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3/7/19

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON ENERGY

REPORT ON THE  
PUBLIC PETITION (No. 3 OF 2019) REGARDING COAL MINING ACTIVITIES IN MUI,  
MWINGI EAST SUB-COUNTY OF KITUI COUNTY

CLERK'S CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

JULY, 2019

CHAIRPERSON'S FOREWORD .....	3
EXECUTIVE SUMMARY.....	4
1 PREFACE.....	5
1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE .....	5
1.1 OVERSIGHT.....	6
1.2 COMMITTEE MEMBERSHIP .....	6
1.3 COMMITTEE SECRETARIAT .....	7
1.4 COMMITTEE RECCOMENDATIONS .....	7
CHAPTER ONE.....	9
2.0 INTRODUCTION.....	9
2.1 BACKGROUND.....	9
2.2 LEGAL PROVISIONS TOUCHING ON THE PETITION .....	9
2.2.1 RIGHT TO PETITION PARLIAMENT .....	9
2.1.2 MINING ACT 2016.....	10
2.1.3 THE LAND ACT 2012.....	13
2.1.4 ENERGY ACT 2019.....	14
CHAPTER TWO.....	15
3.0 SUBMISSIONS ON THE PETITION.....	15
3.1 PETITION BY HON. GIDEON MUTEMI MULYUNGI, MP.....	15
3.1.1 PETITIONERS PRAYERS TO THE NATIONAL ASSEMBLY .....	16
3.2 SUBMISSION BY THE CABINET SECRETARY, MINISTRY OF LANDS AND PHYSICAL PLANNING .....	17
3.3 SUBMISSIONS BY CABINET SECRETARY, MINISTRY OF ENERGY .....	17
3.4 SUBMISSIONS BY THE PRINCIPAL SECRETARY, STATE DEPARTMENT OF MINING..	18
3.5 COMMITTEE FACT FINDING VISIT TO MUI, KITUI COUNTY .....	19
CHAPTER THREE .....	20
4.0 COMMITTEE OBSERVATIONS .....	20
5.0 COMMITTEE RECOMMENDATION .....	21

## CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Public Petition No. 3 of 2019 regarding Coal Mining activities in Mui Basin, Mwingi East Sub-county of Kitui County. The Petition dated 14<sup>th</sup> February, 2019 by Hon. (Dr.) Gideon Mutemi Mulyungi, MP on behalf of the residents of Mui was presented in the National Assembly on 25<sup>th</sup> March, 2019 and subsequently committed to Departmental Committee on Energy for consideration pursuant to Standing order 227(1).

The Committee was required to respond to the Petitioner by way of a report addressed to the Petitioner/Petitioners and laid on the Table of the National Assembly not more than sixty (60) calendar days from the time of reading the prayer.

In processing the Petition, invited submissions from various stakeholders and visited Mui area on 16<sup>th</sup> May 2019 to meet the residents and to receive their views. The Committee analyzed these submissions and prepared the report.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Petition. Finally, I wish to express my appreciation to the Honorable Members of the Committee and all the stakeholders who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Energy and pursuant to provisions of Standing Order 227(2), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Public Petition No. 3 of 2019 regarding Coal Mining activities in Mui, Mwingi East Sub-county of Kitui County

HON. DAVID GIKARIA, M.P

## EXECUTIVE SUMMARY

The Public Petition No. 3 of 2019 regarding Coal Mining activities in Mui, Mwingi East Sub-county of Kitui County dated 14<sup>th</sup> February, 2019 was presented in the National Assembly on 25<sup>th</sup> March, 2019 by Hon. (Dr.) Gideon Mutemi Mulyungi, MP on behalf of the residents of Mui. The Petition was subsequently committed to Departmental Committee on Energy for consideration pursuant to standing order 227(1).

The Petitioners stated they have lived in Mui area time immemorial as peasant farmers who farmed crops and keep livestock for their livelihood. They explained that, in the year 2008 when coal was discovered in Mui basin, the government of Kenya through its agencies arrived at a decision to relocate them to pave way for mining of coal. They averred that the Gazette Notice No.389 issued by the Cabinet Secretary for mining on 27<sup>th</sup> April 2018 that gave public notice on the application of mining rights did not follow the due processes of law. They maintained that the notice of relocation issued by the county government without environmental impact assessment would negatively affect their livelihood and was against their cultural practices including interference of their communal cemeteries.

The Committee received submissions, visited the area and made critical analysis of the submissions and the fact finding. It observed that, the Petition carried weighty issues that touched on violation of the Constitution and other legal provisions. Similarly, the public participation was not done and so was civic education on the matter.

The Committee recommends formation of liaison Committee to guide the coal activities and land issues in Mui basin. The Ministry of Energy to carry out civic education and facilitate Public Participation before undertaking any coal activities in Mui Basin. Finally, the Committee to carry out an inquiry into the use of coal in electricity generation in Kenya



# 1 PREFACE

## 1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1 The Departmental Committee on Energy is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

- 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;
- (i) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- (ii) To study and review all the legislation referred to it;
- (iii) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (iv) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- (v) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- (vi) To examine treaties, agreements and conventions;
- (vii) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- (viii) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- (ix) To examine any questions raised by Members on a matter within its mandate.

## 1.1 OVERSIGHT

2. The Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the Fossils fuels exploration, Development, production, maintenance and regulation of energy
3. In executing its mandate, the Committee oversights the performance of the following State departments:-
  - (i) Energy, and
  - (ii) Petroleum.

## 1.2 COMMITTEE MEMBERSHIP

4. 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

### 1.3 COMMITTEE SECRETARIAT

5. The Committee is resourced with the following technical staff, representing the Office of the Clerk;

- |                          |   |                         |
|--------------------------|---|-------------------------|
| 1. Mr Benjamin Magut     | - | First Clerk Assistant   |
| 2. Mr Douglas Katho      | - | Clerk Assistant         |
| 3. Mr Ronald Walala      | - | Legal Counsel           |
| 4. Mr Abdirahman Gorod   | - | Fiscal Analyst          |
| 5. Mr David Ngeno        | - | Research Officer        |
| 6. Mr Joseph Okong'o     | - | Media Relations Officer |
| 7. Ms Rose Ometere       | - | Audio Recording Officer |
| 8. Ms. Sheila Chebotibin | - | Sergeant at Arms        |

### 1.4 COMMITTEE RECCOMENDATIONS

6. Arising from the observation and key findings, the Committee recommends—

1. The Ministry of Energy in consultation with area Member of Parliament to urgently constitute a new Local Liaison Committee to coordinate and guide the coal mining activities in Mui basin
2. The Ministry of Lands to Re-survey and verify the land with a view of correcting errors in the already issued Title deeds and investigate the concerns raised by the residents on land irregular allocated to strangers in Mui Basin and report back to the Committee within 90 days.
3. The Ministry of Energy to carry out public awareness on coal as a source for electricity generation as well as coal mining activities. The Ministry should further expose local leaders on the international best practises on the use of clean coal in electricity generation by facilitating study visits to countries using ultra clean technologies.
4. In engaging the community, the Government must pay particular attention to the local cultural practises, customs and relevant provision of the Mining Act while exploiting coal resources in Mui Basin.

