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TWELFTH PARLIAMENT – SECOND SESSION – 2018

DEPARTMENTAL COMMITTEE ON ENERGY

REPORT ON THE PETITION BY MESSRS PIUS OMOLO AND MR. AGOI VEDELL ON BEHALF OF OIL MARKETERS IN COUNTRY REGARDING LICENSING OF OIL MARKETING COMPANIES BY ENERGY REGULATORY COMMISSION (ERC)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 DEC 2018	DAY: THURSDAY
TABLED BY:	Hon. Robert Pukose for Chair, Energy Committee
CLERK-AT-THE-TABLE:	Lemna Moses

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

DECEMBER, 2018

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ABBREVIATIONS

OMC – Oil Marketing Companies

ERC – Energy Regulatory Commission

KAA- Kenya Airports Authority

KRA – Kenya Revenue Authority

OTS – Open Tender System

JKIA – Jomo Kenyatta International Airport

KCAA – Kenya Civil Aviation Authority

FOREWORD

Pursuant to Standing Order No. 225 (2) (a) a Petition was tabled before the House by Hon Speaker on behalf Mr. Pius Omolo and Mr. Agoi Vedell representing Oil marketers in Country.

The Petition requests the National Assembly to investigate the massive influx of illegal oil marketers in the country with a view to eliminate them or cause them to be licensed in order to operate lawfully.

The Petition was referred to the Departmental Committee on Energy for consideration and report within sixty days as per the requirements of S.O. 227.

In considering the Petition, the Committee held meetings with the Mr. Pius Omolo and Mr. Agoi Vedell who appeared on behalf of the petitioners, representatives Oil Marketers in Kenya, Kenya Airport Authority (KAA), Kenya Civil Aviation Authority (KCAA), representative of local airlines in the country, and Energy Regulatory Commission (ERC). The meetings were aimed at inquiring into the issues raised in the petition.

The Committee appreciates the assistance provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions in considering the petition.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my duty to table on the Floor of the House the Report of the Committee on the Petition.

HON. DR. ROBERT PUKOSE, MP

EXECUTIVE SUMMARY

The Petition was tabled before the House by Hon Speaker on behalf Mr. Pius Omolo and Mr. Agoi Vedell on behalf of oil marketers in Country

The Petitioner points out that, despite the requirement for an Oil Marketing Company (OMC) to obtain license from Energy Regulatory Commission (ERC) to engage in the business of supplying Jet A1 fuel to airlines in Jomo Kenyatta Airport, Wllson Airport and other airports in the country, the market has been penetrated by unlicensed and illegal agents who are able to offer lower prices than Open Tender System prices (OTS)

The Petitioners requests the National Assembly to investigate the massive influx of illegal oil marketers in the country with a view to eliminate them or cause them to be licensed in order to operate lawfully.

This report has considered and responded to the prayers sought by Mr. Pius Omolo and Mr. Agoi Vedell on behalf of oil marketers in the Country regarding licensing of Oil Marketing Companies (OMC).

1.0 MANDATE OF THE COMMITTEE

The Departmental Committee on Energy derives its mandate from the provisions of Standing Order No. 216(5) which grants it amongst other functions:-

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House; and
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

2.2 Further, the Second Schedule to the Standing Orders mandates the Committee consider matters relating to the following subjects Fossils fuel exploration, Development, production, maintenance and regulation of energy

2.3 In executing this mandate, the Committee oversees various State Departments, namely:

- i. The State Department of Energy ; and
- ii. The State Department of Petroleum.

2.0 MEMBERS OF THE COMMITTEE

The Committee comprises the following Members-

1. The Hon. David Gikaria, M.P. - **Chairperson**
2. The Hon. (Dr.) Robert Pukose, M.P. - **Vice Chairperson**
3. The Hon. Cecily Mbarire, M.P.
4. The Hon. Ekomwa Lomenen James, M.P.
5. The Hon. Joseph Wathigo Manje, M.P.
6. The Hon. Lemanken Aramat, M.P.
7. The Hon. Oscar Sudi, Kipchumba, M.P.
8. The Hon. (Eng.) Vincent Musyoka Musau, M.P.
9. The Hon. Amina Gedow Hassan, M.P
10. The Hon. Abdikhaim Osman Mohamed, M.P
11. The Hon. Clement Muturi Kigano, M.P.
12. The Hon. Elisha Odhiambo, MP
13. The Hon. Elsie Muhanda, MP
14. The Hon. Gitau Faith Wairimu, M.P.
15. The Hon. Julius Musili Mawathe, MP
16. The Hon. Ken Chonga, MP
17. The Hon. Tindi Nicholas Mwale, MP
18. The Hon. Walter Owino, MP
19. The Hon. Mohammed Ali Lokiro, MP

2.1 COMMITTEE SECRETARIAT

1. Mr Benjamin Magut - First Clerk Assistant–Lead Clerk
2. Mr Douglas Katho - Third Clerk Assistant
3. Ms Brigita Mati - Legal Counsel
4. Mr David Ngeno - Research Officer
5. Mr Abdi Gorod - Fiscal Analyst
6. Mr Joseph Okong'o - Media Relations Officer
7. Mr John Ng'ang'a - Audio Recording Officer
8. Ms Sheila Chebotibin - Sergeant at Arms

3.0 LIST OF RECOMMENDATIONS

Having considered the Petition and met the Petitioners and other stakeholders the Committee therefore recommends that;-

- 1) **Energy Regulatory Commission (ERC) and Kenya Airports Authority must ensure that only licensed and fully compliant Oil Marketing Companies (OMC) are allowed to supply and sale Jet A1 fuel to the airlines operating in the Airports around the country.**
- 2) **ERC in conjunction with KAA to review and audit the status of all Oil marketing companies operating and supplying jet fuel in the country with a view of ensuring only licensed OMC's are in operation at the airports. The findings of the review and audit be submitted to the Committee within a period of 60 days.**
- 3) **Kenya Airports Authority (KAA) shall ensure that all the airlines that operate and fuel in the country engages only licensed Oil Marketing Companies for this purpose.**
- 4) **Energy Regulatory Commission (ERC) before licensing any Oil Marketing Company to supply Jet A1 to Airlines must possess the commensurate internationally accepted insurance as per International Civil Aviation Organization (ICAO) standards.**
- 5) **The ERC must ensure that all Oil Marketing Companies (OMC) that are issued with licenses must have internationally accepted infrastructure at the airports or proof of a joint venture for use of existing infrastructure facilities within the airports.**

- 6) The Kenya Revenue Authority to investigate Ms Pacific Aviation ,Ms ASM Kenya and all other companies providing hospitality for Oil Marketing Companies in the sale of Jet A1 fuel in the country to ascertain their tax compliance and their status of registration in Kenya
- 7) The National Treasury considers to exempt Jet A1 fuel from the 8% Value Added Tax as a way of giving incentives to the local aviation investment in the country in order for them to compete in the region.
- 8) Kenya Revenue Authority (KRA) put in place similar Tax regime on Jet A 1 fuel at Wilson Airport similar to the one at Jomo Kenyatta International Airport since several airlines at Wilson Airport are/becoming regional in their operations. An example is Safarilink Aviation which flies to Kilimajaro Airport but are subjected to different Jet A1 tax regime from Jambo Jet flying to Entebbe airport from Jomo Kenyatta International Airport.
- 9) The Competition Authority to review and investigate the business practices among the oil marketing companies involved in jet fuel business with a view to ensure a level playing field among the operators.

4.0 ACKNOWLEDGMENT

The Petition was tabled before the House by Hon Speaker on behalf Mr. Pius Omolo and Mr. Agoi Vedell representing Oil Marketers in the Country, this is in accordance with the provisions of Standing Order No. 225 (2) (a).

The Petition requests the National Assembly to investigate the massive influx of illegal oil marketers in the country with a view to eliminate them or cause them to be licensed in order to operate lawfully.

The Petition was referred to the Departmental Committee on Energy for consideration and report within sixty days as per the requirements of S.O. 227.

The Committee wishes to register its appreciation to Mr. Pius Omolo and Mr. Agoi Vedell who appeared on behalf of the petitioners, the representatives Oil Marketers in Kenya, officials from Kenya Airport Authority (KAA) and Kenya Civil Aviation Authority (KCAA), the Director General of Energy Regulatory Commission (ERC) and officials of local airlines in the country for attending Committee sitting and presentation on issues raised in the petition.

The Committee appreciates the assistance provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions in considering the petition.

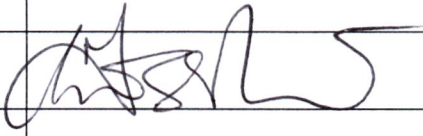
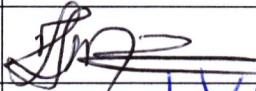

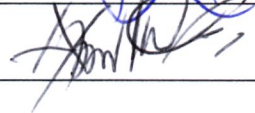

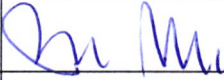
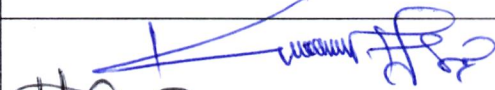

On behalf of the Committee, and pursuant to Standing Order, 227 it is my duty to table on the Floor of the House the Report of the Committee on the petition.

