

THE CONSUMERS FEDERATION OF KENYA (COFEK) PRESS STATEMENT
RELEASED ON MONDAY, NOVEMBER 11, 2013 AT THE PANAFRIC HOTEL,
NAIROBI

Members of the press, ladies and gentlemen. We have called this press conference to address our concerns at the manner in which the all-important energy sector has been run so far, its effects to the consumer and our recommendations.

We trust that those in the sector leadership particularly the Energy and Petroleum Cabinet Secretary (CS) Mr Davis Chirchir and his Principal Secretary (PS) Eng Joseph Njoroge will take our views for what they truly are - positive consumer feedback in the public interest.

Over two weeks ago, we wrote to Mr Chirchir who unlike most of his colleagues, hardly responds to correspondences. Obviously, this is a major undoing on his part.

In our view, Mr Chirchir is at best either misunderstood or his working style is not tenable with public service expectations in the new dispensation. At worst, he is either not working, indecisive or involved in underhand deals at consumer interest.

We have 4 issues to raise namely; Appointments of substantive CEOs at energy sector parastatals; Fate of the Kenya Petroleum Refineries Ltd; Our proposals on merger of energy sector bodies and our concerns on deteriorating quality of service to electricity and fuel consumers.

1. Appointment of Substantive CEO's at Parastatals

The CS has, without legitimate reason, unreasonably delayed appointment of substantive CEO's to very key consumer-interest parastatals such as the Kenya Electricity Generating Company (KenGen), Kenya Power (KPLC), Rural Electrification Authority (REA), Kenya Pipeline Company and most importantly, the Energy Regulatory Commission (ERC).

The indefinite wait on Mr Chirchir long after the respective boards of the said agencies submitted their nominees for appointment is hurting the entire sector, national economy and consumers given immense public anxiety especially among staff and remaining board members of the said institutions. This is not acceptable and reflects negatively on his competence and suitability against the vast mandate.

The excuses of lack of gender, regional balance, insiders or outsiders or any other to fill the plum jobs are too weak if ever they are confirmed to be the reasons the tight-lipped CS is using to delay the said appointments.

As all this is happening, and against Mr Chirchir's own pledge of a possible 2 cents per unit consumption as the least cost of power, ERC which has an acting CEO and whose board is not properly constituted as per the Consumer Protection Act, 2012 (Section 94) is likely to approve the new steep KPLC tariffs any time from next month. We will work with likeminded partners to

vigorously oppose such an eventuality especially if consumers are not consulted before such a verdict.

We are uncertain as to whether or not the contracts of the CEO's of Kenya Electricity Transmission Company (KETRACO) and Kenya Nuclear Electricity Board (KNEB) are due.

We are, however, aware of the grave governance situation at the National Oil Corporation of Kenya (NOCK) where the CEO's contract is ending in March 2014, she has not applied for extension within the set guidelines. Less than 5 months remaining, an advertisement for her replacement is yet to be placed.

We are also reliably informed that Mr Chirchir has since refused to meet with the NOCK board and is reported to only meet the Chairman and CEO. Like many other boards in the sector, NOCK has two unfilled vacancies and the board has not had a scheduled formal meeting for months.

On delayed appointments of CEO's, we must clarify that the CS has discretion on whom to appoint among the three nominees for each agency. If he has sufficient evidence and conviction of malpractice in the recruitment process, he can veto the board by asking for the recruitment process to be re-started. He however has no discretion on failing to respond and choose either option within a reasonable timeframe.

In terms of precedents, the former Head of Civil Service and Secretary to Cabinet, in 2011, introduced the requirement of 6 months notice for application for extension of contracts for parastatal CEOs. It was aimed at providing a seamless transition from one CEO to another. There is equally a limit within which an officer can be in an acting position.

Our conclusion is that Mr Chirchir is breaking the law with impunity. He must end his silence of conspiracy and do his job. The alternative is for him to voluntarily relinquish his position to someone who is willing to work.

We met with the Attorney General and informed him of this predicament. We urged him to advise his client as much. Article 232(1)(c)(e)(f) - which is not in vain - requires part of the values and principles of public servants to be efficient, responsive, prompt, effective and to offer equitable services.

The law further requires such officers to be accountable for their administrative acts as well as being transparent in providing to the public timely and accurate information. Weighed against this parameter, Mr Chirchir is doing the opposite.

The CS is also breaking provisions of Article 35 which requires that he cannot withhold important information from the public especially in this case where he is either indecisive and or grossly incompetent to discharge his mandate.

Mr Chirchir is breaking Article 153(4) which requires him, to act within the Constitution of Kenya 2010 provisions in discharging his duties as a CS and in which case he is individually accountable to the President

Our Recommendations:

If Mr Chirchir fails to make the said appointments or publicly offer a satisfactory explanation as to his inability to perform his key duties, within a further two weeks from today, Cofek will have no option other than to launch a simultaneous multi-prong lawful assault;

(a) Invoke provisions of Article 119 of the Constitution to petition Parliament, through the relevant Committee, to summon the CS to explain his inability to deliver and if found culpable commence proceedings to get him out of office

(b) Cofek and like-minded parties will commence a judicial petition on different grounds including the need for the CS to be declared unsuitable and incompetent to perform his duty given his inaction and impotence in making relevant decisions.