## 1.5 ACKNOWLEDGMENT

7. 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.
8. 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...3-7-19.....

THE HON. DAVID GIKARIA, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENERGY



## CHAPTER ONE

### 2.0 INTRODUCTION

#### 2.1 BACKGROUND

9. The Public Petition No. 3 of 2019 regarding Coal Mining activities in Mui Basin, Mwingi East Sub-county of Kitui County dated 14<sup>th</sup> February, 2019 was presented in the National Assembly on 25<sup>th</sup> March, 2019 by Hon. (Dr.) Gideon Mutemi Mulyungi, MP on behalf of the residents of Mui.
10. The Petitioners stated they have lived in Mui area since time immemorial as peasant farmers who grow crops and keep livestock for their livelihood. They stated that in the year 2008 when coal was discovered in Mui Basin, the government of Kenya through its agencies arrived at a decision to relocate them to pave way for mining of coal.
11. They averred that the Gazette Notice No.389 issued by the Cabinet Secretary for mining on 27<sup>th</sup> April 2018 that gave public notice on the application of mining rights did not follow the due processes of law. It pointed out that the notice of relocation issued by the county government would negatively affect their livelihood and would go against their cultural practices including interference of their communal cemeteries.
12. In light of the above the Petitioners pray that the National Assembly, through the Departmental Committee on Energy considers the matters raised in the Petition pursuant to the provisions of Standing orders 227 and make recommendations thereof.

#### 2.2 LEGAL PROVISIONS TOUCHING ON THE PETITION

##### 2.2.1 RIGHT TO PETITION PARLIAMENT

13. The right to Petition Parliament is provided for under Article 119 of the Constitution, which provides as follows:-

“Every person has a right to Petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. Parliament shall make provision for the procedure for the exercise of this right.”

14. The Petition therefore falls under the Committees mandate under National Assembly Standing Order 227(1). In addition, standing orders 227(2) outlines the procedure for committal of a Petition to a Committee and transmission of its decision to the Petitioner. Further, the Petition to Parliament (Procedure) Act, 2012 provides for the procedure to be followed in the submission, processing and consideration of a Petition.
15. Articles 94 as read together with Article 95 of the Constitution further provides for the role and by extension the authority of Parliament in general and the National Assembly in particular. Generally, the Houses of Parliament exercise the legislative mandate of the people, deliberate on matters of national interest and oversight the exercise of power by other arms of government.
16. Public participation is now a guaranteed process in Kenya. The constitution in various chapters and clauses require that public participation be undertaken at all levels of government before government officials and body make official decisions.
17. Public participation is having an open, accountable and structured process where citizens or people or a segment of a community can interact, exchange views and influence decision making. Actually, public participation is part of a democratic process.

#### 2.1.2 MINING ACT 2016

18. Section 34 of the Mining Act on Mineral right applications provides;
  - (1) The Cabinet Secretary shall, on receipt of the application, give notice in writing of the pending application for the grant of a mineral right to—
    - (a) the land owner or lawful occupier of the land where the mineral is located;
    - (b) the community; and
    - (c) the relevant county Government.
  - (2) The Cabinet Secretary shall, on receipt of the application, publish notice of the pending application in a newspaper of wide circulation at the applicant's expense.
  - (3) A notice given under sub-section (1) shall—
    - (a) state the proposed boundaries of the land in relation to which an application for a mineral right is made; and

- (b) be published, for twenty one days in the Gazette and in the offices of the County Government within which county the land is situated.
- (4) Subject to sub-section
- (5), a person or community may object to the grant of a licence—
  - (a) within twenty one days in the case of an application for a prospecting licence; and
  - (b) within forty two days in the case of an applications for a mining licence.
- (6) The Cabinet Secretary shall hear and determine any objection to an application under subsection (4) through the Minerals Rights Board.

19. Section 37 of the Mining Act 2016 on Mineral rights on private land provides

- (1) A prospecting and mining rights shall not be granted under this Act with respect to private land without the express consent of the registered owner, and such consent shall not be unreasonably withheld.
- (2) (2)For the purpose of subsection (1), consent shall be deemed to be given for the purposes of this Act where the owner of private land has entered into—
  - (a) a legally binding arrangement with the applicant for the prospecting and mining rights or with the Government, which allows for the conduct of prospecting or mining operations; or
  - (b) an agreement with the applicant for the prospecting and mining rights concerning the payment of adequate compensation.
- (3) Where consent is granted prior to any change in land ownership, such consent shall continue to be valid for as long as the prospecting and mining rights subsists.

22. Section 72 of the Mining Act on Application for prospecting licence provides;

- (1) A person may apply for a prospecting licence to the Cabinet Secretary in the prescribed form and accompanied by the prescribed fee.

(2) An applicant for a prospecting licence shall provide the following information to the Cabinet Secretary—

- (a) the mineral or minerals in respect of which the licence is sought;
- (b) the area in respect of which the licence is sought;
- (c) particulars of the proposed programme for prospecting operations to be carried out under the licence;
- (d) details of the experience and financial resources available to the applicant to be able to conduct the prospecting operations;
- (e) a plan giving particulars of the proposals by the applicant with respect to the employment and training of Kenyan citizens; and
- (f) a plan giving particulars of the proposals by the applicant with respect to the procurement of local goods and services.

(3) The Cabinet Secretary shall not grant a prospecting licence unless he is satisfied that—

- (a) the size area of land over which the prospecting licence is sought is reasonable having regard to the proposed programme of prospecting operations by the applicant;
- (b) the applicant has adequate financial resources, technical competence and mining industry experience to carry on the proposed programme of prospecting operations;
- (c) the applicant has submitted an environmental rehabilitation and restoration plan;

(d) the local product plan by the applicant with respect to the procurement of locally available goods and services are acceptable; and

(e) the employment plan by the applicant with respect to employment and training of Kenyan citizens are acceptable.