Sign..........Date.....

THE HON. DR. ROBERT PUKOSE, MP

VICE CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENERGY

ADOPTION LIST FOR COMMITTEE REPORT ON THE PUBLIC PETITION

	NAMES	SIGNATURE
1.	Hon. David Gikaria , MP Chairperson	
2.	Hon. (Dr) Robert Pukose , MP (Vice Chair)	
3.	Hon. Cecily Mbarire , MP	
4.	Hon. Ekwoma Lomenen James , MP	
5.	Hon. Joseph Waithigo Manje ,MP	
6.	Hon. Lemanken Aramat, MP	
7.	Hon. Oscar Sudi Kipchumba , MP	
8.	Hon. Vincent Musyoka Musau ,MP	
9.	Hon. Amina Gedow Hassan ,MP	
10.	Hon. Abdikahim Osman Mohamed ,MP	
11.	Hon. Clement Muturi Kigano, MP	
12.	Hon. Elisha Odhiambo, MP	
13.	Hon. Elsie Muhanda, MP	
14.	Hon. Gitau Faith Wairimu , MP	
15.	Hon. Julius Musili Mawathe , MP	
16.	Hon. Kern Chonga , MP	
17.	Hon. Mohamed Ali Lokiro , MP	
18.	Hon. Tindi Nicholas Mwale , MP	
19.	Hon. Walter Owino ,MP	

5.0 INTRODUCTION

- 5.1 The Petition was tabled before the House by Hon Speaker on behalf Mr. Pius Omolo and Mr. Agoi Vedell representing oil marketers in the Country. The Petition was tabled Pursuant to Standing Order 225 (2) (b) by the Hon. Speaker on behalf of the petitioners on Wednesday 3rd October, 2018.
- 5.2 Pursuant to the House rules, the Petition was referred to the Committee on 3rd October, 2018 for consideration and preparation of a report within 60 days. The Committee considered the Petition pursuant to the provisions of Standing Order 227.
- 5.3 The Petitioners wished to draw to the attention of the House on the following, that:
1. Over the past years the Oil Companies have been licensed by the Energy Regulatory Commission (ERC)
 2. Despite the requirement for Oil Marketing Company to obtain licenses prior to engaging in the business of supplying Jet fuel to airlines at Jomo Kenyatta International Airport (JKIA) and Wilson Airport among others, the market has been penetrated by unlicensed and illegal agents who are able to offer lower prices than Open Tender System (OTS) prices therefore distorting prices
 3. As a result , Oil Marketing Companies have incurred losses due to the fact that the local oil marketers have invested in infrastructure and the pricing of jet fuels is based on the OTS as required by Law
 4. There is need to investigate the influx of illegal marketers in the country and reconsider the manner in which the pricing of jet fuel is undertaken.

5. Despite efforts of the petitioners raising the matter to ERC and Ministry of Petroleum, the response was unsatisfactory.

5.4 Petitioners in their prayers, sought that the National Assembly, investigates and inquire into all the issues raised in the petition and gives direction it deems fit in the circumstances.

6.0 SUBMISSIONS AND EVIDENCE

6.1 PRESENTATION BY THE PETITIONERS

While appearing before the Committee on 6th November, 2018 and 4th December, 2018, the Petitioners made the following submission;

1. Illegal & Un-licensed Agents at the Airports

Despite the requirements for Oil Marketing Companies (OMC) to obtain licenses prior to engaging in the business of handling and supplying Jet fuel to airlines at Jomo Kenyatta International airport (JKIA) and Wilson Airport among others, unlicensed and illegal agents have penetrated the market. Some of the companies that are suspected to be operating illegally is Pacific Aviation, ASM, Skytanking and World Fuels Aviation.

That, some companies operating as middlemen at JKIA and Wilson airport are unlicensed and are hence undertaking petroleum business activities illegally. These agents do not declare income nor do they pay taxes in Kenya creating a possibility of tax leakage that is denying Kenya Revenue Authority revenue that could lead to economic crimes.

The unlicensed and illegal agents have not invested in aviation facilities in the country. They should be investigated and de-licensed to protect local OMC's who have invested in refueling equipment, insurances and facilities that play a significant role in the success of the aviation industry, national security, safety of passengers and protection of the national economy.

That, KAA should be compel to formally issue a circular to all carriers authorized to refuel in Kenya that it constitutes a breach of Law to contract for delivery of Jet-fuel in this jurisdiction with persons who do not hold valid petroleum Business licenses, and the Energy Regulatory Commission (ERC) to investigate local OMC that are hosting such illegal and unlicensed suppliers and warn them to forthwith desist from such arrangements.

That, part of requirement to grant license to deal with Jet A1 fuels should include investment in the Kenya Pipeline Company initial line fill. This is in accordance to Section 80(1) of the Energy Act, any person undertaking the business of Importation, Exportation, Wholesaling, Retailing, Storage and /or transportation of petroleum products should only do so under the terms and conditions of a valid license issued by the Energy Regulatory Commission.

2. Open Tender System (OTS) pricing versus MOPAG at the Airports

To ensure centralized collection of revenue, the Government of Kenya enforced compulsory industry imports in line with the provision of Legal Notice No. 197 of 2003, which requires oil-marketing companies operating in Kenya to import all their oil requirements through the Open Tender System (OTS). The Government of Kenya calls for monthly tenders and awards to the lowest bidder, that is, the company offering the lowest Freight & Premium (F&P)

The OTS as adopted by the Ministry of Energy remains the most competitive and transparent import mechanism and helps stabilize prices and provides an avenue for price regulation as seen in the retail sector of the petroleum industry.

That, ERC be tasked to review the licensing of companies operating at the airports and pricing of Jet A-1 in Kenya. Licensing OMC operating at the airports should be restricted to OMC who participate in the OTS and comply with the full requirements by ERC license for Import, Export Storage, Wholesale and Distribution of Jet A1. This should include investment in the Kenya Pipeline

Company initial line fill. An order should be issued to illegal and unlicensed middlemen to stop operating at the airports within 14 days.

Though all Jet A-1 imports into Kenya for supply to airlines are priced on OTS basis, the international airlines have consistently insisted on evaluating offers on Mean of Plats Arab Gulf (MOPAG) which if allowed to continue, shall effectively extinguish the legally binding tender system (OTS) in the aviation business. The formula is transparent, the customer airline gets to see the pure differential, the cargo is transparent and competitive i.e. Lowest Freight & Premium advantage is passed to the customer. It ensures reliability of supply in a constraint market as the industry gets priority.

That, ERC should issue a circular within 14 days to regulate and publish airport prices every month based on OTS, as is best practice in several international airports. Many international airports worldwide issue Published Airport Prices (PAP) monthly to regulate prices and protect investments by their local oil suppliers.

Measures to be taken by Government authorities to curb the malpractices in the aviation industry and ensure taxes are collected.

1. Proposed measures to be taken by ERC for Jomo Kenyatta International Airport (JKIA)

To qualify for the ERC Petroleum Business licenses OMC wishing to supply Jet aviation to airlines at Kenya's airport should be compelled to do the following:

- ❖ Participate in the OTS and meet minimum requirements by ERC and hold license for Import, Export Storage, Wholesale and Distribution of Jet A1. This should including investment in the Kenya Pipeline Company initial line fill.
- ❖ Obtain to operate in Kenya by providing proof a Certificate of Incorporation CR12 and provide annual Tax Compliance Certificate and PIN

Certificate showing Income Tax, PAYE and VAT status.

- ❖ Obtain a valid KRA facility Compliance Certificate
- ❖ Obtain Nairobi City Council Single Business Permit Issued by Nairobi City Council (Nairobi County Government)
- ❖ Obtain a valid Aviation liability insurance cover of USD 1.25 billion from a first class provider.
- ❖ Invest in Jet A1 into plane refueling dispensers, parking facilities, training, office space
- ❖ Obtain a valid Membership Certificate of the Joint Inspection Group (JIG)

2. Proposed measures by ERC for OMCs operating at Wilson Airport

To qualify for award of ERC licenses for OMC wishing to supply Jet aviation to airlines at Wilson Airport should be compelled to do the following:

- ❖ Obtain a valid County Government of Nairobi Fire Prevention Department Clearance Certificate
- ❖ Provide to Kenya Bureau of Standards Quality Plans and evidences of the Process Controls
- ❖ Obtain OSHA Certificate of Registration of A Workplace for Storage and Sales of Aviation Fuels & Jet-A1
- ❖ Obtain Certificate of Compliance as per the Physical Planning Act (Cap 286)
- ❖ Obtain National Environmental and Management Authority (NEMA) Environment Impact Assessment (EIA) License

3. Proposed measures to be taken by KAA

To qualify for award of KAA licenses for OMC wishing to operate and supply Jet aviation to airlines at JKIA & Wilson Airports OMC should be compelled to obtain a license to provide Fuel and related Products at the airports

4. Proposed measures to be taken by KCAA

To qualify for award of KCAA licenses for OMC wishing to operate and supply Jet aviation to airlines at Jomo Kenya International Airport OMC should be compelled to meet regulation 93 of Civil Aviation (Aerodromes) Regulations and get approval to construct fuel facilities.

