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The CMS guide to the electricity sector

China

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Contents

Government policy for the electricity sector

The electricity supply industry in China is regulated by a series of laws and regulations which reflect government policy. The electricity sector was a state monopoly until 1985. Private participation in power generation business started in 1986 and in 1992 foreign investors were permitted by law to participate. However state-owned and run enterprises still have a monopoly on power transmission and distribution.

China's current policy is set out in the eleventh five-year plan (that covers the period 2006 to 2010 inclusive) and development layout for the year 2020 in the electricity sector. This:

- emphasises the need to reduce the number of small plants and correspondingly increase the generation capacity of larger and cleaner plants;
- encourages the development of hydropower, nuclear and gas-fired generation; and
- stresses the need to improve transmission and interconnection.

It has also required further deepening of the reform programme for China's power sector, calling for:

- the unbundling of the power sector into separate generation and distribution entities;
- the establishment of an open and ordered electricity market taking into account the specific context of China; and
- the establishment of an effective electricity price-setting system.

Prior to 2002 the State Power Corporation ran almost all the Chinese state companies in the power sector. It controlled the electricity grid through provincial subsidiaries as well as owning half of China's generating capacity. At the same time the Electricity Division of the State Economy and Trade Commission performed the administrative and supervisory functions.

At the end of 2001 China acceded to the WTO and in March 2002 the State Council approved the implementation of the Plan for the Reform of the Electric Power System which is regarded as a reflection of its promise to open its domestic market. It also aims to bring China's electricity market into line with international trends and practice and to make it competitive.

The plan consists of three main components, being:

- the unbundling of the State Power Corporation's power generation and distribution assets and the transfer of these to 11 separate enterprises;
- market deregulation including the introduction of power pooling and power pricing reforms; and
- the establishment of a new regulatory body, the State Electricity Regulatory Commission ("SERC"), to oversee the power industry.

The Chinese government has promulgated a series of favourable policies for accomplishing these goals. However the reform process has encountered some difficulties with respect to the separation of ownership between the power generation utilities and grid operators, the establishment of new pricing mechanisms and problems arising from the vague definition of the extent of SERC's powers.

In order to push forward the reform of the electric power system, in April 2007 the State Council approved 'Implementation Advice on Reform of Electric Power System during the Eleventh Five Years' ("Advice").

The Advice clarifies that during the eleventh five years the main tasks for the reform of electric power system are:

- to resolve the problems arising from the unbundling of generation and distribution entities and in stages, boosting the unbundling reforms for the distribution entities' principal and supplementary business;
- the establishment of an open and ordered electric market system in accordance with the specific situation of China;
- to continue reform of electricity entities and to foster the market;
- the further reform of electricity tariffs and transparency of pricing;
- the draw up a blueprint for unbundling electricity transmission and distribution;
- to advance the reform of electric power system in the country;
- the further establishment of the detailed legal regime for the electric power sector; and
- the further transfer of governmental functions, and to improve the approval and supervision systems.

Structure of the industry, functional unbundling and corporate separation

In December 2002 China announced the completion of the unbundling of the State Power Corporation, as envisaged by the Plan for the Reform of the Electric Power System, with:

- the allocation of the State Power Corporation's generation assets to five regional generation companies consisting of state-owned generators and independent power producers with private capital. These are China Huaneng Group, China Datang (Group) Corporation, China Huadian Corporation, China Guodian Group, and China Power Investment Corporation;
- the transfer of the State Power Corporation's power distribution assets to two grid companies; and
- the creation of four power construction and service companies.

At the same time the State Electricity Regulatory Commission was established and the first step was taken towards the establishment of regional power markets.

The unbundling was effected to bring competition into China's electricity generation sub-sector. Each of the five power generation companies mentioned above has less than 20% of China's market share of electric power generation and they will compete not only with each other but also with a large number of other generation companies for contracts with the electricity grid operators.

Following this reform the structure of the electricity sector in China revolves around the following entities and their relationships.