(4) The Cabinet Secretary shall prescribe the items required to be submitted by the applicant where an application for the prospecting licence is approved under this Act.

### 2.1.3 THE LAND ACT 2012

23. Section 157 of the above Act provides

1) Any person who—

(a) knowingly makes any false statement, orally or in writing, in connection with any disposition or other transaction affecting land or any other matter arising under this Act;

(b) knowingly gives any false information or makes any false statement, either orally or in writing, in connection with any call for information made under this Act or in connection with any investigation into the commission of any offence under this Act;

(c) fraudulently procures—

(i) the registration or issue of any certificate of ownership, or any other document or instrument relating to the land; or

(ii) the making of any entry or the endorsement of any matter on any document or instrument referred to in subparagraph (i); or

2012 Land No. 6

(iii) the cancellation or amendment of any of the documents referred to in this paragraph instruments or entries or endorsements; or

(d) fraudulently alters, adds to, erases, defaces, mutilates or destroys any document or instrument relating to land or any entry on or endorsement of any such document or instrument; suppresses or conceals from the Commission, the Registrar, or any authorized officer exercising powers under this Act or assists or joins in so doing, any material document, fact or matter, commits an offence and on conviction is liable to a fine not exceeding ten million shillings or imprisonment for a term not exceeding ten years or to both the fine and imprisonment

#### 2.1.4 ENERGY ACT 2019

24. Section 94 of the energy Act 2019 requires one to get a licence or a permit in order to engage in coal business;

(1) A licence or permit as the case may be, is required

by a person who wishes to carry out the production of energy from coal.

(2) A person who wishes to undertake—

(a) electricity generation using coal must have a valid licence issued by the Authority;

(b) transportation of coal for energy production using a vehicle must have a valid permit in respect of that vehicle issued by the Authority.

25. Section 98 of the Energy Act 2019 gives conditions for consideration when granting a licence or the permit, and among the conditions include

- a) the impact of the undertaking on the social, cultural or recreational life of the community
- b) the need to protect the environment and to conserve the natural resources in accordance with the environmental, health, and maritime laws and international maritime treaties ratified by Kenya and other guidelines developed by the Authority



## CHAPTER TWO

### 3.0 SUBMISSIONS ON THE PETITION

#### 3.1 PETITION BY HON. GIDEON MUTEMI MULYUNGI, MP

26. While appearing before the Committee on 9<sup>th</sup> May 2019, the Hon. Gideon M. Mulyungi, MP, Member of Parliament from Mwingi Central on behalf of the residents of Mui submitted that ;

- (i) That , the Petitioners have lived in Mui, Mwingi East Sub County of Kitui area since time immemorial, majority of whom are peasant farmers who grow maize, beans, sorghum, millet, green grams among other crops and also keep livestock
- (ii) That, in the year 2008 coal mineral was discovered in the area occasioning the government through the then Provincial Administration and local leaders to arrive at a decision to relocate residents from the said area to allow for mining of the coal
- (iii) That, on 27<sup>th</sup> day of April 2018 vide Gazette Notice No, 389, the Cabinet Secretary gave a public notice on the application for the mineral rights without following the due process of law in particular without any civic education, public participation and /or involvement of the people
- (iv) That , the community has never given consent for the mining in accordance with the provisions of section 37(1) of the Mining act with regards to the procedure of mining on private land
- (v) That, similarly, the Governor of the County Government of Kitui announced that mining activities would start in the next six months with effect from April 2018 and that the local residents would be relocated to Kanyonyoo area in Kitui County, about 100km from their current residence
- (vi) That, the residents have buried their loved ones in the said area and it will be against the Kamba customs and cultural practices to unearth their loved ones or see their graves being destroyed by heavy machines

- (vii) That, school going children, the elderly and the disabled will be negatively affected due to change of the environment as a result of relocation
- (viii) That, the land was not properly surveyed with many people possessing titles with errors in names and while others have less size than the actual parcel of land allocated
- (ix) That, during demarcation process, large parcels of land were left between the boundaries and/or allocated to strangers who have no legal right over it.
- (x) That, Environmental Impact Assessment or the Environmental Management Plan were never conducted
- (xi) That , the community has never been informed about compensation of their land or properties;
- (xii) That, the efforts to resolve this matter with relevant stakeholders have been futile; and
- (xiii) That ,the issues in respect of which this Petition is made are not pending before any court of law, constitutional or legal body

### 3.1.1 PETITIONERS PRAYERS TO THE NATIONAL ASSEMBLY

27. The Petitioners pray to National Assembly through the Departmental Committee on Energy to consider the matters raised in the Petition pursuant to the provisions of the Standing orders 216(5) and Make recommendations thereof

### 3.2 SUBMISSION BY THE CABINET SECRETARY, MINISTRY OF LANDS AND PHYSICAL PLANNING

Appearing before the Committee on 13<sup>th</sup> June, 2019 Hon Gedion Mungaro, Chief Administrative Secretary, Ministry of Lands and Physical Planning submitted that;

28. The Ministry of Lands observed that coal basin area fall within Kitui County and covers 7 adjudication sections and that all the sections had been adjudicated and title deeds processed. So far, 16,008 out of the 22,601 tittles processed have been issued

29. It acknowledged, however, that during the demarcation process its technical team made some errors on the details of a few parcels of land. It had also received approximately 200 complaints regarding the adjudication process in the area mainly touching the acreage but no specific complaints of strangers having been allocated land.

### 3.3 SUBMISSIONS BY CABINET SECRETARY, MINISTRY OF ENERGY

Appearing before the Committee on 13<sup>th</sup> June, 2019, Dr. Joseph Njoroge, Principal Secretary, State department of Energy submitted that;

30. The Ministry of Energy noted that it was aware that the residents have lived in this area and have engaged in growing of crops and keeping of livestock for their livelihood. The ministry made this observation in the course of engagement with the community while it was carrying out geological mapping, exploration and appraisal drilling to establish the presence of viable coal deposits in the wide Mui basin of Mwingi and Kitui counties.

31. Following the geological mapping, exploration and appraisal drilling, the Ministry of Energy and Petroleum made a public pronouncement of the presence of viable coal deposits in 2010. The ministry was not however privy to the statement attributed to the then provincial administration and local leaders on the decision to relocate residents from the same area to allow mining of the coal. The ministry has maintained that due process would be followed in relocating residents following a complete feasibility study and resettlement action plan to internationally accepted standard that will mainly affect the development areas identified in this studies and not the whole community in Mui basin area.