6.2 PRESENTATION BY THE ENERGY REGULATORY COMMISSION (ERC)

While appearing before the Committee on 6th November 2018 Mr. Pavel Oimeke, Director General ERC submitted that:

- a) ERC is a single sector regulatory agency established under the Energy Act No. 12 of 2006 (the Act) and has responsibility for the economic and technical regulation of electric power, renewable energy and downstream petroleum. The objects and functions of the Commission are set out in Section 5 of the Act while Section 6 sets out its powers.
- b) The objects and functions of ERC are set out in Section 5 of the Act and include:
 - (a) to regulate:
 - i. Importation, exportation, generation, transmission, distribution, supply and use of electrical energy;
 - ii. Importation, exportation, transportation, refining, storage and sale of petroleum and petroleum products;
 - iii. production, distribution, supply and use of renewable and other forms of energy;
 - (b) To protect the interests of consumer, investor and other stakeholder interests.
 - (c) To maintain a list of accredited energy auditors as may be prescribed;
 - (d) To monitor, ensure implementation of, and the observance of the principles of fair competition in the energy sector, in coordination with other statutory authorities;
 - (e) To provide such information and statistics to the Minister as he may from time to time require;

- (f) To collect and maintain energy data;
 - (g) To prepare indicative national energy plan; and
 - (h) To perform any other function that is incidental or consequential to its functions under this Act or any other written law.
- c) Jet A1 is imported as Dual Purpose Kerosene (DPK) and is discharged to Kenya Pipeline Company Limited's (KPC) tanks in Mombasa. Upon declaration by the importer, part of the DPK quantity becomes Jet A1 while the balance becomes Illuminating Kerosene (IK). Jet A1 is then treated with special caution to prevent dirt and water infiltration. Tanks for storage of Jet A1 are fitted with special filters to avoid contamination by water and dirt.
- d) Jet A1 business is regulated under Section 80 of the Energy Act 2006 that mandates ERC to issue licences to persons engaged in the importation, refining, exportation, wholesale, retail, storage or transportation of petroleum. Persons engaged in the sale of Jet A1 in Kenya are therefore required to possess valid licences as follows:
- i. Import, Export and Wholesale of Petroleum Products (Except LPG) – for persons importing Jet A1;
 - ii. Storage of Petroleum Products (Except LPG) for persons storing Jet A1;
 - iii. Export and Wholesale of Petroleum Products (Except LPG) or Export and Wholesale of Jet A1 for persons undertaking wholesale trade in Jet A1.
- e) Jet A1 at Moi International Airport is supplied through special aviation vehicles called bowsers, which collect/ load Jet A-1 from KPC's PS 12 depot located within the airport. The storage facility is licensed by ERC for Storage of Petroleum Products (Except LPG). Jet A1 traders at MIA do not therefore require to build a storage facility but rather are supplied through the KPC PS 12 loading system. All the traders require are bowsers/dispensers that can collect

- Jet A1 and deliver it to the aircrafts. The bowsers/dispensers can be owned or hired to facilitate each individual trader's operational equipment requirements.
- f) Jet A1 at Jomo Kenyatta International Airport is supplied through a hydrant system connected to KPC's depot located in close proximity to the airport. The storage facility is licensed by ERC for Storage of Petroleum Products (Except LPG).
 - g) Jet A1 traders at JKIA do not therefore require to build a storage facility but rather are supplied through the KPC hydrant. All that the traders require to undertake aircraft refueling are dispensers that connect to the hydrant system and deliver Jet A1 into the aircrafts. The dispensers can be owned or hired as part of each individual trader's operational equipment requirements. Some of the traders at JKIA are Total Kenya PLC, Vivo Energy Kenya Limited, Gulf Energy Limited, Libya Oil Kenya Limited, Word Fuel Services Kenya Limited, Skytanking (K) Limited and Skywagon Company Limited. These companies are licensed by ERC for Export and Wholesale of Petroleum Products (Except LPG).
 - h) Jet A1 at Wilson Airport is supplied from four (4) facilities with above ground petroleum storage tanks. These facilities are owned and operated by Total Kenya PLC, Vivo Energy Kenya Limited, Gulf Energy Limited and Flamex Petroleum Limited. These facilities are licensed by ERC for Storage of Petroleum Products (Except LPG) and the companies possess Export and Wholesale of Petroleum Products (Except LPG) licences as well
 - i) Jet A1 at Eldoret International Airport is supplied from an above ground petroleum storage facility owned and operated by Total Kenya PLC. The facility is licensed by ERC for Storage of Petroleum Products (Except LPG) and the company possesses an Export and Wholesale of Petroleum Products (Except LPG) licence as well.
 - j) Jet A1 at Kisumu International Airport is supplied by specialized aviation bowsers/ dispensers, which collect Jet A-1 from KPC's depot located in close

proximity of the airport. The storage facility is licensed by ERC for Storage of Petroleum Products (Except LPG).

- k) Jet A1 traders at KIA do not therefore require to build a storage facility but rather are supplied from KPC depot. All that the traders require are dispensers that connect to the hydrant and deliver Jet A1 into the aircrafts. The bowsers/dispensers can be owned or hired as part of each individual trader's operational equipment requirements.
- l) The requirement to get license for Export and Wholesale of Jet A1 include
 - i. Certificate of Incorporation/Business registration certificate – company must be incorporated in Kenya;
 - ii. CR 12 from Registrar of Companies (not older than 12 months) for Limited Companies;
 - iii. Legible copies of Identification documents for all the directors (IDs/passports);
 - iv. Work permits Class "G" for foreign directors as per the CR12;
 - v. Valid tax compliance certificate from Kenya Revenue Authority; and
 - vi. Single Business Permit for the office premises from the County Government
- m) The requirement to get license for Storage of Petroleum Products (Except LPG) include
 - i. Certificate of Incorporation/Business registration certificate – company must be incorporated in Kenya;
 - ii. CR 12 from Registrar of Companies (not older than 12 months) for Limited Companies;
 - iii. Legible copies of Identification documents for all the directors (IDs/passports);
 - iv. Work permits Class "G" for foreign directors as per the CR12;
 - v. Valid tax compliance certificate from Kenya Revenue Authority; and

- vi. Single Business Permit for the storage facility from the County Government
- vii. Environmental Impact Assessment licence from NEMA
- viii. Confirmation from Kenya Bureau of Standards that the facility complies with the Kenya Standard (Inspection Report)
- ix. Fire clearance certificate from the County Government
- x. Certificate of registration of workplace from the Directorate of Occupation Safety and Health Services.
- xi. Valid certificate of Calibration of the petroleum tanks

n) The requirement to get license for Transport of Jet A-1 include

- i. CR 12 from Registrar of Companies (not older than 12 months old) for Limited Companies;
- ii. Legible copies of Identification documents for directors (IDs/passports)
- iii. Certificate of incorporation/business registration certificate
- iv. Work permits Class "G" for foreign directors as per the CR12
- v. Valid tax compliance certificate from KRA;
- vi. PIN/VAT Certificate;
- vii. Single Business Permit for the office premises from the County Government
- viii. A valid certificate of calibration for the tanker mounted on each vehicle
- ix. Fire certificate for the vehicle from the County Government office by Chief Fire Officer
- x. A valid Motor Vehicle Inspection Certificate for each prime mover and trailer
- xi. Log books for each prime mover and trailer(Attach lease agreement if not in the name of owner/company)

- xii. A list of vehicles; prime mover paired to trailer where necessary (In Microsoft Excel)
- o) ERC received a complaint from a section of the market in May 2018 about traders at JKIA and Wilson whom they suspected were in business without the requisite licences under the Energy Act 2006. Some of the traders and agents in that market complained about World Fuels Services Kenya Limited and Skytanking (K) Limited. Even though ERC noted that the two (2) companies were licensed, the complainants were invited to a meeting at ERC where the matter was extensively discussed. ERC then wrote to Kenya Airports Authority via a letter dated 21st May 2018 requesting KAA to ensure that all traders supplying Jet A1 to the airports and airstrips in the country were duly licensed by ERC. Since then, the complainants did not pursue the matter further until this petition.
- p) Jet A1 is not price controlled unlike Illuminating Kerosene and market forces of supply and demand therefore determine the price. The entry into the market of many traders in Jet A1 has increased competition and it therefore means that companies must continuously restructure their operations to remain competitive
- q) Supply of Jet A1 to the airports and airstrips in Kenya is highly regulated. However, ERC will collaborate with Kenya Airports Authority (KAA) to ensure that every operator or agent purporting to supply petroleum products at airports and airstrips is fully licensed as required by the Energy Act No. 12 of 2006.
- r) List of Companies Licensed to Deal in the Storage of Jet A-1
 - 1. Kenya Pipeline Company Limited
 - 2. Vivo Energy (K) Limited
 - 3. Libya Oil Kenya Limited
 - 4. Total Kenya Limited
 - 5. Gulf Energy Limited