(c) Directly petition the appointment authorities namely the President and his Deputy to either transfer him to a lesser demanding position or simply replace him soonest. In the meantime, it will be in public interest if the head of public service Mr Joseph Kinyua appraises the performance of this particular CS with a view to advising the President accordingly.

(d) Call for peaceful demonstrations requiring that CS leaves office immediately.

We must also mention the growing concern that nearly all board positions and key management positions, against provisions of Article 232(1)(h)(i) are mostly held by Kenyans from two communities a scenario that must be reversed. The sector must be reviewed to reflect the face of Kenya.

2. Fate of the Kenya Petroleum Refineries Limited

The Cabinet Secretary has failed, yet gain, to offer leadership on this key consumer issue which has kept fuel prices too high. Its condition has kept the quality of fuel unpredictable and indeed the oil marketers have equally complained. A clear non-performing arrangement like KPRL will not need any further experiments. If India investors failed the Kenyan consumer terribly through the Essar deal, it is doubtful that Nigerians or other prospective investors will rescue the old refinery.

Viewed against its relatively small size, the refinery upgrade viability is no longer an attractive considering the high capital costs. We urge that the KPRL is immediately shut down and reasonable alternatives found for all its current employees. The politics of making employees or

certain investors temporarily happy will adversely hit both the economy and consumers too hard to bear. The sector can absorb the current employees of KPRL.

3. Our Proposals on Merger of Energy Sector Agencies

While we have not seen the Abdikadir Report on restructuring parastatals, our proposals are based on enhancing value addition by reducing unnecessary recurrent costs to the consumer as follows;

(a) That the Kenya Nuclear Electricity Board (KNEB) be disbanded and nuclear electricity be made a section within KenGen but reduced to a planning and safety unit. Kenya cannot, without exhausting green energy and other cheaper and more effective options, when superpowers are opting out of nuclear. It is also difficult to value addition of KNEB so far.

(b) Kenya Electricity Generating Company (KenGen) should be made efficient so as to absorb Geothermal Development Company, Wind Power, Solar as divisions with Managing Directors reporting to the KenGen CEO and with some level of autonomy.

(c) Kenya Electricity Transmission Company (KETRACO) take over all transmission work including that which is being done by Kenya Power (KPLC) which should only retain distribution function.

(d) That the at least 5 companies be licensed to compete with KPLC but allocated different regions. KPLC can retain former provinces of Nairobi and Central.

(e) ERC mandate needs to be enhanced and its monthly fuel pricing fixing ritual stopped. We need to see an independent ERC whose CEO has security of tenure. ERC must no longer be seen as a department of the Ministry of Energy and Petroleum busy taking instructions from Nyayo House chiefs.

4. Service Quality Standards

(a) For the past 6 months, power outages and surges have been a norm rather than an exception. A lot of inconvenience as well as direct losses accruing from damage of household goods as well as other equipment has become common. Kenya Power has particularly been too poor and unnecessarily bureaucratic on the form and time within which compensation is expected. We intend to bring a class action suit against Kenya Power soon. Consumers with unsettled claims are urged to send us their details as soon as possible. Finally, we urge Kenya Power to use SMS and emails to further inform consumers of power interruptions.

(b) We are also concerned at the near go-slow in which Kenya Power is issuing quotations for the new electricity connections before the window period of lower connection fees closes. We urge ERC to take leadership here and require that KPLC acts within the shortest time possible and guidelines and forms of compensation simplified and disseminated to all consumers.

(c) Nearly 60% of the fuel sold, according to our modest estimates, is adulterated. The value for money is being lost here. Vehicle engines fed on such adulterated fuel develop poor performance and shorter lifespan. While we commend ERC belated action of publishing names of dealers and stations affected, we find the very low fines not deterrent enough. The fact that the dealers are still allowed to sell the condemned fuel after re-opening their stations demeans the entire process.

Conclusion

The energy sector is very robust especially if the independent power producers can be managed well with a view to dropping them. The World Bank and other multi-lateral investment in the sector is worthy commendation. It is however, unfortunate the World Bank and such other development are not so keen about value for money, good governance and consumer protection within the sector. Impunity, bad leadership within the sector and particularly nepotism and political interference has made Kenyan consumers to pay a huge and ever rising price.

It is such arrangement that would see the ERC approve of unjustifiable arrangements such as asking consumers to repay the Sh630M private debt it owes the Water Resources Management Authority and further require consumers to pay 5cents per Kw/h. Just like we are in Court to stop this, the KPRL monopoly and other ills affecting consumers, we wish to assure Kenyans that we are willing to pay whatever the price to restore good governance within the energy sector. Thank you.

Stephen Mutoro
Secretary General