### 3.4 SUBMISSIONS BY THE PRINCIPAL SECRETARY, STATE DEPARTMENT OF MINING

Appearing before the Committee on 13<sup>th</sup> June, 2019, Mr John Omenge, Principal Secretary, State Department of Mining submitted that;

32. The State Department of Mining stated that the correct Gazette notice was No. 3891 of 27<sup>th</sup> April 2018 but not No. 389 of 27<sup>th</sup> April 2018 as quoted in the Petition. Nevertheless it clarified that the said Gazette Notice was in respect to an application for a prospecting licence by Palak Steel Mill Limited. The company's application No. PL/2017/0013 was a prospecting license over an area of 311.7199 Km<sup>2</sup> (Approx. 1450 cadastral blocks) in Mwingi East sub-county, Kitui County, to prospect for coal.
33. The Principal Secretary, further maintained that the area of application by Palak Steel Mill Limited was outside the four gazette Mui basin coal blocks that had been reserved for the ministry of energy and that the company had submitted land owner consents for the intended exploration activities as per the provisions of the Mining Act.
34. The Principal Secretary, said that the gazette notice was for purposes of informing the public of the application and inviting any comments and objections within 21 days from the date of its publication as provided for by the act. The application was published in the Nation Newspaper of 21<sup>st</sup> June 2018 with the purpose of ensuring that the public was duly informed of the pending application as also provided for under the law. With no objection received a prospecting licence no. PI/2017/0013 was issued for a term of three (3) years with effect from 8<sup>th</sup> October 2018.
35. A prospecting licence enables the holder to undertake prospecting and exploration activities. It is only after a viable mineral deposit has been established that the prospecting licence holder can apply for a mining licence. Consequently no application for coal mining has been received by the Ministry of petroleum and mining from Palak Steel Mill Limited and as such no coal mining licence has been issued to the company.

### 3.5 COMMITTEE FACT FINDING VISIT TO MUI, KITUI COUNTY

36. The Departmental Committee on Energy visited Mui Basin in Kitui County on 16<sup>th</sup> May 2019 to receive submission from the residents regarding this public Petition.

37. The residents of Mui Basin raised a lot of issues on the mining of coal. Their submissions were both oral and written submissions (See Annex for the residents' submissions)

38. The community main concerns about coal mining was anchored on fears related to:-

- (i) Health related complication due to dust/air pollution as a result of mining activities once it commences
- (ii) Displacement from their land owing to the planned relocation of the community to other available land within the county. This displacement, they argued will lead to loss of grazing land and other economic activities which will negatively impact its people
- (iii) The Ministry of Energy and Ministry of Mining have not educated residents of Mui on importance of the coal mining, how the community is to benefit them and how this project will affect them both socially and economically.
- (iv) The government seems to pay attention to the local community cultural practises, customs and belief while proceeding to undertake the project as provided in the Mining Act. These customs include how to handle community cemeteries during relocation and excavation while mining for coal.
- (v) That, the Ministry of Energy has not at any time discussed with the residents of Mui basin to be affected by the project, the modalities of land and relocation compensation.
- (vi) Ministry of Lands and Physical Planning surveyed and adjudicated the Mui basin land in 2015. However, residents of Mui basin complained about many significant errors that were captured in their Title deeds which the Ministry was yet to correct. Further, the residents were concerned of strangers being allocated land in the basin.

## CHAPTER THREE

### 4.0 COMMITTEE OBSERVATIONS

39. Arising from the submissions by the various witnesses and the Committee visit, The Committee observed that;

- a) The Government of Kenya in year 2010 discovered Coal deposits in Kitui County. The Ministry of Energy clustered the discovery into four blocks namely Block A (Mutitu Sub County) , Block B ( Mutitu and Kitui Central Sub Counties) , Block C (Mwingi East, Mutitu, & Kitui Central Sub Counties) and Block D (Mwingi East & Mwingi Central Sub Counties)
- b) The Gazette Notice No. 389 quoted by the Petitioners which was issued on 27<sup>th</sup> April, 2018 was erroneous and the correct Notice No. 3891. However, this Gazette Notice relates to application for Prospecting License by Palak Steel Mill Ltd, a company prospecting Coal resources in Coal blocks in Mwingi East Sub County and not Mui basin.
- c) The Ministry of Lands and Physical Planning in 2015 undertook the process of demarcation and land adjudication in Mui basin in Kitui County. However, Title deeds issued in respect to Mutwangombe, Thitha, Kitise and Yumbu/Itiko “A” had with many significant errors which has since not yet been corrected. The residents also indicated that strangers were irregularly allocated land during this demarcation and land adjudication.
- d) The Ministry of Lands and Physical Planning have acknowledged that during the demarcation of the Coal Basin area, its technical teams made errors in titling and in the Register. Consequently, the Ministry has undertaken to rectify the errors in the Register by August 2019.
- e) The Ministry of Energy is yet to re-constitute the Local Liaison Committee in Mui Coal Basin, a Committee that supports the government to effectively engage the local community whenever government grants private sector licenses to undertake mineral extraction and exploration



- f) The process of engagement towards actual Coal mining has not started in Mui Basin. Similarly the Ministry of Energy is yet to undertake Environmental Impact Assessment Studies, Feasibility studies and Resettlement Action Plans in Mui Basin.

## 5.0 COMMITTEE RECOMMENDATION

38. Arising from the observation and key findings, the Committee recommends–

- i. The Ministry of Energy in consultation with area Member of Parliament to urgently constitute a new Local Liaison Committee to coordinate and guide the coal mining activities in Mui basin.
- ii. The Ministry of Lands to re-survey and verify the land with a view of correcting errors in the already issued Title deeds and investigate the concerns raised by the residents on land irregularly allocated to strangers in Mui Basin and report back to the Committee within ninety (90) days.
- iii. The Ministry of Energy to carry out public awareness on coal as a source for electricity generation as well as coal mining activities. The Ministry should further expose local leaders on the international best practises on the use of clean coal in electricity generation by facilitating study visits to countries using ultra clean technologies.
- iv. In engaging the community, the Government should pay particular attention to the local cultural practises, customs and relevant provision of the Mining Act while exploiting coal resources in Mui Basin.



