THE DRAFT ENERGY (RENEWABLE ENERGY RESOURCE) REGULATIONS, 2025

(Pursuant to Section 10(a) (iii)) of the Energy Act, 2019)

REGULATORY IMPACT STATEMENT

FEBRUARY, 2025

Issued by the Energy and Petroleum Regulatory Authority

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The draft Energy (Renewable Energy Resource) Regulations, 2025 have been developed within the provisions of Section 10(a) (iii) of the Energy Act, 2019 and constitute regulations to the same Act.

1. INTRODUCTION

Kenya has significant renewable energy resources such as solar, wind, geothermal, hydro and biomass. The country has been actively involved in the development and utilization of these resources. This is to address its growing energy needs while promoting sustainability and environmental conservation. This development aims to support the goal of ensuring access to electricity by all Kenyans and 100 % renewable energy utilisation by 2030. To optimise the adoption, the country has instituted several strategic interventions. Such interventions are envisaged in various policy instruments which include the Sessional Paper No. 4 of 2004, the Energy Policy 2018, and the Energy Act No. 1 of 2019 (Act).

The success of adoption of renewable energy technologies requires a responsive policy framework. The framework should, among other things, provide for procedures for exploration and exploitation of renewable energy resources, quality and safety of renewable energy facilities, and benefit sharing.

Kenya has been actively pursuing ways of optimising the utilisation of renewable energy resources. The country gazetted the Geothermal Resources Act, No. 12 of 1982. This Act vested all unexploited geothermal resources in the Government of Kenya and provided for the licensing of the exploration and exploitation of geothermal resources. Similarly, in 2008, the country instituted the Feed in Tariff Policy to catalyse the exploitation of renewable energy resources specifically wind, solar, hydro, biomass and geothermal.

The Energy Act, No 1 of 2019 consolidates the laws that relate to energy. It includes provisions for promotion of renewable energy (Section 73-76), geothermal resource exploration and exploitation (Section 77-90) and a feed-in-tariff framework (Section 91- 93). The Act further mandates the Energy and Petroleum Regulatory Authority (the Authority) to undertake the technical and economic regulation of the production, conversion, distribution, supply, marketing and use of renewable energy in the country. It is therefore imperative that the Authority develops regulations that will guide the development of renewable energy. The draft regulations apply to persons involved in the exploration and use of wind, hydro, geothermal and marine resources for purposes of energy production. Presented herein is a Regulatory Impact Statement of implementation of the draft Energy (Renewable Energy Resource) Regulations, 2025.

2. OBJECTIVES OF THE REGULATIONS

The main objective of the regulations is to promote investment in renewable energy by providing a framework for permitting exploration of renewable resources and licensing of geothermal exploitation. The specific objectives of the regulations are:

i. To harmonize the requirements of exploration and exploitation of renewable energy resources;
ii. To promote quality and safety in renewable energy facilities;
iii. To provide for benefit sharing of exploited geothermal energy resources;
iv. To ensure environmental sustainability of geothermal exploration and exploitation; and
v. To aid collection of renewable energy resource data;

3. REGULATORY ALTERNATIVES

3.1. Do nothing option

This option assumes a 'business-as-usual' scenario. In the current situation, several barriers exist in the country that have hindered growth in the renewable energy sector. Key barriers include:

a) Lack of clarity in the existing permitting and licensing requirements for renewable energy projects. The processes and parties involved in the approval of renewable energy exploration and renewable energy project development are not detailed in the existing laws;

b) Lack of technical standards specific to the development of renewable energy projects;
c) Lack of guidelines for environmental and social safeguards in project development of renewable energy projects; and
d) Lack of reporting requirements or frameworks for renewable energy resource data by proponents of renewable energy projects.

3.2. Self-Regulation

The alternative to the regulation is self-regulation. In this alternative, the players in the renewable energy sector would come up to set common principles that offer mutual benefits to all. Self-regulation has to come within the purview of specific interests of the stakeholders. However, self-regulatory systems should, above all interests, focus on the needs of the energy consumers. In such a system, it is envisaged that consumers should have easy access to complaint handling processes. The working of such a system should be transparent and accessible to stakeholders. The system should also have credible and adequate sanctions to support the agreed decisions. As well, there should be adequate power to enforce the decisions.