6. Flamex Petroleum Limited

s) List of Companies Licensed to Deal in the Transport of Jet A-1

1. Kenya Pipeline Company Limited
2. Jakline Company Limited
3. Multiple Hauliers (E.A) Ltd
4. Afyare Enterprises Co. Ltd
5. Heller Petroleum Limited
6. Kengas Link Ltd
7. Byline Investment Ltd
8. Laser Freight Limited
9. Sibed Transport Company Limited
10. Hajo Communications Limited
11. Luqman Petroleum Limited
12. Tristar Transport Limited
13. Awadh Omar Bayusuf And Sons Limited
14. Elwak Services
15. H.H Dimbil Limited

s) List of Companies Licensed to Deal in Jet A1 Export and Wholesale of Jet A-1

1. Vivo Energy (K) Limited
2. Total Kenya Limited
3. Gulf Energy Limited
4. Flamex Petroleum Limited
5. Aeroglobal Aviation Services Ltd
6. Finejet Limited
7. Tristar Transport Limited
8. Kenolkobil Limited
9. Heller Petroleum Limited
10. Dalbit Petroleum
11. Bakri Energy Limited

12. Hared Energy Limited
13. Mogas Kenya Limited
14. Texas Energy Limited
15. Zacosia Trading Limited
16. Lake Oil Limited
17. World Fuels Services Kenya Limited
18. Skytanking (K) Limited.

6.3 PRESENTATION BY THE AIRLINES

Appearing before the Committee on officials from Kenya Airways, Fly540 Aviation and Safarilink Aviation submitted that:

- a) The supply of Jet fuel to their airlines are carried out strictly on commercial terms between the concern airline and fuel suppliers based on a competitive prices offered.
- b) The airlines prequalify fuel supplier as per the airline policy and it is a standard industry practice that airlines would contract several OMC to supply Jet fuel to their aircraft with each supplier given a quota to supply
- c) Airline through very strict procurement process would only contract an OMC as Jet fuel supplier having been fully licensed by ERC and meeting other airline requirements e,g insurance covers etc.
- d) Kenya Airways pointed out that among its Jet fuel suppliers is Ms. ASM and it presented to the Committee MS ASM license granted by ERC
- e) Fly540 airlines informed the Committee that it had contracted Ms. Pacific Aviation as its fuel supplier however Ms. Pacific would in turn contract OMCs like Vivo and Oillibya to physically fuel Fly540 aircrafts
- f) The present Airline officials also pointed out that there exist illegal agents in both JKIA and Wilson who deal with Jet fuel and had even approached them for business. They noted that majority of this illegal agents are foreign companies

6.4 PRESENTATION BY THE KENYA AIRPORTS AUTHORITY (KAA)

While appearing before the Committee on 6th November 2018 Kenya Airports Authority (KAA) submitted that:

- g) The supply of Jet fuel to airlines at our airports is carried out strictly on commercial terms between the concern airline and fuel suppliers based on a competitive OTS. Kenya Airports Authority does not weigh on the outcome of the process.
- h) Having being identified by ERC the supplier seeks KAA's authority for requisite operational space. This can be in form of office space or land to set up equipment fuel farm.
- i) As per the KAA Policy on leases, licenses and concessions 2016, such request are subjected to the following
 - i. That such space to establish a fuel facility is provided in the Airport master plan
 - ii. The supplier has requisite license from ERC
 - iii. Proof of client (airline) contract
 - iv. Requisite insurance cover
 - v. Limited to an optimal number, guided by traffic levels at the airport
- j) Whereas the policy became operational in 2016, fuel suppliers at Jomo Kenyatta International Airport and Wilson Airport have been in operation prior to the stated date.

7.0 OBSERVATIONS

In view of the various meetings and deliberations as well as evidence adduced/submitted, the Committee made the following observations, that:-

- 1) The Committee noted that the OTS is a competitive and transparent process where all the competing firms have submitted to have confidence in the process.
- 2) In order to ease collection of revenue, the Government has enforced compulsory industry imports in line with the provision of Legal Notice No. 197 of 2003, which requires oil-marketing companies operating in Kenya to import all their oil requirements through the Open Tender System (OTS). The Ministry of Petroleum calls for monthly tenders and awards to the lowest bidder, that is, the company offering the lowest Freight & Premium (F&P).
- 3) Jet fuel is Tax exempt for aircraft undertaking International flights while that of use for local flights are taxed.
- 4) Energy Regulatory Commission (ERC) is the only lawful institution that license Oil Marketing Companies (OMC) that sale, import, transport and store Jet fuels subject to meeting all requirements for licensing.
- 5) The supply of Jet fuel to airlines at the designated airports is carried out strictly on commercial terms between the concerned airline as clients and fuel suppliers based on a competitive MOPAG pricing model and as well as company's marketing/operational.
- 6) Major airlines undertake procurement of jet fuel through pre-qualified suppliers to supply for a certain agreed period. However some of the pre-qualified suppliers and who are awarded tender for supply of jet fuel use other players in the industry to supply on their own behalf in what is an industry practice called '**hospitality**'.

- 7) Kenya Airports Authority (KAA) grants the requisite operational space to the OMCs that have been approved by ERC.
- 8) There are eighteen (18) Oil Marketing Companies (OMC) licensed by Energy Regulatory Commission (**Annex 3**) to supply Jet fuels to airlines in Kenya. However some of the alleged suppliers do not hold current requisite licenses.
- 9) That according to ERC, Ms Pacific Aviation, a company that is also contracted by Fly540 aviation to supply Jet fuels has no requisite current license from ERC.
- 10) KAA whose mandate is to grant operational space for OMCs to operate at JKIA submitted that Ms ASM a company contracted to supply jet fuel to Kenya Airways has the requisite current licenses. However in its submissions KAA indicated that Ms ASM and Ms Pacific is not one of the companies approved and licensed by KAA for purposes of operating in JKIA and Wilson airport for purposes of supplying Jet Fuel.
- 11) There are different tax regimes on Jet fuel in Jomo Kenyatta International Airport and Wilson Airport. Jet fuel at JKIA is tax exempt and airlines offering local flights are expected to remit VAT for the fuel consumed after consumption whereas at Wilson Airport like the rest of the airports in the country have jet fuel taxed at source creating market distortions and unfair competition amongst industry players.

8.0 RECOMMENDATIONS

Having considered the petition and met the petitioners and other stakeholders the Committee therefore recommends that:-

- 1) Energy Regulatory Commission (ERC) and Kenya Airports Authority must ensure that only licensed and fully compliant Oil Marketing Companies (OMC) are allowed to supply and sale Jet A1 fuel to the airlines operating in the Airports around the country.

- 2) ERC in conjunction with KAA to review and audit the status of all Oil marketing companies operating and supplying jet fuel in the country with a view of ensuring only licensed OMC's are in operation at the airports. The findings of the review and audit be submitted to the Committee within a period of 60 days.

- 3) Kenya Airports Authority (KAA) shall ensure that all the airlines that operate and fuel in the country engages only licensed Oil Marketing Companies for this purpose.

- 4) Energy Regulatory Commission (ERC) before licensing any Oil Marketing Company to supply Jet A1 to Airlines must possess the commensurate internationally accepted insurance as per International Civil Aviation Organization (ICAO) standards.

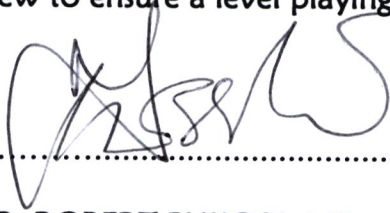
- 5) The ERC must ensure that all Oil Marketing Companies (OMC) that are issued with licenses must have internationally accepted infrastructure at the airports or proof of a joint venture for use of existing infrastructure facilities within the airports.

- 6) Kenya Revenue Authority to investigate Ms Pacific Aviation ,Ms ASM Kenya together with all other companies providing hospitality for Oil

Marketing Companies in the sale of Jet A1 fuel in the country to ascertain their tax compliance and their status of registration in Kenya

- 7) The National Treasury considers to exempt Jet A1 fuel from the 8% Value Added Tax as a way of giving incentives to the local aviation investment in the country in order for them to compete in the region.
- 8) Kenya Revenue Authority (KRA) put in place similar Tax regime on Jet A 1 fuel at Wilson Airport similar to the one at Jomo Kenyatta International Airport since several airlines at Wilson Airport are/becoming regional in their operations. An example is Safarilink Aviation which flies to Kilimajaro Airport but are subjected to different Jet A1 tax regime from Jambo Jet flying to Entebbe airport from Jomo Kenyatta International Airport.
- 9) The Competition Authority to review and investigate the business practices among the oil marketing companies involved in jet fuel business with a view to ensure a level playing field among the operators.