- The Regulators - The National Development and Reform Commission (the "**NDRC**"), the Ministry of Commerce ("**MOFCOM**"), and the State Electricity Regulatory Commission (and their respective local bureaux). Each exercises some power with respect to regulating and supervising the electricity sector.
- The Generators - The five large generation group companies together with a large number of medium or small size generators (including some partly or wholly foreign- owned enterprises) that generate electricity and sell this to the Distributors and to large end-users.
- The Distributors - There are two grid companies namely, the State Power Grid Company and Southern Power Grid Company. The State Power Grid Company has subsidiary grid companies responsible for operating 5 regional grid networks (north, northwest, northeast, east, and central China). It owns 90% of China's high level power grid and retains a portion of the State Power Corporation's generating assets for peak demand management. The six grid companies have a monopoly on retail supply of electricity within their respective geographic domains. However the 6 regional grids are not well interconnected and it is China's stated intention to create a unified national power grid by 2020.
- The End Users - End users have to buy electricity from the Distributors in their respective regions. Recent trial measures allow some large users to apply for approval to buy electricity directly from the generators.

Wholesale and retail competition: trading arrangements

Price reform is one of the important issues with regard to the reform of the electric power system. In July 2003 the State Council issued its Plan for the Reform of Electricity Prices according to which the long-term aim of the power sector's price reform is:

(i) to separate electricity prices into a wholesale generation price, a transmission price, a distribution price, and an end-sale price;
(ii) for wholesale and retail market competition, to determine the generation price and end-sale price;
(iii) for the government to establish the transmission price and the distribution price; and
(iv) to establish clear administrative rules and standards and a transparent administration system.

The short term tasks relating to price reform are:

(i) the establishment of a suitable generation price mechanism to moderate competition;
(ii) to establish preliminary transmission and distribution prices to promote the healthy development of electricity grids;
(iii) to link the end-sale price to the generation price;
(iv) to improve the mechanism for fixing the end-sale price; and
(v) to allow the large users to purchase electricity directly from an electricity supplier.

Wholesale market

As the reforms proceed, some competition in the wholesale market has become possible in that the distributors can choose from which generators to purchase their electricity. Regional electrical trading centres have already been launched in Northeast, East China, Southern and Central China , where the generating companies can sell electricity to grid operators on a monthly basis using a competition system based on pool bidding or using pool bidding combined with bi-lateral contracts.

It is intended that the market will gradually adopt other forms of trade, including real time trade and trade of electricity generation capacity rights. As the market matures and the pricing system is perfected, the regional electricity market will become fully open to competition. The State Electricity Regulatory Commission plans in due course to extend the market trial to the Northwest and North China power grids.

The on-going trial price reforms in North-East China and Central China are designed to change the current "one-price system" into a "two-price" (capacity and energy) system".

Under the one-price system, the price paid by the distributors to the generation companies for electricity is fixed by the government. Therefore the way generation project investors seek to maximise the return on their investment is by setting the minimum KWh of electricity that must be purchased by the local distributor as high as possible. This means that the generation companies tend to seek to establish as large a project as possible which causes non-competitive practices in the construction of electricity plants and the waste of resources.

The two-price system provides a mechanism to introduce competition in the wholesale market by providing that the generation price be made up of:

(i) a capacity price (fixed by the government and based on a proportion of the average investment costs of generation companies); and
(ii) an energy price (decided by pool bidding or by pool bidding combined with bi-lateral contracts).

The purpose of setting up a two-price system is to protect the investors' interests whilst also encouraging free competition and cost control by the generation companies.

Retail market

As there is only one electricity distributor in each power supply area and the single distributor is always a vertically integrated operator, customers can only purchase energy, transmission and distribution service as a single product. There has therefore been no competition in the retail market. However reform in the retail market has been launched recently. In March 2004, SERC issued the Trial Interim Measures on the Direct Purchase to Electricity Generators by Users. According to these interim measures, large users can negotiate to purchase electricity from the electricity generators and electricity grid operators directly, subject to receiving prior permission from SERC. Currently SERC has approved a trial for large users that are directly purchasing in Jilin and Guangdong. It is reported that there are more than twelve provinces applying for the trials. Based on previous success, SERC also intends to gradually expand the trial regions.

Regulators and the scope of their authority

The main bodies at central and local government level that have authority to determine regulatory policies are:

- the National Development and Reform Commission at the central government level and its local bureaux;
- the State Electricity Regulatory Commission and its regional Electricity Regulatory bureaux; and
- the Ministry of Commerce at central government level and its local bureaux.

