in the exploitation of the geothermal resources.

The regulatory aspect of the Geothermal Policy is provided for in the Geothermal Resources Regulations of 1990. These regulations stipulate the procedures to be followed by those who wish to explore, drill, extract and utilize geothermal resources.

2. PROVISIONS OF GEOTHERMAL RESOURCES ACT.

2.1 Authority to Search for Geothermal Resources.

Ownership of all unextracted geothermal resources under any land are vested with the Government. The Minister for Energy is responsible for declaring any area a geothermal resources area. The act prohibits any unauthorized use of the geothermal resources. In order to extract and use geothermal resources one has to be granted authority or license. Authority to search for geothermal resources is also granted by the Minister for Energy.

The Minister may authorize any person (including a public officer) to make surveys, investigations, tests and measurements in search of geothermal resources. The written authority empowers a person to enter any land specified by the authority, drill any bore, make

geological and geophysical surveys and generally do all things necessary in connection with the search of geothermal resources.

When practicable, reasonable notice of intention to enter upon any land shall be given to the owner or occupier of the land. Also, the authorized person should be ready to produce his notice of authority when required to do so by the owner or occupier of the land on which he intends to enter or has entered.

The authority granted is subject to the condition that every bore drilled shall be kept under close supervision, maintained in a safe condition and finally left in a condition of lasting safety.

The authority granted is not transferable and is valid for one year but it may be renewed on a yearly basis after expiration. The authority may be revoked if the person to whom it was granted has not complied with any requirement or condition of his authority or if the operations being carried out are detrimentally affecting other specified bores. It may also be revoked if it is in the public interest that the operations being carried out should cease.

2.2 The Geothermal Resources License.

The Geothermal Resources License may be granted over part or the whole of a geothermal resources area. The license application must be on the approved form and should be accompanied by the prescribed fees. The license granted will be for a term not exceeding thirty years or as the Minister for Energy may determine.

The license shall confer upon the licensee the right to enter upon the land being the subject of the license to drill and to extract geothermal resources and to do all such things as are necessary for the conduct of those operations. This means the right to drill and construct all necessary boreholes, erect the necessary infrastructure for operations, utilize the geothermal resources and subject to the Water Act, reclaim and utilize any water. The licensee also has the right to take and use or apply the geothermal resources for any purpose specified in the license.

Where any by-product obtained in the production of geothermal resources may be reclaimed for further use or sale and is a mineral within the meaning of the Mining Act, the license may be modified so as to allow for the inclusion of a mining lease to enable recovery of that by-product.

The license may be renewed for a term not exceeding five years subject to such terms and conditions as the Minister for Energy may think fit. The licensee shall not transfer or assign his license or any part thereof without the consent in writing of the Minister for Energy.'

The license may be declared forfeited if the licensee wholly ceases to work in the area of the license during a continuous six months period without the written consent of the Minister for Energy, or if he commits a breach or is in default of any provision of the Geothermal Resources Act. The forfeiture of a license shall not affect any liability already incurred by the licensee.

The holder of a license under the Electric Power Act may for the purpose of generating, transmitting or supplying electrical power extract, take, use and apply geothermal resources on or under any land which is the subject of the license. Also he may erect, construct, provide and use such works and appliances as may be necessary for the purpose of generating electricity, and in connection with the transmission, use, supply and sale of electricity.

2.3 Compensation

Any person who has interest in any land injuriously affected by the exploitation of the Geothermal Resources is entitled to compensation to be determined by the Minister for Energy. Also whenever, in the course of searching or boring for geothermal resources, any disturbance of the rights of the owner or occupier of any land or a nuisance or damage to that land or to any crops, trees, buildings, stock or works is caused, the holder of authority or license shall pay to the owner or occupier a fair and reasonable compensation.

2.4 Penalties for Unlawful exploitation of Geothermal Resources.

Any person who drills any bore or who extracts, takes, uses or applies geothermal resources without authority shall be guilty of an offence. Also a person who interferes with any survey pegs or beacons placed for the purpose of exploitation of geothermal resources is guilty of an offence. Any person who is guilty of any of these offenses shall be liable for a fine.

3. GEOTHERMAL RESOURCES REGULATIONS.

3.1 Application For Authority To Search For Geothermal Resources.

Application for authority to search for geothermal resources is made to the Minister in writing for any area of land. The application should specify the following:- the name, nationality, nature of business and the principal place of business, the name and nationality of every director, delineation of the area to be covered by the authority, particulars of the work and minimum expenditure, a statement of any significant adverse effect which the proposed operations would have on the environment and proposals for controlling or eliminating these effects. An application fee of Kshs 50,000 is charged for a notice of authorization.

The Minister may, when granting an authority to explore, also grant to the authority holder the right to be granted, on application, a geothermal resources license.

3.2 Application And Renewal Of Geothermal Resources License.

Application for a geothermal resources license is made to the Minister of Energy in respect to any geothermal resources area. The application should specify the following:- the name, nationality, nature of business and the principal place of business, name and nationality of every director, statement of financial status, technical competence and experience, delineation of the area to be covered by the license, statement of exploration programme, terms on which the applicant proposes to negotiate, proposals with respect to employment and training of citizens of Kenya, goods and services required for the production. operations which can be obtained in Kenya and details of expected infrastructure.

Application for renewal of a geothermal resources license shall be made not later than twelve months before the day on which the license is due to expire. The application should be accompanied by

the following:- particulars of work carried out, the funds expended up to and including a date not earlier than one month immediately preceding the date of the application, proposals of the applicant's work and minimum expenditure during the period being applied for.