MINUTES OF THE 136<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
ENERGY HELD IN THE BOARD ROOM OF 8<sup>TH</sup> FLOOR UKULIMA BUILDING ON  
TUESDAY 25<sup>TH</sup> JUNE, 2019 AT 10.00AM

PRESENT

1. The Hon. (Dr.) Robert Pukose, M.P. - Vice Chairperson
2. The Hon. Ekomwa Lomenen James, M.P.
3. The Hon. Lemanken Aramat, M.P.
4. The Hon. Walter Owino, MP
5. The Hon. Ken Chonga, MP
6. The Hon. Vincent Musyoka Musau, M.P.
7. The Hon. Julius Musili Mawathe, MP
8. The Hon. Elsie Muhanda, MP
9. The Hon. Abdikhaim Osman Mohamed, M.P
10. The Hon. Elisha Odhiambo, MP

ABSENT WITH APOLOGY

1. The Hon. David Gikaria, M.P. - Chairperson
2. The Hon. Gitau Faith Wairimu, M.P.
3. The Hon. Joseph Wathigo Manje, M.P.
4. The Hon. Mohammed Ali Lokiro, MP
5. The Hon. Clement Muturi Kigano, M.P.
6. The Hon. Cecily Mbarire, M.P.
7. The Hon. Amina Gedow Hassan, M.P
8. The Hon. Tindi Nicholas Mwale, MP
9. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE:

NATIONAL ASSEMBLY

- |                          |   |                       |
|--------------------------|---|-----------------------|
| 1. Mr. Benjamin Magut    | - | First Clerk Assistant |
| 2. Mr. Douglas Katho     | - | Clerk Assistant III   |
| 3. Mr. David Ngeno       | - | Research Officer      |
| 4. Ms. Sheila Chebotibin | - | Serjeant –At-Arms     |
| 5. Mr. Rose Ometere      | - | Audio Officer         |

MIN. NO. NA/ENERGY/2019/101: PRELIMINARIES AND INTRODUCTIONS

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

MIN. NO. NA/ENERGY/2019/102: CONSIDERATION AND ADOPTION OF THE  
PETITION BY HON. GEDION MULYUNGI, MP  
ON BEHALF OF THE RESIDENTS OF MWINGI  
CENTRAL REGARDING COAL MINING  
ACTIVITIES IN MUI BASIN, KITUI COUNTY.

Arising from the observation and key findings of the Committee report on the consideration of the Petition by Hon. Gedion Mulyungi, MP regarding coal mining activities in Mui basin, Kitui County, the Committee unanimously adopted the Report on a proposal by the Hon. Abdikhaim Osman and Seconded by the Hon. Ken Chonga, MP with the following recommendations–

- i. The Ministry of Energy in consultation with area Member of Parliament to urgently constitute a new Local Liaison Committee to coordinate and guide the coal mining activities in Mui basin.
- ii. The Ministry of Lands to re-survey and verify the land with a view of correcting errors in the already issued Title deeds and investigate the concerns raised by the residents on land irregularly allocated to strangers in Mui Basin and report back to the Committee within ninety (90) days.
- iii. The Ministry of Energy to carry out public awareness on coal as a source for electricity generation as well as coal mining activities. The Ministry should further expose local leaders on the international best practises on the use of clean coal in electricity generation by facilitating study visits to countries using ultra clean technologies.
- iv. In engaging the community, the Government should pay particular attention to the local cultural practises, customs and relevant provision of the Mining Act while exploiting coal resources in Mui Basin.

MIN. NO. NA/ENERGY/2019/103: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past 12Noon.

SIGNED.....  
(CHAIRPERSON)

DATE..... 3-7-19

MINUTES OF THE 133<sup>RD</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY  
HELD IN THE 2<sup>ND</sup> FLOOR CONTINENTAL ON THURSDAY 13<sup>TH</sup> JUNE 2018 AT  
10.00AM

MEMBERS PRESENT

- |   |   |                  |
|---|---|------------------|
| 1. The Hon. David Gikaria, M.P.           | - | Chairperson      |
| 2. The Hon. (Dr.) Robert Pukose, M.P.     | - | Vice Chairperson |
| 3. The Hon. Gitau Faith Wairimu, M.P.     |   |                  |
| 4. The Hon. Tindi Nicholas Mwale, MP      |   |                  |
| 5. The Hon. Ekomwa Lomenen James, M.P.    |   |                  |
| 6. The Hon. Joseph Wathigo Manje, M.P.    |   |                  |
| 7. The Hon. Walter Owino, MP              |   |                  |
| 8. The Hon. Ken Chonga, MP                |   |                  |
| 9. The Hon. Vincent Musyoka Musau, M.P.   |   |                  |
| 10. The Hon. Clement Muturi Kigano, M.P.  |   |                  |
| 11. The Hon. Julius Musili Mawathe, MP    |   |                  |
| 12. The Hon. Elsie Muhanda, MP            |   |                  |
| 13. The Hon. Mohammed Ali Lokiro, MP      |   |                  |
| 14. The Hon. Abdikhaim Osman Mohamed, M.P |   |                  |
| 15. The Hon. Elisha Odhiambo, MP          |   |                  |

ABSENT WITH APOLOGY

1. The Hon. Cecily Mbarire, M.P.
2. The Hon. Amina Gedow Hassan, M.P
3. The Hon. Lemanken Aramat, M.P.
4. The Hon. Oscar Sudi, Kipchumba, M.P.

IN ATTENDANCE:

MINISTRY OF ENERGY, MINISTRY OF LANDS & PHYSICAL  
PLANNING, STATE DEPARTMENT OF MINING.

- |                               |   |
|-------------------------------|---|
| 1. Hon. Gedion Mung'aro       | - CAS Ministry of Lands and Physical Planning   |
| 2. Eng. Dr. Joseph K. Njoroge | - Principal Secretary Ministry of Energy  |
| 3. Mr. Timothy Gakuu          | - Chief Economist, Ministry of Energy   |
| 4. Ms. Kendi Sagala           | - CS Office Ministry of Energy  |
| 5. Ms. Joyce Owiti            | -PA PS Office State Department Mining   |
| 6. Mr. Ligungla D. Asembo     | - Principal Superintendent Geologist, Ministry of Energy  |
| 7. Mr. Chrispin O Lupe        | - Chief Geologist , Ministry of Energy  |
| 8. Dr. Kasom FM               | - PA to PS Energy, Ministry of Energy   |
| 9. Mr. Chacha Maroa           | -Land Registrar, Ministry of Lands and Physical Planning  |
| 10. Charles Moemi             | - Deputy Director Land Valuation, Ministry of Lands and Physical Planning                           |
| 11. J.K. Mundia               | - Land Registrar, Ministry of lands   |
| 12. Dr. Kithumbu Eustace      | - Senior Ass. Director of Land Adjudication and Settlement, Ministry of Lands and Physical Planning |
| 13. Mr. Paul Ndungu           | -Senior Land Surveyor, Ministry of Lands and Physical Planning                                      |
| 14. John Omenge               | - Principal Secretary, State Department for Mining  |
| 15. Macleaus Sloya            | - P.A to CS, State Department for Mining  |

**IN ATTENDANCE:**

**NATIONAL ASSEMBLY**

- |                          |   |                       |
|--------------------------|---|-----------------------|
| 1. Mr. Benjamin Magut    | - | First Clerk Assistant |
| 2. Mr. Douglas Katho     | - | Clerk Assistant III   |
| 3. Mr. David Ngeno       | - | Research Officer      |
| 4. Ms. Sheila Chebotibin | - | Serjeant –At-Arms     |
| 5. Mr. Rose Ometere      | - | Audio Officer         |

**MIN. NO. NA/ENERGY/2019/192: PRELIMINARIES AND INTRODUCTIONS**

The sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted by Members present.