All three derive their powers pursuant to the authority bestowed upon them by the State Council.

Degree of independence

SERC is officially the regulator for the electricity sector. However, as with the NDRC and MOFCOM, it exercises its administrative function under the authorisation of the State Council which is part of the government.

In addition, due to the impact of the long period that the state electricity companies enjoyed a monopoly over the sector, the 11 entities that took over the role of the State Power Corporation are still, in practice, able to exercise some administrative function although, formally, such entities are themselves the subject of regulation.

Regulatory powers

The regulatory powers of the above-mentioned authorities are as follows:

- The National Development and Reform Commission
  The NDRC is responsible for formulating both the long-term and the five-year plans, and for fundamental policies for the power industry in China and for determining the pricing mechanisms. The NDRC's local bureaux are required to ensure compliance and implementation of the policies formulated by the NDRC within their jurisdiction. The Price Bureau is a department under the NDRC that is generally responsible for setting, and supervising compliance with, electricity prices.

- The State Electricity Regulatory Commission
  At the beginning of 2003 the State Economy and Trade Commission that formerly performed administrative and supervisory functions for China's electricity industry was abolished. The newly established MOFCOM took over most of its responsibility and rights. However it was the newly established SERC that took over the supervisory functions for the electricity sector including:

(i) regulating the electricity system and market;
(ii) formulating a national electricity development plan;
(iii) formulating and issuing standards in respect of the quality of services and procedures for handling and solving complaints relating to the quality of service;
(iv) supervising electric power security of supply;
(v) providing proposals for price regulation.

  Six regional Electricity Regulatory bureaux are currently being established under SERC to cover respectively Northeast China, Northwest China, East China, Central China, North China and South China. They will supervise and regulate the regional electricity sector participants and market, and be in charge of the enforcement of industry regulations within their respective areas. The main purpose for establishing regional bureaux is to break the barriers between provinces to pave the way of the establishment of unified national market.

  From December 2004 Electricity Regulatory offices were established one after another under six regional Electricity Regulatory bureaux in eleven cities to strengthen regulation within their respective provinces.

- The Ministry of Commerce
  The Ministry of Commerce is responsible for formulating regulatory policies relating to the functioning of the market, and the examination and approval of electric power projects invested by foreign investors.

Regulatory instruments

The main regulatory instruments used in the electricity sector include licences, concessions, rules, criteria and standards that are issued pursuant to the Electricity Law of 1995 and other relevant regulations, rules, circulars and responses. Licences are the main instrument used to regulate generators and grid operators.

Challenge of regulatory decisions

China's administrative review legislation provides for the grounds and procedures for the private sector to challenge the decisions of regulators. However this has been the subject of much recent debate in academic/legal circles and has yet to be perfected.

In general if a regulator makes a decision in respect of a specific case relating to pre-existing circumstances (a "concrete decision") that harms the interest of a company or an individual or a specific class of companies or individuals, the aggrieved party/ies may request reconsideration of the decision by the regulator at a higher level. For example, if a municipal Price Bureau issues a warning to an electricity distributor or imposes a penalty for over-changing, then the electricity distributor can appeal to the provincial Price Bureau to reconsider the matter.

If companies or individual are unable to obtain satisfaction with respect to a concrete decision by way of administrative review they can, in most cases, submit the matter to the PRC court system. In most cases, the companies or individuals can directly commence court proceedings to challenge such a decision without even commencing administrative review.

If a decision relates to the future rights and interests of companies or individuals generally (a "non-concrete decision") it is not normally challengeable on its merits. An exception is that, in certain cases, a company or individual may request reconsideration of a non-concrete decision when requesting reconsideration of a concrete decision that has been made pursuant to the non-concrete decision.

To date there have been few administrative review cases relating to the power sector in China because the governmental bodies and the operators have not been independent of each other. Challenges and issues, if any, have normally been raised through administrative channels and resolved internally.

According to the Price Law the authorities in charge of pricing should convene a hearing on the pricing of electricity before the price of electricity is decided by the government. Such hearings normally focus on the necessity and feasibility of pricing.