Signed.....



.....Date.....

6/12/2018

HON. DR. ROBERT PUKOSE, MP
Vice Chairman, Departmental Committee on Energy.

03 OCT 2018

DIRECTOR COMMITTEE SERVICES

Directorate of L&P (NA)
The Table Office

M E M O

TO: DIRECTOR, COMMITTEE SERVICES

FROM: PRINCIPAL CLERK ASSISTANT I
(HEAD OF TABLE OFFICE)

DATE: October 02, 2018

SUBJECT: PUBLIC PETITION

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03/10/18

The following Petition was presented to the House, on Tuesday, October 02, 2018:-

- Conveyance regarding licensing of Oil Marketing Companies by the Energy Regulatory Commission (ERC) (*referred to the Departmental Committee on Energy*).

Enclosed, please find attached the Petitions for your necessary action.

RANA K. TIAMPATI
(Encls.)

Copy to: -

1. Clerk of the National Assembly
2. Director of Legislative & Procedural Services
3. Chairperson, Departmental Committee on Defence and Foreign Relations
4. Chairperson, Committee on Implementation

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REPUBLIC OF KENYA
TWELFTH PARLIAMENT - (SECOND SESSION)
THE NATIONAL ASSEMBLY
PUBLIC PETITION
(No. 105 of 2018)

**REGARDING LICENSING OF OIL MARKETING COMPANIES BY THE
ENERGY REGULATORY COMMISSION (ERC)**

Honourable Members,

Standing Order 225(2)(b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I therefore wish to convey to the House that my office has received a Petition signed by Messrs. Pius Omollo and Mr. Agoi Vedell on behalf of Oil Marketers in the Country regarding licensing of oil marketing companies by the Energy Regulatory Commission (ERC).

Honourable Members,

The Petitioner avers that for the past years, ERC has been licensing Oil Marketing Companies prior to engaging in the business of supplying fuel and it has emerged that unlicensed and illegal agents have stormed oil markets occasioning distortion of market prices and massive losses. The Petitioner further avers that Oil Marketing Companies have incurred massive losses due to the fact that the local oil marketers have invested in infrastructure and the pricing of the jet fuels is based on Open tender System as stipulated in the law.

Honourable Members,

The Petitioner therefore prays that the National Assembly investigates the massive influx of illegal oil marketers in the country with a view to eliminate them or cause them to be licensed in order to operate lawfully.

Honourable Members,

This Petition therefore stands committed to the Departmental Committee on Energy for consideration. The Committee is requested to consider the Petition and report its findings to the House and petitioners in accordance with Standing Order 227(2).

I thank you!



THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Tuesday, October 02, 2018

PETITION PURSUANT TO ARTICLE 119 OF THE CONSTITUTION, PETITION, PETITION TO PARLIAMENT (PROCEDURE) ACT NO. 22 OF 2012 AND THE NATIONAL ASSEMBLY STANDING ORDERS BY LICENSED OIL MARKETERS

TO THE SPEAKER OF THE NATIONAL ASSEMBLY,
P.O BOX 41842-00100,
NAIROBI.

DHS
w/ advise
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RE: LICENSING OF OIL MARKETING COMPANIES BY THE ENERGY REGULATORY COMMISSION PURSUANT TO THE PROVISIONS OF THE ENERGY ACT, 2006

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1. THAT we are the undersigned Petitioners representing oil marketers in the country seeks to Petition the National Assembly on matters relating to supply of jet fuel in Kenya.
2. THAT over the past years the Oil Companies have been licensed by the Energy Regulatory Commission hereinafter referred to as ERC.
3. THAT despite the requirements for an Oil Marketing Company to obtain licenses prior to engaging in the business of supplying Jet fuel to airlines at Jomo Kenyatta International airport (JKIA) and Wilson Airport among others, the market has been penetrated by unlicensed and illegal agents who are able to offer lower prices hence distorting market prices.
4. THAT as a result, Oil Marketing Companies have incurred losses due to the fact that the local oil marketers have invested in infrastructure and the pricing of the jet fuels is based on Open Tender System (OTS) as required by the law.
5. THAT there is need to investigate the influx of illegal oil marketers in the country and reconsider the manner in which the pricing of jet fuel is undertaken.

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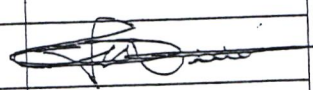


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RECEIVED
23 AUG 2018
CLERK'S OFFICE

PETITION PURSUANT TO ARTICLE 119 OF THE CONSTITUTION, PETITION, PETITION TO PARLIAMENT (PROCEDURE) ACT NO. 22 OF 2012 AND THE NATIONAL ASSEMBLY STANDING ORDERS BY LICENSED OIL MARKETERS

6. THAT despite our efforts to have the matters raised in this Petition addressed by ERC and the Ministry of Energy, the responses have been unsatisfactory and not forthcoming.
7. THAT the matters raised in this Petition are not also pending in any court of law in Kenya.
8. THAT the Petitioner therefore prays for-
 - (a) pursuant to Standing Order 216(5)(a), the Departmental Committee on Energy does investigate and inquire into all the matters raised in this Petition;
 - (b) pursuant to Standing Order 216(5)(a), the Departmental Committee on Energy make recommendations thereof.

Petition presented by:

Name	Address	Identification Number	Signature
PIUS OMOLLO	P.O. Box 61870 Galsu NRB	5336504	
AGOL VEDELL	P.O. Box 19095 00501 - NBO	11145436	
DAVID GATHAGE	P.O. Box 61872 00200 NRB	23648714	

Head table
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George
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DLSP
for your justice
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MEMO

TO : THE SENIOR-DEPUTY CLERK, NATIONAL ASSEMBLY

8
11.19/18

THRO' : THE DIRECTOR LEGAL SERVICES, N-A

The Forwarded. The petition may be tabled for consideration.
Dum. 29/08/18

THRO' : THE PRINCIPAL LEGAL COUNSEL, N-A

The petition conforms to the requirements of the Petitions to Parliament (Procedure) Act, 2012 and the provisions of Standing Order 223 and may be forwarded to the Speaker for tabling in the House.

FROM : LEGAL COUNSEL II

Consideration pursuant to Article 119 of the Constitution.

DATE : 27th August, 2018

RE: PETITION TO NATIONAL ASSEMBLY ON LICENSING OF OIL MARKETING COMPANIES BY THE ENERGY REGULATORY COMMISSION PURSUANT TO THE PROVISIONS OF THE ENERGY ACT, 2006

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The above matter refers and your instruction to the Legal Directorate to peruse and establish whether the Petition by Mr. Pius Omollo and others, complies with the law and Standing Orders. The Petitioner prays that Parliament investigates the illegal penetration of unlicensed dealers and agents who supply fuel to airlines at Jomo Kenyatta International Airport (JKIA) and Wilson Airport among others, contrary to provisions of the Energy Act (No. 12 of 2006).

We have perused the Constitution, Petition to Parliament (Procedure) Act, 2012 and the National Assembly Standing Orders and find that the Petition as presented satisfies the requirements of

the Petition to Parliament (Procedure) Act, 2012 and the National Assembly Orders and should therefore be forwarded to the Speaker for tabling in the House.

Submitted for consideration and further directions.

A handwritten signature in black ink, appearing to be 'BK' or similar initials, enclosed within a circular scribble.

Brigitta K. Mati

LEGAL COUNSEL II.

MEMO

D L S
For Table...
31/07

TO: THE SENIOR DEPUTY CLERK, NATIONAL ASSEMBLY

THRO': THE CHIEF OF STAFF, SPEAKER'S OFFICE -

forwarded
31/07/2018

THRO': DIRECTOR, LEGAL SERVICES, NA

Forwarded. The petition is in order and may be tabled in the House for consideration.
J.M. 31/07/18

FROM: PRINCIPAL LEGAL COUNSEL

DATE: 31ST JULY, 2018

RE: PETITION PURSUANT TO ARTICLE 119 OF THE CONSTITUTION BY LICENCED OIL MARKETERS

The above matter refers and the instructions from the Speaker's officer.

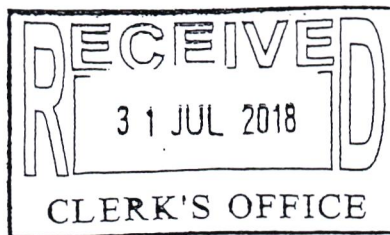
We find that the Petition as presented does satisfy the requirements of the Petition to Parliament (Procedure) Act, 2012 and the National Assembly Standing Orders and should therefore be forwarded to the Speaker for tabling in the House.