A geothermal resources license may be accompanied by, or be conditional upon, the execution of a contract between the licensee and the relevant Government department or other body designated by the Minister for the purpose of providing for the utilization of the geothermal resources.

3.3 Steps Leading to Production Phase of Geothermal resources.

Once a geothermal resources license is granted, an exploration phase of a period not exceeding five years is allowed for. If at the end of this period no geothermal resources of a potential commercial interest is discovered the Minister may require the licensee to surrender the licensed area.

If the licensee discovers a geothermal resource which is of potential commercial interest, he is required to submit an appraisal programme to the Minister for approval within sixty days.

If the appraisal programme results into the declaration of visible commercial geothermal resources, the licensee is required to submit a development and production programme within twelve months from the date of declaration.

The development and production programme shall include the following:- the date by which the applicant intends to commence production, the capacity of production and scale of operation, the marketing arrangements made for disposal of geothermal energy including details of all contracts or arrangements made with proposed users, proposals for the prevention of pollution, treatment of wastes, the safeguarding of natural resources, the progressive reclamation and rehabilitation of lands disturbed by prospecting or production operations, statement of any significant adverse environmental effect which could be caused by production operations and proposals for controlling and eliminating that effect, a technical report on the production possibilities and the intention of the applicant, detailed forecast of capital investment, operating costs and sales reserves and the anticipated type and source of financing.

The development and production phase shall commence upon the approval by the Minister of the development and production programme.

3.4 Requirements and Conditions For Geothermal Operations.

All geothermal operations should be carried out in a such manner as to prevent unnecessary waste of or damage to geothermal or other energy and mineral resources. Quality of surface waters, air, and other natural resources, including wildlife, soil, vegetation and natural history should be protected. Quality of cultural resources, including archeological, historical, scenic and recreational resources should be protected. Operations should be carried out in a manner that allows accommodation of other land users. Human and wildlife resources should be protected from unacceptable levels of noise. Operations should be carried out in a manner that prevents injury to life and damage to property.

Sites selected for construction of drilling sites, roads, sumps, steam transmission lines and other construction attendant to the geothermal operations shall be evaluated for stability and in unstable earth conditions shall be avoided where they could affect the integrity of the facility.

Operations shall be conducted in a manner which minimizes erosion and disturbances to natural drainage. The licensee is required to

conduct all operations in such a manner as to afford reasonable protection of fish, wildlife, and natural habitat.

3.5 Incentives To Developers Of Geothermal Resources.

The Minister for Energy will obtain on behalf of the licensee any permit necessary to use the water in the license **area** for the purpose of operations.

The Minister will, at the request of the licensee, make available any land as the licensee may require for the conduct of operations. The licensee will be required to pay any compensation for the acquisition of any land for such operations.

The Government of Kenya will grant rights of way, easements, temporary occupation or other permissions within and without the license area as are necessary for the conduct of operations.

The licensee will be given the right to ingress to and egress from the license **area** as required for the conduct of his operations.

Entry permits for technicians and managers employed in operations under the license will be issued and or renewed by the Government of Kenya subject to the Immigration Act.

The licensee will be free to import all material, equipment and supplies to be used in carrying out operations under the license. All these imports will be exempt from all custom duties.

The expatriate employees of the licensee will be permitted to import household goods and personal effects. All these will be exempt from all custom duties. The employees are free to sell these items in Kenya if they are no longer needed but the seller should fulfil all formalities required in connection with payment of duties, taxes, fees and charges imposed on such sale. If the items are re-exported from Kenya, they will be exempt of all taxes, duties, fees and charges.

The licensee will be free to open and maintain external accounts inside Kenya and foreign bank accounts outside Kenya subject to the Exchange Control Act.

The licensee will be free to pay directly outside Kenya for purchases of goods and services necessary to carry out his operations.

The licensee will be free to receive, retain outside Kenya and freely dispose of foreign currencies received outside Kenya and is not obligated to remit such proceeds to Kenya with the exception of those proceeds as may be needed to meet expenses in Kenya and payments to the Government.

Expatriate employees working in Kenya may be paid in foreign currencies outside Kenya. Such employees shall only be required to bring into Kenya such foreign exchange as may be required to meet their personal living expenses and to meet payments of Kenyan taxes.

The licensee will be free to repatriate abroad all proceeds from the geothermal operations in Kenya, including but not limited to proceeds from the sale of assets.

The licensee has the freedom to have rates of exchange for the purchase or sale of currency in Kenya, not less favourable to him than those granted to any investor in Kenya.

4. CONCLUSION

Exploitation of geothermal resources in Kenya is currently being carried out by the Kenya Power Company (KPC) which is a state corporation. The Geothermal Resources Act, 1982, and the geothermal regulations, 1990, are used to regulate the operations of KPC in the exploitation of the geothermal resources.

The Government of Kenya intends to invite private investors to participate in the exploitation of the geothermal resources. The effect of the geothermal resources Act and its associated regulations will be known when the private investors come in the picture.

REFERENCE

The Geothermal Resources Act, 1982, Legal Notice No. 12 of 1982 47-58 (1982), Kenya Gazette Supplement No. 43 (Acts No. 5).

The Geothermal Resources Regulations, 1990, Legal Notice 205, Kenya Gazette, Supplement No. 33, 262-283.