

ENERGY

Regulator should rein in utilities gone berserk, stop 'Open Sesame'

The Energy Regulatory Commission carries out its work with aplomb. Every month, it announces the maximum retail price of petroleum products for all major cities. The oil marketers dutifully and uniformly rack up their prices to this figure.

And yet, this is not the way that it was supposed to pan out. The ERC and National Oil Corporation were set up to protect the consumer from avaricious marketers.

Marketers were expected to compete in price but not charge above the maximum recommended price. The ERC formulas cushioned them against fluctuations in exchange rate and other market uncertainties and provided generous margins.

This obvious collusion has been largely ignored. The formula also hides the inefficiencies in the agencies that handle the fuel. This has been exposed by the goings-on at Kenya Pipeline Company.

Following the saga unfolding at KPC is like reading *Ali Baba and the Forty Thieves*. Ali Baba, a poor woodcutter, is gathering wood in the forest when a band of thieves approaches. He hides as they enter a cave that opens when they say the words "Open Sesame". After they depart, he stands before the cave and gives the command. To his surprise

and delight, it opens to reveal an enormous cache of treasure. He packs some gold on his donkeys and returns home.

KPC pumps oil marketers' fuel. Over the years, a few people have discovered that they only need to fiddle with paper work and voila! A vast quantity of fuel is unlocked for the shady parallel market.

Devani discovered this with the Triton scam, where 126 million litres of fuel were siphoned off. Like Ali Baba, he had watched the marketers trust their fuel to an insecure KPC. He discovered that nobody would follow him. Like Ali Baba, he went to enjoy his fortune.

Several 'Ali Babas' have discovered the cave that KPC has become. Oil marketers, like the 40 thieves, have secured their wealth in this compromised cave. Just as with the 40 thieves, we do not feel much sympathy for them.

Recruited our guard

What we do not know is that this cave also serves as a self-refilling cornucopia at our expense. Wily oil marketers have recruited our guard, the ERC, to ensure that they do not suffer loss. Losses are passed on to the consumer, the very society whom the 40 thieves rob!

When Ali Baba's rich but hardhearted merchant brother Kasim discovers his sibling's



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newfound wealth, he demands an explanation. The next day, he visits the cave and greedily gathers as much treasure as he can but forgets the formula for leaving the cave. He is found and killed by the thieves.

Greed leads to carelessness. The looters who came after 'Ali Baba' Devani were impatient. They forgot the formula. They took too much too soon. It is even reported that they replaced the fuel with water!

The marketers are angry, but only because insurance and ERC have refused to refill their horn by covering up this obvious loss. They are now throwing 'Kasim' under the bus. Ironically, it is the Cabinet

Secretary for Environment, Mr Keriako Tobiko, a former Director of Public Prosecutions, who has pointed out that it is not possible to lose Sh1 billion fuel without perpetrating an environmental crisis.

ERC needs to up its game. The service levels provided by monopolies in the energy sector leave a lot to be desired. Consumers are still reeling from expensive electricity charges by Kenya Power, attributed to purchase of faulty transformers and an opaque billing system.

ERC is unfortunate to be regulator in an industry with powerful players, both government and private, in a highly politicised environment. It is supposed to regulate behemoths like Kenya Power, KenGen, KPC, Ketracco, Rural Electrification Authority, Geothermal Development Company as well as powerful private players. Could ERC be a victim of 'regulatory capture'?

The ERC and the DPP must make it personally expensive to play 'Open Sesame' with public resources. Theft of public resources is not a victimless crime. Is somebody still waiting for the President to order a crackdown?

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