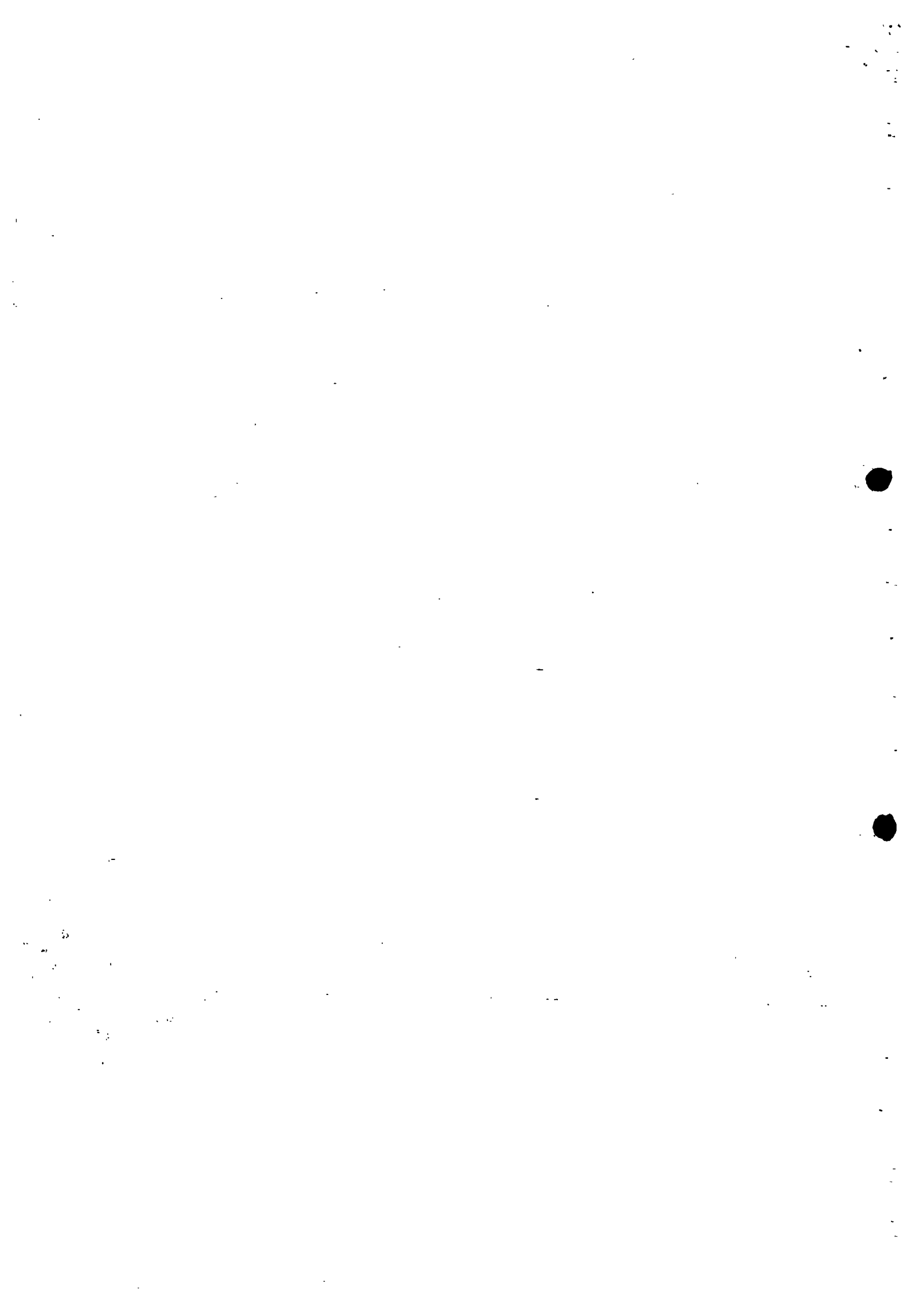
J. M Ndeto
PRINCIPAL LEGAL COUNSEL
NATIONAL ASSEMBLY

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③ Miriam Mado.
Please ack.

Rtain
2/8/18







Kenya Airports Authority

Head Office, Airport North Road
P.O. Box 19001 - 00501 Nairobi, Kenya
Tel: +254 - 020 - 822111 / 6611000 / 6612000
Fax: +254 - 020 - 822078, 827304
Email: info@kaa.go.ke
www.kaa.go.ke

CAA/3/07/1 VOL XI (126)

4th December, 2018

The Clerk of the National Assembly

Parliament Buildings

P.O Box 41842-00100

NAIROBI

Attn: Mr. Jeremiah W.Ndombi

PETITION BEFORE THE DEPARTMENTAL COMMITTEE ON ENERGY

We wish to refer to your letter Ref: MOT&I/C/ADM/034/7/1 Vol. XI/(30) dated 2nd November 2018 on the above subject, and specifically to the enclosed petition on the licensing of Oil Marketing Companies by the Energy Regulatory Commission.

Having perused the petition we would like to appraise you as follows;

1. The supply of Jet Fuel to airlines at our airports is carried out strictly on commercial terms between the concerned airline and fuel suppliers based on a competitive Open Tender System (OTS). Kenya Airports Authority does not weigh in on the outcome of the process either way.
2. Having been so identified the Fuel Supplier seeks from the Airport Authority the requisite operational space. This can be in the form of offices or land to set up an equipment fuel farm, (for storage of Fuel Bowsers and administration services).
3. Following the approval of our policy on **Leases Licenses and Concessions, 2016**; such a request is subjected to the following:
 - a. That such space to establish a fuel facility is provided for in the Airport Master Plan.
 - b. That the firm has requisite license from the Energy Regulatory Commission.
 - c. Proof of client (airline) contracts.
 - d. Requite insurance cover.
 - e. Limited to an optimal number guided by traffic levels at each airport.
4. Whereas the policy became operational in 2016, fuel suppliers at Jomo Kenyatta International Airport and Wilson Airport have been in operation prior to the stated date. Below is a schedule of operators at the two key airports;

	Airport	Fuel Firm	Remarks
I	Jomo Kenyatta International Airport		
		1 Bakri International Energy Company Ltd P.O. Box 19095 – 00501 NAIROBI	Operates from Leased land with effect from 1 st April 2012
		2 Gulf Energy Ltd P.O. Box 61872 – 00200 NAIROBI	Operates from leased land with effect from 1 st January 2012
		3 Kenol Kobil Plc P.O. 44202 – 00100 NAIROBI	Operates from Own plot
		4 Oilibya (Libya Oil Kenya Ltd) P.O Box 64900 – 0620 NAIROBI	Operates from Own plot
		5 Total Kenya Plc P.O Box 30736 – 00100 NAIROBI	Operates from Own plot
		6 Vivo Energy Kenya P.O. 43561 – 00100 NAIROBI	Operates from Own plot
		7 Hass Petroleum P. O. Box 76337 NAIROBI	Firm has no leased premises, operates under hospitality contract with Kenol Kobil Plc
II	Wilson Airport		
		1 Vivo Energy Kenya P.O. 43561 – 00100 NAIROBI	Operates from own plot
		2 Finejet Group P.O. Box 103329 – 00101 NAIROBI	Operates from leased plot with effect from 1 st April 2013
		3 Gulf Energy Ltd P.O. Box 61872 – 00200 NAIROBI	Operates from leased plot with effect from 1 st January 2013.
		4 Total Kenya Plc P.O Box 30736 – 00100 NAIROBI	Operates from leased plot with effect from 1 st April 2012.
		5 Flamex Petroleum P.O Box 1497-00502 NAIROBI	Firm leased plot on 1 st April 2016.

			Facility yet to be developed and firm has not commenced operations.
	6	Skytanking Ltd P.O Box 101726-00101 NAIROBI	Firm leased plot on 1 st April 2016. Facility yet to be developed and firm has not commenced operations.

5. The Authority does not recognise or deal with any other oil marketing company at the two airports apart from the above listed firms.
6. Further, the Authority does not determine or regulate pricing of Jet Fuel as this is market driven.

Finally the Authority is keen and willing to support all efforts and endeavours aimed at regulating aviation fuel sector for the betterment of the industry.


JONNY ANDERSEN
MANAGING DIRECTOR / CEO



**APPEARANCE BEFORE THE DEPARTMENTAL COMMITTEE ON ENERGY ON
TUESDAY 6TH NOVEMBER 2018 ON LICENSING OF JET A1 BUSINESSES IN
KENYA**

1. INTRODUCTION AND BACKGROUND

The Departmental Committee on Energy of the National Assembly through a letter dated 31st October 2018, requested the Energy Regulatory Commission (ERC) to appear before it on the 6th November 2018 to respond to a petition on the licensing of Jet A1 businesses in Kenya.

2. MANDATE OF THE ERC

ERC is a single sector regulatory agency established under the Energy Act No. 12 of 2006 (the Act) and has responsibility for the economic and technical regulation of electric power, renewable energy and downstream petroleum.

The objects and functions of the Commission are set out in Section 5 of the Act while Section 6 sets out its powers.