Regulatory regime

The main laws and regulations governing the power business are:

- The Electricity Law (promulgated on 28 December 1995)
  The Electricity Law is the highest level law specifically regulating the electricity industry. Its purpose is to protect the interests of the electricity investors, electricity operators and electricity users and to guarantee the safety of the electricity supply.

- The Decree on the Use and Supply of Power (promulgated on 17 April 1996)
  The Decree sets out provisions relating to the use and supply of electricity. Power suppliers can only supply electricity within a certain power supply division. It provides that power suppliers should charge end-users according to the price approved by the state.

- The Administrative Measures on the Supervision of Use and Supply of Power (promulgated on 19 May 1996)
  The Administrative Measures regulate the local power administrative departments (above the county level) that regulate and supervise power supply and use and grant them powers to impose sanctions in respect of any actions that violate the Electricity Law.

- The Decree on Power Grid Dispatching (promulgated on 29 June 1993)
  The Decree sets out the 5 different levels of dispatching organisations from national level down to county level and sets out regulations regarding how to deal with dispatching plans, rules, and dictates.

- The Implementation Measures of the Decree on Power Grid Dispatching (promulgated on 11 November 1994)
  These set out detailed measures relating to the administration of dispatching organisations, dispatching plans, interconnections between electricity grids and electricity generators, and the sanctions applicable to those who violate this Decree.

- The Measures on the Division and Administration of Power Supply (promulgated on 19 May 1996)
  The Measures provide that all electricity grid companies and generators who sell directly to end-users must apply for a licence for electricity supply. Electricity suppliers cannot supply power outside the areas to which the licence applies, unless authorised by the relevant electricity regulators. The divisions of power supply fall into four levels: the cross-provincial division; provincial division; municipal division; and county divisions.

- The Supplementary Regulations on the Measures of the Division and Administration of Power Supply (promulgated on 22 May 1997)
  The Supplementary Regulations were issued to ensure that the divisions of power supply were established fairly and reasonably and provide that applications for licences relating to the power supply divisions must be submitted to the regulators at provincial level.

- The Decree on the Protection of Electricity Facilities and its implementing rules (promulgated on 15 September 1987 and revised on 1 January 1998)
  This Decree and its implementing rules set out detailed rules on the protection of electricity facilities for the purpose of public safety and the smooth implementation of power generation and construction.

- The Measures on the Supervision of Electricity Market (promulgated on 13 October 2005)
  These Measures provide that SERC and its local bureaux are responsible for supervising the operation of the electricity market and its participants. These regulations empower SERC to penalise participants that violate laws and regulations in relation to the electricity market.

- The Trial Interim Measures on the Direct Purchase from Electricity Generators by Users (issued on 29 March 2004)
  The Trial Interim Measures were issued for the purpose of implementing aspects of the "Plan for the Reform of Electric Power System". They authorise large users to negotiate the forward purchase of electricity directly from electricity generators and electricity grid operators. During the current trial stage, participants in such arrangements require prior approval from SERC and the NDRC.

- The Regulation on Electric Power Supervision (promulgated on 15 February 2005)
  This Regulation establishes the competent authority for power supervision and sets out its duties and measures, as well as the liabilities of both the authority and the electricity entities for breaching the regulations.

- **The Interim Provisions for the Administration of Grid Power Price; the Interim Provisions for the Administration of Power Transmission and Distribution Price; the Interim Provisions for the Administration of End-sale Price (promulgated on 28 March 2005)**
  These Interim Provisions set out the mechanism for setting the price of power in accordance with the Plan for the Reform of Electricity Prices.

- **The Trial Measures for the Supervision of Electric Power Supply Services (promulgated on 21 June 2005)**
  The Trial Measures aim to regulate the activities of electric power supply entities in order to protect the rights and interests of end users.

- **The Provisions on the Administration of Electric Power Business Licences (promulgated on 13 October 2005)**
  The Provisions set out the formalities for obtaining licences for generation, transmission and distribution.

- **The Trial Rules on Operation of Power Grids (promulgated on 3 November 2006)**
  The Trial Rules were issued to regulate the safe operation of the power grid. They set out detailed rules on grid-connection and interconnection.