**MIN. NO. NA/ENERGY/2019/193: MEETING WITH THE MINISTRY OF ENERGY, MINISTRY OF LANDS AND THE STATE DEPARTMENT OF MINING REGARDING THE PETITION BY HON. GEDION MULYUNGI ON COAL MINING ACTIVITIES IN MUI BASIN**

- a. The Chief Administrative Secretary for the Ministry of lands appeared before the Committee on behalf of the Cabinet Secretary for Energy and responded to the issues raised in the Petition as follows:-
  - i. The Coal Basin area falls within Kitui County and covers 7 adjudication Sections which have been adjudicated and titles deeds processed.
  - ii. That during the demarcation of the Coal Basin area, the technical teams made errors on the details of a few parcels and the Ministry has already undertaken to rectify the errors in the register by August 2019.
  - iii. That so far 16,008 out of the 22,601 titles processed have been issued; there are approximately 200 complaints received regarding the adjudication process in the area mainly touching on the acreage. There are not specific strangers having been allocated land.
- b. The Principal Secretary for the Ministry of Energy appeared before the Committee on behalf of the Cabinet Secretary for Energy and responded to the issues raised in the Petition as follows:-
  - i. That the Ministry is aware that the residents have lived in the area as evident during the geological mapping, exploration and appraisal drilling to establish the presence of viable coal deposits in the wide Mui Basin of Mwingi in Kitui County.
  - ii. That following the geological mapping , exploration and appraisal drilling , the a public pronouncement was made of the presence of viable coal deposits in 2010 and that the Ministry is not privy to the statement attributed to the then Provincial administration and local leaders on the decision to relocate residents from the same area to allow mining of the coal.
  - iii. The Ministry maintains that due process will be followed in the relocating residents following a complete feasibility study and resettlement action plan



- to internationally accepted standard that will mainly affect the development areas identified in these studies and not the whole community in Mui Basin area.
- iv. The process of engagement towards actual mining has not started the relocation will be done taking into account recommendations of the Environment Impact Assessment Studies, feasibility studies and Resettlement Action plans and that the resettlement action plans will contain all aspects and include how to handle customary and cultural assets of the community in an agreed manner.
  - v. Further the resettlement action plan and the environment impact assessment studies will be done as required by our laws and at an appropriate stage.
  - vi. That the compensation stage has not reached as the area required for development will only be identified from the feasibility studies.
- c. The Principal Secretary for the State Department of Mining appeared before the Committee on behalf of the Cabinet Secretary for Petroleum and Mining and responded to the issues raised in the Petition as follows:-
- i. That's on 27<sup>th</sup> April, 2018 the Cabinet Secretary for Mining vide Gazette Notice No. 3891 in respect to an application for a prospecting license by Palak Steel Mill Limited. The Company's application No. PL/2017/0013 was for a prospecting License over an area of 311.7199 Km<sup>2</sup> to prospect for coal.
  - ii. The area of application by Palak Steel Mill Limited is outside the four gazette Mui Basin Coal blocks that had been reserved for the Ministry of Energy and that the company had submitted land owner consents for the intended explorations activities as per the provisions of the Mining Act.
  - iii. The gazette notice was for purposes of informing the public of the application and inviting any comments and objections within 21days from the date of its publication as provided for by the Act.
  - iv. Further the application was published in the Nation Newspaper of 21<sup>st</sup> June 2018 with the purpose of ensuring that the public was duly informed of the pending application as also provided for under the law. With no objection received, a prospecting license no. PI/2017/0013 was issued for a term of three years with effect from 8<sup>th</sup> October, 2018.
  - v. A prospecting license enables the holder to undertake prospecting and exploration activities. It is only after a viable mineral deposits has been established that the prospecting license holder can apply for a mining license.
  - vi. No application for coal mining has been received by the ministry of petroleum and Mining from Palak Steel Mill Limited and as such no coal mining license has been issued to the company.

MIN. NO. NA/ENERGY/2019/194: ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 10mins past 12Noon.

SIGNED.....

(CHAIRPERSON)

DATE.....

3-7-19





Approved:  
B. S. N. A.  
25/3/19

REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (THIRD SESSION)

THE NATIONAL ASSEMBLY

PUBLIC PETITION

(NO. 3 OF 2019)

REGARDING COAL MINING ACTIVITIES IN MUI, MWINGI EAST SUB-COUNTY OF KITUI COUNTY

I, the undersigned, on behalf of residents of Mui, Mwingi East Sub-County of Kitui County within the republic of Kenya;

**DRAW** the attention of the House to the following: -

1. **THAT**, the petitioners have lived in Mui, Mwingi East Sub-County of Kitui area since time immemorial, majority of whom are peasant farmers who grow maize, beans, sorghum, millet, green grams among other crops and also keep domestic animals;
2. **THAT**, in the year 2008, coal mineral was discovered in the area occasioning the Government through the then Provincial Administration and local leaders to arrive at a decision to relocate residents from the said area to allow for mining of the coal;
3. **THAT**, on 27<sup>th</sup> day of April 2018 vide Gazette Notice No.389, the Cabinet Secretary for Mining gave a public notice on the application for mineral rights without following due process of law in particular without any civic education, public participation and/or involvement of the people;