2.2 OBJECTS AND FUNCTIONS

The objects and functions of ERC are set out in Section 5 of the Act and include:

(a) to regulate:

- i. Importation, exportation, generation, transmission, distribution, supply and use of electrical energy;
- ii. Importation, exportation, transportation, refining, storage and sale of petroleum and petroleum products;
- iii. production, distribution, supply and use of renewable and other forms of energy;

- (b) To protect the interests of consumer, investor and other stakeholder interests.
- (c) To maintain a list of accredited energy auditors as may be prescribed;
- (d) To monitor, ensure implementation of, and the observance of the principles of fair competition in the energy sector, in coordination with other statutory authorities;
- (e) To provide such information and statistics to the Minister as he may from time to time require;
- (f) To collect and maintain energy data;
- (g) To prepare indicative national energy plan; and
- (h) To perform any other function that is incidental or consequential to its functions under this Act or any other written law.

3. REGULATION OF JET A1 BUSINESSES

3.1 Mandate to issue Licences

Jet A1 business is regulated under Section 80 of the Energy Act 2006 that mandates ERC to issue licences to persons engaged in the importation, refining, exportation, wholesale, retail, storage or transportation of petroleum. Persons engaged in the sale of Jet A1 in Kenya are therefore required to possess valid licences as follows:

- i. Import, Export and Wholesale of Petroleum Products (Except LPG) – for persons importing Jet A1;
- ii. Storage of Petroleum Products (Except LPG) for persons storing Jet A1;
- iii. Export and Wholesale of Petroleum Products (Except LPG) or Export and Wholesale of Jet A1 for persons undertaking wholesale trade in Jet A1.

3.2 Jet A1 infrastructure in Kenya

Jet A1 is imported as Dual Purpose Kerosene (DPK) and is discharged to Kenya Pipeline Company Limited's (KPC) tanks in Mombasa. Upon declaration by the importer, part of the DPK quantity becomes Jet A1 while the balance becomes Illuminating Kerosene (IK). Jet A1 is then treated with special caution to prevent dirt and water infiltration. Tanks for storage of Jet A1 are fitted with special filters to avoid contamination by water and dirt.

3.2.1 Moi International Airport

Jet A1 at Moi International Airport is supplied through special aviation vehicles called bowsers, which collect/ load Jet A-1 from KPC's PS 12 depot located within the airport. The storage facility is licensed by ERC for Storage of Petroleum Products (Except LPG).

Jet A1 traders at MIA do not therefore require to build a storage facility but rather are supplied through the KPC PS 12 loading system. All the traders require are bowsers/dispensers that can collect Jet A1 and deliver it to the aircrafts. The bowsers/dispensers can be owned or hired to facilitate each individual trader's operational equipment requirements.

3.2.2 Malindi Airport

Jet A1 at Malindi Airport is supplied from an above ground petroleum storage facility owned and operated by Vivo Energy Kenya Limited. The facility is licensed by ERC for Storage of Petroleum Products (Except LPG) and the company possesses an Export and Wholesale of Petroleum Products (Except LPG) licence.

3.2.3 Lamu Airport

Flamex Petroleum Limited supplies Jet A1 at Lamu airport via drums. The company is licensed by ERC for Export and Wholesale of Petroleum Products (Except LPG).

3.2.4 Ukunda Airstrip

Flamex Petroleum Limited supplies Jet A1 at Lamu airport through an above ground storage facility. The facility is licensed by ERC for Storage of Petroleum Products (Except LPG) and the company possesses an Export and Wholesale of Petroleum Products (Except LPG) licence.

3.2.5 Jomo Kenyatta International Airport (JKIA)

Jet A1 at Jomo Kenyatta International Airport is supplied through a hydrant system connected to KPC's depot located in close proximity to the airport. The storage facility is licensed by ERC for Storage of Petroleum Products (Except LPG).

Jet A1 traders at JKIA do not therefore require to build a storage facility but rather are supplied through the KPC hydrant. All that the traders require to undertake aircraft refueling are dispensers that connect to the hydrant system and deliver Jet A1 into the aircrafts. The dispensers can be owned or hired as part of each individual trader's operational equipment requirements. Some of the traders at JKIA are Total Kenya PLC, Vivo Energy Kenya Limited, Gulf Energy Limited, Libya Oil Kenya Limited, Word Fuel Services Kenya Limited, Skytanking (K) Limited and Skywagon Company Limited. These companies are licensed by ERC for Export and Wholesale of Petroleum Products (Except LPG).

3.2.6 Wilson Airport

Jet A1 at Wilson Airport is supplied from four (4) facilities with above ground petroleum storage tanks. These facilities are owned and operated by Total Kenya PLC, Vivo Energy Kenya Limited, Gulf Energy Limited and Flamex Petroleum Limited. These facilities are licensed by ERC for Storage of Petroleum Products (Except LPG) and the companies possess Export and Wholesale of Petroleum Products (Except LPG) licences as well.

3.2.7 Nanyuki Airstrip

Jet A1 at Nanyuki Airstrip is supplied from an above ground petroleum storage facility owned and operated by Flamex Petroleum Kenya Limited. The facility is licensed by ERC for Storage of Petroleum Products (Except LPG) and the company possesses an Export and Wholesale of Petroleum Products (Except LPG) licence.

3.2.8 Isiolo Airport

Jet A1 at Isiolo Airport is supplied from an above ground petroleum storage facility owned and operated by Vivo Energy Kenya Limited. The facility is licensed by ERC for Storage of Petroleum Products (Except LPG) and the company possesses an Export and Wholesale of Petroleum Products (Except LPG) licence.

3.2.9 Eldoret International Airport

Jet A1 at Eldoret International Airport is supplied from an above ground petroleum storage facility owned and operated by Total Kenya PLC. The facility is licensed by ERC for Storage of Petroleum Products (Except LPG) and the company possesses an Export and Wholesale of Petroleum Products (Except LPG) licence as well.

3.2.10 Kisumu International Airport (KIA)

Jet A1 at Kisumu International Airport is supplied by specialized aviation bowsers/ dispensers, which collect Jet A-1 from KPC's depot located in close proximity of the airport. The storage facility is licensed by ERC for Storage of Petroleum Products (Except LPG).

Jet A1 traders at KIA do not therefore require to build a storage facility but rather are supplied from KPC depot. All that the traders require are dispensers that connect to the hydrant and deliver Jet A1 into the aircrafts. The bowsers/ dispensers can be owned or hired as part of each individual trader's operational equipment requirements.

3.2.11 Lokichogio Airstrip

Jet A1 at Lokichogio Airstrip is supplied from two (2) aviation fuel storage facilities. These storage facilities are owned and operated by Total Kenya PLC and Flamex Petroleum Limited each with her own above ground tanks. The facilities are licensed by ERC for Storage of Petroleum Products (Except LPG) and the companies possess Export and Wholesale of Petroleum Products (Except LPG) licences as well.

4. JET A1 BUSINESS LICENCE REQUIREMENTS

4.1 Export and Wholesale of Petroleum Products (Except LPG) or Export and Wholesale of Jet A1

- i. Certificate of Incorporation/Business registration certificate - company must be incorporated in Kenya;
- ii. CR 12 from Registrar of Companies (not older than 12 months) for Limited Companies;
- iii. Legible copies of Identification documents for all the directors (IDs/passports);
- iv. Work permits Class "G" for foreign directors as per the CR12;
- v. Valid tax compliance certificate from Kenya Revenue Authority; and
- vi. Single Business Permit for the office premises from the County Government

4.2 Storage of Petroleum Products (Except LPG)

- i. Certificate of Incorporation/Business registration certificate - company must be incorporated in Kenya;
- ii. CR 12 from Registrar of Companies (not older than 12 months) for Limited Companies;
- iii. Legible copies of Identification documents for all the directors (IDs/passports);
- iv. Work permits Class "G" for foreign directors as per the CR12;
- v. Valid tax compliance certificate from Kenya Revenue Authority; and
- vi. Single Business Permit for the storage facility from the County Government
- vii. Environmental Impact Assessment licence from NEMA
- viii. Confirmation from Kenya Bureau of Standards that the facility complies with the Kenya Standard (Inspection Report)
- ix. Fire clearance certificate from the County Government
- x. Certificate of registration of workplace from the Directorate of Occupation Safety and Health Services.
- xi. Valid certificate of Calibration of the petroleum tanks

4.3 Transport of Jet A-1

- i. CR 12 from Registrar of Companies (not older than 12 months old) for Limited Companies;
- ii. Legible copies of Identification documents for directors (IDs/passports)
- iii. Certificate of incorporation/business registration certificate
- iv. Work permits Class "G" for foreign directors as per the CR12

- v. Valid tax compliance certificate from KRA;
- vi. PIN/VAT Certificate;
- vii. Single Business Permit for the office premises from the County Government
- viii. A valid certificate of calibration for the tanker mounted on each vehicle
- ix. Fire certificate for the vehicle from the County Government office by Chief Fire Officer
- x. A valid Motor Vehicle Inspection Certificate for each prime mover and trailer
- xi. Log books for each prime mover and trailer(Attach lease agreement if not in the name of owner/company)
- xii. A list of vehicles; prime mover paired to trailer where necessary (In Microsoft Excel)

5. COMPLAINTS ABOUT UNLICENSED JET A1 TRADERS AT JKIA

ERC received a complaint from a section of the market in May 2018 about traders at JKIA and Wilson whom they suspected were in business without the requisite licences under the Energy Act 2006. Some of the traders and agents in that market complained about World Fuels Services Kenya Limited and Skytanking (K) Limited. Even though ERC noted that the two (2) companies were licensed, the complainants were invited to a meeting at ERC where the matter was extensively discussed. ERC then wrote to Kenya Airports Authority via a letter dated 21st May 2018 requesting KAA to ensure that all traders supplying Jet A1 to the airports and airstrips in the country were duly licensed by ERC. Since then, the complainants did not pursue the matter further until this petition.