- **The Interim Measures on Supervision and Management of Power Generation Capacity Rights Trading (promulgated on 17 March 2008)**
  The Interim Measures provide for general rules with regard to the power generation capacity rights trading.

Generation

The construction of electricity projects are regulated by the NDRC, SERC and MOFCOM and their approval is required before the initiation of a project. In October 2005, SERC promulgated the rules that require electricity generators to obtain a licence for their electricity generation business. About 2341 generators have obtained licences up to September 2007. SERC planned to make all qualified generators obtain licences in 2010.

Transmission and distribution

The electricity transmission companies must obtain a licence for electricity transmission according to the Provisions on the Administration of Electric Power Business Licences. At the end of the year 2006, all of the 38 electricity transmitters have obtained such a licence.

All electricity grid companies and generators that supply electricity directly to end-users must obtain a licence to supply electricity from SERC. Under the Decree on Power Grid Dispatching and Measures on the Division and Administration of Power Supply, power project developers are required to apply to grid operators for the connection of their plants. If the electricity generators, plant and equipment, transformer substations and electricity networks meet all the necessary requirements, the grid operator is obliged to approve the developer's application. In addition, the developer needs to enter into a connection agreement with the grid operator. The responsibility for bearing the costs related to such connections are not dealt with in the Decree and Measures, although the usual practice is that the costs are borne by the generator.

The power transmission and distribution prices of network operators are determined by the government taking into account the principles of efficiency, cost control and incentive mechanisms.

Retail

As mentioned earlier, free competition in the retail sector is one of the aims of the price reform in power sector. However currently end-users can only purchase energy and transmission/distribution services as a single product and the NDRC sets the retail electricity price. The implementation of the trial measures that permit large users to purchase electricity directly from the generator is still at an early stage and to date very few large users have obtained the approval for such purchases. SERC is planning to approve more large users so that they are able to purchase directly from generators.

Special consents and permits required from governmental and regulatory agencies

In China the construction of any infrastructure project typically requires a series of approvals, authorisations and permits from various levels of governmental authorities. With regard to generation, transmission and distribution projects, the following, must be obtained as minimum:

- Approval from the NDRC or the local bureau for the proposed project and the designs for the construction of the facilities.
- Fixed asset investment permission from the NDRC or its local equivalent.
- Planning permission from the Urban Planning Bureau, if the project is located in an urban area.
- An environmental permit from the Environmental Protection Bureau.
- A business licence from the State Administration of Industry and Commerce if the project is to be constructed using a special project vehicle such as a joint venture or wholly foreign owned enterprise.
- Approval from MOFCOM (or its local bureau) and registration with the State Administration of Foreign Exchange (or its local bureau) if foreign investment is to be used to finance the project.

According to the Several Regulations on Power Projects Using Foreign Investment (issued on 20 March 1997) foreign companies can currently invest in power plants. In 2007, the latest "Industrial Guidance Catalogue for Foreign Investment" listed the construction and operation of power grids in the restricted category. This means that foreign companies are permitted to invest in the construction and operation of power grids from December 2007, provided that a Chinese party is the majority stakeholder in the relevant joint venture.

Although power generation is open to private and foreign investment, the government exercises control by imposing regulatory requirements on power projects (and entities acquiring interests in existing power plants) involving foreign investment.

For example, under the Several Regulations on Power Projects Using Foreign Investment a thermal power generating project that is to be financed using foreign investment is required to have at least one generating unit of not less than 300MW in order to promote higher generating efficiency.

Foreign investors can invest in power sector by:

(i) setting up an equity or cooperative joint venture;
(iii) setting up a wholly foreign-owned enterprise ("WFOE") (except for nuclear and hydroelectric power projects with a power output of over 250,000 KW);
(iv) purchasing foreign shares and B Shares (shares in Chinese companies that can be purchased by foreign investors) issued by a Chinese company;
(iv) acquiring part of existing assets owned by a Chinese company so as to create an equity or cooperative joint venture;
(vi) setting up a project company to invest in "build, operate and transfer" electricity projects; and
(vii) other mechanisms approved by the government.