**PUBLIC REGARDING MINING OF COAL ACTIVITIES IN MUI, MWINGI  
EAST SUB-COUNTY OF KITUI COUNTY**

---

4. **THAT**, the community has never given consent for the mining in accordance with the provisions sections 37 (1) of the Mining Act with regards to the procedure for mining on private or community land;
5. **THAT**, similarly, the Governor of the County Government of Kitui announced that mining activities would start in the next six months with effect from April, 2018 and that the local residents would be relocated to Kanyonyoo area in Kitui County, about 100km from their current residence;
6. **THAT**, ~~the residents have buried their loved ones in the said area and~~ it will be against the Kamba customs and cultural practices to unearth their loved ones or see their graves being destroyed by heavy machines;
7. **THAT**, School going children, the elderly and the disabled will be negatively affected due to change of the environment as a result of relocation;
8. **THAT**, the land was not properly surveyed with many people possessing titles with errors in names and while others have less size than the actual parcel of land allocated;
9. **THAT**, during demarcation process, large parcels of land were left between the boundaries and/or allocated to strangers who have no legal right over it;
10. **THAT**, Environmental Impact Assessment or the Environmental Management Plan were never conducted;
11. **THAT**, the community has never been informed about compensation of their land and properties if any;

**PUBLIC REGARDING MINING OF COAL ACTIVITIES IN MUI, MWINGI  
EAST SUB-COUNTY OF KITUI COUNTY**

---

12. **THAT**, efforts to resolve this matter with relevant stakeholders have been futile; and

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13. **THAT**, the issues in respect of which this petition is made are not pending before any court of law, constitutional or legal body.

**THEREFORE**, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Energy considers the matters raised in the petition pursuant to the provisions of Standing Order 216 5(a) and make recommendations thereof.

And your **PETITIONERS** will ever pray.

**PRESENTED BY:**



**THE HON. (DR.) GIDEON MUTEMI MULYUNGI, MP**  
**MEMBER FOR MWINGI CENTRAL CONSTITUENCY**

**DATE:**.....

14/2/2019

• Expired

• Sought opinion with CS/  
write letter

---

Public part -

EAI.

Compensation - BSA.

Error titles

Court Ruling - EAI / Public part

---

↓  
Mining Act - Consent.

---

Kawzya - Compensation - Agrees / Public part /  
Civic Educ.  
Dr. Bukosa - Agrees.  
Mawathe -

---

Green Energy

Wed - 15<sup>th</sup>



# REPUBLIC OF KENYA



## MINISTRY OF PETROLEUM AND MINING

### RESPONSE TO THE PUBLIC PETITION BEFORE THE DEPARTMENTAL COMMITTEE ON ENERGY – MATTERS RELEVANT TO THE MINISTRY OF PETROLEUM AND MINING

---

**Petition by Hon (Dr.) Gideon Mulyungi MP (Mwingi Central) regarding Coal Mining Activities in Mui Basin, Mwingi East Sub-County, Kitui County;**

#### **Issue No. 3**

THAT on 27<sup>th</sup> day of April 2018 vide Gazette Notice No 389, the Cabinet Secretary for Mining gave public Notice on the application for mineral rights without following due process of the law in particular without any civic education, public participation and / or involvement of the people.

#### **Response**

The Ministry of Petroleum and Mining wishes to state as follows:

The quoted Gazette Notice No 389 of 27<sup>th</sup> April 2018 in respect of the above is erroneous. The Correct Gazette Notice is **Number. 3891 of 27<sup>th</sup> April 2018**. Nevertheless, we wish to clarify that the said Gazette Notice was in respect to an application for a Prospecting Licence by Palak Steel Mill Limited. The company's application No. PL/2017/0013 was for a prospecting Licence over an area of 311.7199 km<sup>2</sup> (Approx. 1450 cadastral



blocks) in Mwingi East Sub- County, Kitui County, to prospect for coal.

The area of application by Palak Steel Mill Limited is outside the four gazette Mui Basin Coal Blocks that had been reserved for the Ministry of Energy as shown in the attached diagram (Annexure).

The company had submitted land owner consents for the intended exploration activities as per the provisions of the Mining Act.

The gazette notice was for purposes of informing the public of the application and inviting any comments and objections within 21 days from the date of its publication as provided for by the Act.

Further, the application was published in the **Nation Newspaper of 21<sup>st</sup> June 2018** with the purpose of ensuring that the public was duly informed of the pending application as also provided for under the law. With no objection received, a Prospecting Licence No PI/2017/0013 was issued for a term of three (3) years with effect from 8<sup>th</sup> October 2018.

A prospecting licence enables the holder to undertake prospecting and exploration activities. It is only after a viable mineral deposit has been established that the prospecting licence holder can apply for a mining licence. Consequently no application for coal mining has been received by the Ministry of Petroleum and Mining from Palak Steel Mill Limited and as such no coal mining licence has been issued to the company.