A successful self-regulated sector would require mutually beneficial arrangements between stakeholders with regards to service standards, prices, technical and safety standards. To be realized, both customers and developers, either across the entire Kenya renewable energy sector or on a site-by-site basis, would have to engage in detailed negotiations where both parties agree that their interests are protected.

Self-regulation includes having a mechanism of registering qualified renewable energy project developers that are easily accessible to end-users. This approach would be effective where all developers have formed a strong association or a common discussion platform. In addition, the government enters into a negotiated agreement with the players to come up with self-regulatory mechanisms.

In Kenya, there are no existing umbrella organizations that represent all the players. Similarly, there are no mechanisms for sanctioning non-compliant members. This makes the self-regulation option not viable. Without any regulatory oversight, there would be no immediate recourse for any aggrieved party to address standards, handle grievances, and mitigate disputes.

The draft Energy (Renewable Energy Resource) Regulations, 2025 provides a unified mechanism of supporting investment in renewable energy, by providing a framework for permitting and licensing of exploration and exploitation of renewable energy resources. This is in addition to providing a framework for enforcement of standard and safety of end users.

4. COSTS AND BENEFITS OF THE REGULATIONS

4.2.Economic Impacts

The Sustainable Development Goal 7 that provides for access to affordable, reliable, sustainable and modern energy for all is in line with Kenya's target of 100% renewable energy utilisation by 2030. The main objective of the regulations is to establish a framework for public and private renewable energy project developers to simplify and standardise the application, approval and reporting process. This will simplify the processes for developing renewable energy project and thus facilitate access to reliable, sustainable and modern energy.

Energy is key input in the manufacturing and industrial sectors of a nation. The productivity of these sectors is dependent on the availability of reliable and sustainable energy. The draft regulations are poised to stimulate economic development by addressing energy poverty.

4.3.Social Impacts

The draft regulations include provisions for safeguarding the interests of communities in which renewable energy resources are located. This provisions aim to ensure that local communities are adequately consulted and their concerns addressed in the project implementation cycle. Further the regulations provide for benefit sharing of the proceeds of exploitation of renewable energy resources between local communities, the host county and the project developer.

4.4.Environmental Impacts

The regulations will lead to a better regulated and more competent and accountable renewable energy sector. The additions in renewable energy will lead to reduce the country's grid emission factor below the current 0.33 kg of CO_2 per kWh. This will contribute to meeting Kenya's Nationally Determined Contribution (NDC) of reducing emission by 30% below the business as usual scenario.

4.5.Costs of Implementation of the Regulations

The regulations propose a fee to meet administrative costs associated with the permitting and licensing renewable energy projects. The funds will facilitate closer scrutiny of the applicants to ensure that only qualified persons are licensed for project implementation.

Extra costs shall be borne through funds available to the Authority from other sources provided for in Section 20 of the Energy Act, 2019. The enactment of these regulations will not result in any additional resource allocation from the government with proposed fees designed not to limit any practitioner from accessing the services. Information Technology Systems shall be deployed to ensure efficiency and transparency in the permitting, licensing and reporting as required in the regulations.

The regulations further propose a royalty on the value of geothermal steam extracted. The royalties are meant to ensure benefit sharing of the renewable energy resource with the local government once geothermal projects are implemented.

5. CONCLUSION AND RECOMMENDATIONS

This regulatory impact statement has analysed three available options of "do nothing", "self-regulation" and explicit regulation through the Energy (Renewable Energy Resource) Regulations, 2025. The Energy and Petroleum Regulatory Authority recommends adoption of the recommended regulations as opposed to "do nothing" and "self-regulation". Once adopted, the regulations shall streamline the renewable energy sector by providing a framework for the exploration and exploitation of renewable energy in Kenya

6. IMPLEMENTATION AND REVIEW

The Authority will implement the Energy (Renewable Energy Resource) Regulations 2025 through gazettement in the Kenya Gazette. Review shall be done as per the provisions of the **Statutory Instruments Act No. 23 of 2013** and in consultation with all stakeholders.