The duration of the operation of an equity or cooperative joint venture (or the term of cooperation) or WFOE should not exceed: (i) 20 years for thermal power plants, (ii) 30 years for hydropower plants, and (iii) 25 years for nuclear power plants.

A proposed acquisition of a power plant must:

- meet the requirements for the duration of the new entity after acquisition;
- be consistent with the state's industrial policies; and
- be consistent with the power development long-term and five-year plans.

The foreign investor and the company to be acquired need to provide information to the authorities which satisfactorily evidences, amongst other things, the foreign company's legal status, the source of the funding for the proposed acquisition and the financing methods.

Regulation of monopolies and anti-competitive practices

Under the existing regulatory framework the main governmental bodies with authority to approve or reject mergers or other changes in control over businesses in the power sector are the:

- **National Development and Reform Commission**
  The NDRC will examine whether the proposed projects are in line with the public interest and relevant anti-monopoly regulations when the projects are submitted for its approval.
- **State Electricity Regulatory Commission**
  SERC supervises generators and grid operators with respect to the implementation of electricity pricing policy and the compliance with open and fair competition.

Anti-competitive practices have been of limited relevance in the power sector in China in view of its historical monopoly character. However, the recent power reform plan aims to achieve a certain degree of competition and this will increase awareness in this regard.

In 1993 China promulgated an Anti-Unfair Competition Law. On 30 August 2007, the Anti-monopoly Law was finally promulgated. It prohibits abuse of a dominant market position, which is relevant to the electricity sector. In addition, the Provisions of the State Council on Thresholds for Notification of Concentration of Business Operators was promulgated on 3 August 2008, in order to supplement the Anti-monopoly Law.

Cross-border trade

China has begun to engage in increasingly more cross-border electricity trading. Recently it has been importing electricity from Russia, Myanmar and North Korea and also exporting electricity to Vietnam, North Korea and Myanmar. In addition, it has plans to connect part of its electricity grid to the Thai power system in order to export electricity to Thailand.

The Foreign Trade Law and its subsidiary legislation govern foreign trade activities and there are, as yet, no special rules applicable to cross-border sales or deliveries of electricity in China. The Foreign Trade Law, as revised, provides that as from 1 July 2004 all legal persons and natural persons are permitted to engage in cross-border trading activities provided that they are duly registered with the Chinese government authorities.

Renewables policy and its implementation

The eleventh five-year plan encourages the development of new energy sources and renewable energy supplies. The Outline for the Development of New and Renewable Energy Industry (2000-2015) sets out the objectives for the proportion of the nation's energy to be provided by renewable energy as 0.7% for the period 2000-2005, 1.25% for the period 2006-2010 and 2% for the period 2011-2015.

As one of ways to promote clean energy, the Ministry of Finance promulgated the Interim Measures on Administration of Specialised Funds for Industrialisation of Wind-power Electricity Generation Facilities on 11 August 2008, according to which central government provides financial awards to Chinese controlled enterprises that meet certain criteria relating to industrialisation of wind-power electricity generation facilities.

Emissions control and allowance trading

The Chinese government has acknowledged the importance of environmental protection. Most environmental quality standards, pollution discharge standards and emission standards are compulsory and provide a benchmark for monitoring violations.

In 2003 China issued the Decree on the Administration of Levy and Use of Emission Fees. This:

- describes permitted types and amounts of emissions;
- gives details of the levy and use of emission fees; and
- establishes a penalty regime applying to polluters who breach the regulations.

The clean development mechanism (the "CDM") was established under Article 12 of the Kyoto Protocol adopted by the Third Conference of the Parties to the United Nations Framework Convention on Climate Change on December 11, 1997. The purpose of the CDM is to promote sustainable development in developing countries and to allow industrialised countries to earn emissions credits from their investments in emission-reducing projects in developing countries (including China). To date, China has dominated the CDM market to date and successfully attracted billions of dollars for inexpensive technological interventions to achieve emission reductions at polluting industries including power generation.

Moreover, according to the Instructive Opinion of the Ministry of Commerce on Attracting Foreign Investment for 2008 (promulgated on 6 Match 2008), foreign investment projects that are of an energy-saving and emission-reducing nature will be welcomed by the Chinese government.

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1574