

Kenya's Energy Regulatory Commission Ramps Up Efforts to Ensure Compliance with Solar Water Heating Regulations

An electric power distributor or supplier is prohibited from providing electricity to premises where a solar water heating system has not been installed

Kenya's Energy Regulatory Commission (Commission) recently notified the public that all new buildings falling within specified categories are required to install, use and maintain solar water heating systems in accordance with the **Energy (Solar Water Heating) Regulations of 2012**. The affected premises include Domestic Residential Premises, Educational Institutions, Health Institutions, Hotels and Lodges, Restaurants, Cafeterias and other eating places, as well as Laundries. For buildings that were erected before the Regulations came into effect in May 2012, the Commission has set a deadline of May 25th, 2017 for compliance with the Regulations.

Under the Regulations, which were issued under the **Energy Act 2006**, all premises with hot water requirements of a capacity exceeding 100 litres should install and use hot water systems. This requirement was to be effected on all premises within 5 years of the date the Regulations came into effect, hence the May 25th, 2017 compliance deadline. All owners of premises, architects and engineers engaged in the design, construction, extension or alteration of premises are obliged under the Regulations to incorporate solar water heating systems in the designs of all new premises, as well as those of extensions or alterations to existing premises. Notably, the Regulations prohibit an electric power distributor or supplier from providing electricity to premises where a solar water heating system has not been installed in accordance with the Regulations.

While the Regulations have been in force for more than four years, compliance, especially where existing buildings are concerned, has been slow. Property owners and developers have raised concerns relating to the cost of compliance for both installation and maintenance of the solar heating systems. Estimated market rates for a complete solar water heater system for domestic use range between \$1,200 – 1,500 per unit, while those for commercial buildings are \$6,000 – 20,000, depending on water handling capacity.

Spot checks and inspections are undertaken by the Commission countrywide to ensure that they are in compliance with the Regulations. It is anticipated that the Commission will ramp up the frequency of spot checks and inspections of affected premises over the next several months as the compliance deadline looms. The applicable penalty for property owners and developers failing to comply with the Regulations is imprisonment for a period not exceeding 1 year or fine not exceeding Ksh 1 Million (approximately \$10,000). This may serve as a deterrent for smaller property owners, but it is unclear whether the penalty serves as sufficient deterrent for larger developers and it could be

argued that a \$10,000 penalty is a small price to pay for those developments valued at several million dollars.

Provision has been made for owners of certain premises to seek for exemption from compliance with the Regulations. Eligible premises include (a) premises with technical limitations; (b) premises incapable of incorporating solar heating systems due to their special circumstances; (c) premises supplied with hot water from a cogeneration plant in or proximate to the premises; (d) premises utilising electricity generated from renewable energy and the excess is used to heat water as a dump load; or (e) such other premises as the Commission may determine.

Applicants for exemption are entitled to have their exemption application processed within 45 days and the Commission is obliged to provide written reasons where an exemption application is declined. Persons aggrieved by a decisions of the Commission may appeal to the Energy Tribunal in accordance with Section 26 of the Energy Act within 30 days of the Commission's decision and thereafter to the High Court of Kenya.

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