6. JET A1 PRICING

Jet A1 is not price controlled unlike Illuminating Kerosene and market forces of supply and demand therefore determine the price. The entry into the market of many traders in Jet A1 has increased competition and it therefore means that companies must continuously restructure their operations to remain competitive.

7. CONCLUSION

Supply of Jet A1 to the airports and airstrips in Kenya is highly regulated. However, ERC will collaborate with Kenya Airports Authority (KAA) to ensure that every operator or agent purporting to supply petroleum products at airports and airstrips is fully licensed as required by the Energy Act No. 12 of 2006.

Approved By:

Pavel Robert Oimeke

DIRECTOR GENERAL

Annex 1: List of Companies Licensed to Deal in Jet A1

Annex 1.1: Export and Wholesale of Jet A-1

1. Vivo Energy (K) Limited
2. Total Kenya Limited
3. Gulf Energy Limited
4. Flamex Petroleum Limited
5. Aeroglobal Aviation Services Ltd
6. Finejet Limited
7. Tristar Transport Limited
8. Kenolkobil Limited
9. Heller Petroleum Limited
10. Dalbit Petroleum
11. Bakri Energy Limited
12. Hared Energy Limited
13. Mogas Kenya Limited
14. Texas Energy Limited
15. Zacosia Trading Limited
16. Lake Oil Limited
17. World Fuels Services Kenya Limited
18. Skytanking (K) Limited.

Annex 1.2: Storage of Jet A-1

1. Kenya Pipeline Company Limited
2. Vivo Energy (K) Limited
3. Libya Oil Kenya Limited
4. Total Kenya Limited
5. Gulf Energy Limited
6. Flamex Petroleum Limited

Annex 1.3: Transport of Jet A-1

1. Kenya Pipeline Company Limited
2. Jakline Company Limited
3. Multiple Hauliers (E.A) Ltd
4. Afyare Enterprises Co. Ltd
5. Heller Petroleum Limited
6. Kengas Link Ltd
7. Byline Investment Ltd
8. Laser Freight Limited
9. Sibed Transport Company Limited
10. Hajo Communications Limited
11. Luqman Petroleum Limited
12. Tristar Transport Limited
13. Awadh Omar Bayusuf And Sons Limited
14. Elwak Services
15. H.H Dimbil Limited

MINUTES OF THE 93rd SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY HELD IN COMMITTEE ROOM ON 9TH FLOOR HARAMBEE SACCO PLAZA ON TUESDAY 6TH NOVEMBER, 2018 AT 10.30AM

MEMBERS PRESENT

1. The Hon. David Gikaria, M.P. - **Chairperson**
2. The Hon. (Dr.) Robert Pukose, M.P. - **Vice Chairperson**
3. The Hon. Cecily Mbarire, M.P.
4. The Hon. Joseph Wathigo Manje, M.P.
5. The Hon. Abdikhaim Osman Mohamed, M.P
6. The Hon. Elisha Odhiambo, MP
7. The Hon. Elsie Muhanda, MP
8. The Hon. Gitau Faith Wairimu, M.P.
9. The Hon. Julius Musili Mawathe, MP
10. The Hon. Ken Chonga, MP
11. The Hon. Walter Owino, MP

ABSENT WITH APOLOGY

1. The Hon. Lemanken Aramat, M.P.
2. The Hon. Amina Gedow Hassan, M.P
3. The Hon. Ekomwa Lomenen James, M.P.
4. The Hon. Vincent Musyoka Musau, M.P.
5. The Hon. Clement Muturi Kigano, M.P.
6. The Hon. Mohammed Ali Lokiro, MP
7. The Hon. Tindi Nicholas Mwale, MP
8. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE:

- | | | |
|----------------------|---|--|
| 1. Mr. Pius Omollo | - | GULF ENERGY |
| 2. Mr. Cyrus Kirima | - | Chief Operating Officer, Gulf Energy |
| 3. Mr. David Gathage | - | Chief Operating Officer, Amu Power/Gulf Energy |
| 4. Mr. Pius Omollo | - | Head of Aviation Business, Gulf Energy |
| 5. Mr. Cyrus Kirima | - | Chief Operating Officer, Gulf Energy |
| 6. Mr. David Gathage | - | Chief Operating Officer, Amu Power/Gulf Energy |
| | | Head of Aviation Business, Gulf Energy |

IN ATTENDANCE:

NATIONAL ASSEMBLY

- | | | |
|-----------------------|---|---------------------|
| 1. Mr. Benjamin Magut | - | Lead Clerk |
| 2. Mr. Douglas Katho | - | Clerk Assistant III |
| 3. Ms. Brigitta Mati | - | Legal Counsel |
| 4. Mr. John Ng'ang'a | - | Audio Officer |
| 5. Mr. David Ngeno | - | Research Officer |

MIN. NO. NA/ENERGY/2018/347: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and introductions at 10.34am.

MIN. NO. NA/ENERGY/2018/348: MEETING WITH THE PETITIONERS REGARDING LICENSING OF OIL MARKETING COMPANIES BY ENERGY REGULATORY COMMISSION (ERC)

The Petitioners appeared before the Committee and made an oral presentation as follows;

The Petitioner avers that for the past years, ERC has been licensing Oil Marketing Companies prior to engaging in business of supplying fuel and it has emerged that unlicensed and illegal agents have stormed oil markets occasioning distortion of market prices and massive losses. The petitioner further avers that Oil marketing Companies have incurred massive losses due to the fact that the local oil marketers have invested in infrastructure and the pricing of the jet fuels is based on Open tender system as stipulated in the law.

The Petitioners therefore prays that the National Assembly investigates the massive influx of illegal Oil marketers in the Country with a view to eliminate them or cause them to be licensed in order to operate lawfully.

The Committee resolved to invite the Kenya Airports Authority, the Kenya Civil Aviation as well as the Kenya airways and any other carriers that consumes the jet fuel at Kenya airport and air strips.

MIN. NO. NA/ENERGY/2018/349: MEETING WITH THE ENERGY REGULATORY COMMISSION (ERC) REGARDING LICENSING OF OIL MARKETING COMPANIES.

The Director for ERC appeared before the Committee and informed the Committee that ERC received a complaint from a section of the market in May 2018 about traders at JKIA and Wilson Airport whom they suspected were in business without the requisite licences under the energy act 2006. He said that some of the traders who are agents in that market complained about world fuels services Kenya limited and sky-tanking (K) limited even though ERC noted that the two companies were licensed, the complaints were invited to a meeting at ERC where the matter was extensively discussed. ERC then wrote to Kenya airports authority via a letter dated 21st may 2018 requesting KAA to ensure that all traders supplying Jet A1 to the airports and airstrips in the country what duly licensed by ERC since then the complainant did not pursue the matter further until this petition.

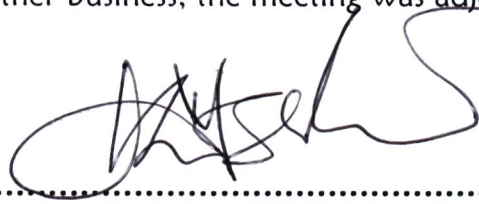
The Director General for ERC further informed the Committee that the Jet A1 is not priced controlled and like illuminating kerosene and market forces of supply and demand

therefore determine the price the entry into the market of many traders in jet A1 has increased competition and it therefore means that companies must continuously restructure their operations to remain competitive.

The DG for ERC concluded that the supply of Jet A1 to the airports and airstrips in Kenya is highly regulated however ERC will collaborate with Kenya Airports Authority KAA to ensure that every operator or agent purporting to supply petroleum products at airports and airstrips is fully licensed as required by the energy act number 12 of 2006

MIN. NO. NA/ENERGY/2018/350: ANY OTHER BUSINESS AND ADJOURNMENT

There being no Other Business, the meeting was adjourned.



SIGNED.....
(CHAIRPERSON)

DATE..... 6/12/2018