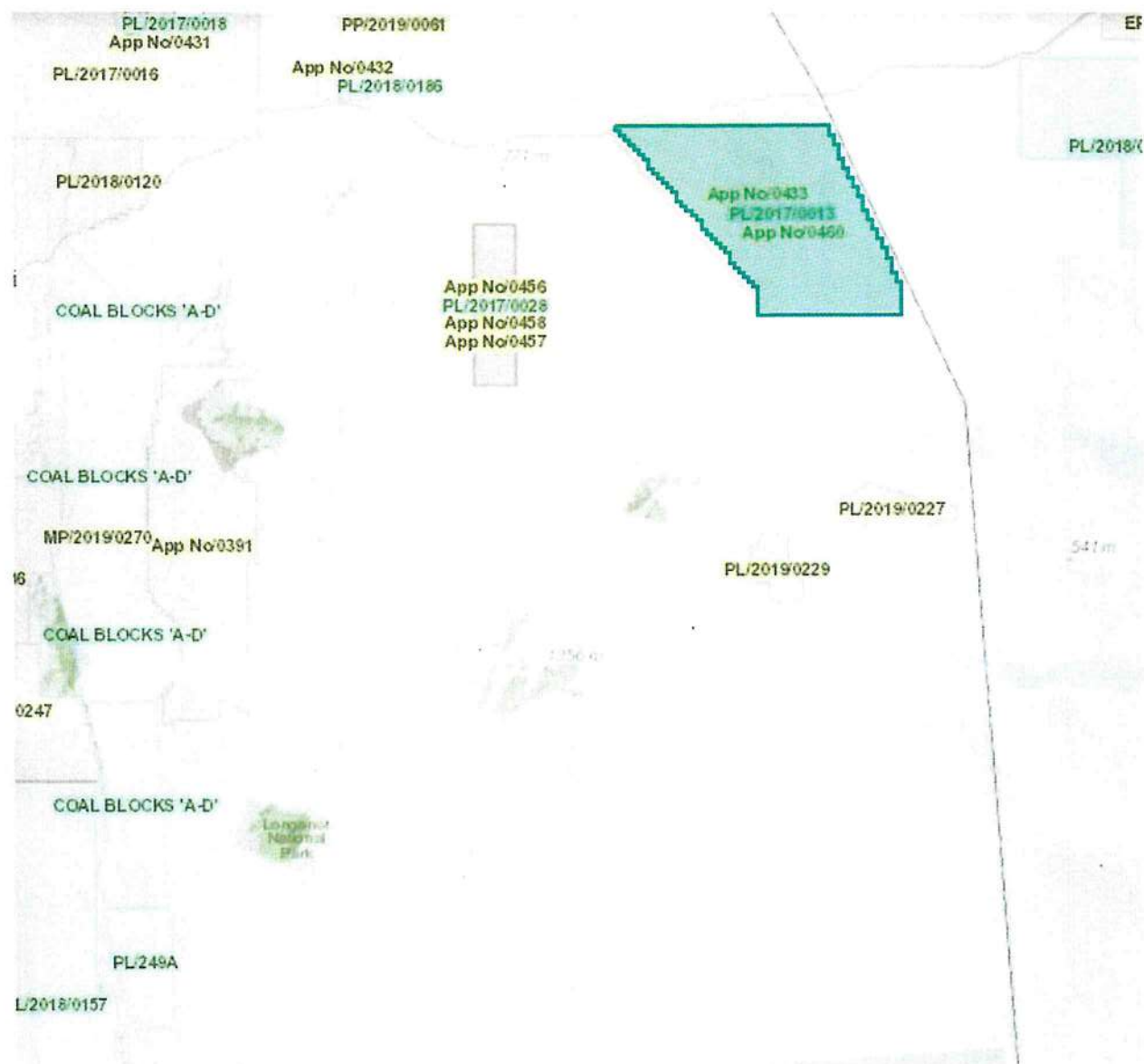


Matters pertaining to concessioning, exploration and stakeholder engagement in respect of the four Mui Basin Coal Blocks reserved for the Ministry of Energy will be dealt with by the Ministry of Energy.

In similar manner, the Ministry of Lands and Physical Planning will address matters in relation to land survey and titling as well as resettlement of the affected communities in the coal project.



PALAK STEEL MILL LIMITED APPLICATION FOR PROSPECTING  
LICENCE NO PL/2017/0013 IN RELATION TO MUI COAL BLOCKS













## MINISTRY OF LANDS AND PHYSICAL PLANNING

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### PETITIONS TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON ENERGY

PUBLIC PETITION NO. 3 OF 2019 BY HON. (DR.) GIDEON MULYUNGI, MEMBER OF PARLIAMENT, MWINGI WEST ON BEHALF OF RESIDENTS OF MUI, MWINGI EAST SUBCOUNTY OF KITUI COUNTY REGARDING THE COAL MINING ACTIVITIES IN MUI, MWINGI EAST SUB COUNTY OF KITUI COUNTY

#### 1.0. THE PETITION

The petition dated February 14, 2019 concerns land within the Mui Coal Basin area in Kitui County. The Petitioners contend that:

- a) The said land was not properly surveyed
- b) The titles for several parcels of land do not reflect the actual acreage on the ground
- c) Several titles have errors in the names.
- d) During the demarcation process, large parcels were left between the boundaries and allocated to strangers.

#### 2.0. RESPONSE

Honourable Chair, I wish to respond as follows:

##### BACKGROUND

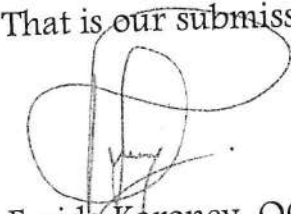
The Coal Basin area falls within Kitui County and covers 7 Adjudication Sections. All the sections have been adjudicated and title deeds processed as tabulated below-

S/No.	Adjudication Section	Date Declared	Date Published	No. of Title Deeds
1.	Mutwangombe	28/8/2002	2/4/2015	5113
2.	Thitha	4/3/2014	8/4/2015	5110
3.	Kitise	5/3/2014	31/3/2015	2050
4.	Yumbu/Itiko 'A'	7/3/2014	7/4/2015	2400
5.	Ngiluni	25/9/1998	15/3/2006	3246
6.	Ngoo	26/6/1990	11/9/1995	1760
7.	Kivou	26/1/2001	17/19/2006	2922
			<b>TOTAL</b>	<b>22601</b>

Honourable Chair we acknowledge that during demarcation of the Coal Basin area, our technical teams made errors on the details of a few parcels. The Ministry has already undertaken to rectify the errors in the register by August 2019. We have commenced the process and aim to complete it within the set timelines.

So far, 16,008 out of the 22,601 titles processed have been issued. We have received approximately 200 complaints regarding the adjudication process in the area mainly touching on acreage. We do not however have specific complaints of strangers having been allocated land.

That is our submission honourable chair.



Farida Karoney, OGW  
**CABINET SECRETARY**

June 13, 2019



REPUBLIC OF KENYA  
MINISTRY OF ENERGY

RESPONSE BY HON. CHARLES KETER, EGH, CABINET SECRETARY FOR  
ENERGY

RESPONSE TO PUBLIC PETITION BY HON. (DR) GIDEON MUYUNGI, MP  
MWINGI WEST

REGARDING COAL MINING ACTIVITIES IN MUI, MWINGI EAST SUB-  
COUNTY OF KITUI COUNTY

The Hon. Member of Parliament drew the attention of the House to the following:

1. **THAT**, the petitioners have lived in Mui, Mwingi East Sub-County of Kitui area since time immemorial, majority of whom are peasant farmers who grow maize, beans, sorghum, millet, green grams among other crops and also keep domestic animals;

**Response**

This Hon. Member's petition refers to coal concessions of Mui Basin Block C (Yoonye-Kateiko) and Block D (Karunga-Isekele) as shown in the attached Sketch Map in Appendix I:

Block C mainly lies in Mwingi East Sub-County of Mwingi Central Constituency, but with portions in the south lying in Mutitu Sub-County of Kitui East Constituency and in Kitui Central Sub-County of Kitui Central Constituency.



Block D lies in Mwingi East Sub-County and Mwingi Central Sub-County, both of Mwingi Central Constituency.

The ministry is aware that the residents have lived in this area and have engaged in the said activities. The Ministry made this observation in the course of engagement with the community while it was carrying out geological mapping, exploration and appraisal drilling to establish the presence of viable coal deposits in the wide Mui Basin of Mwingi and Kitui Counties.

2. **THAT**, in the year 2008, coal mineral was discovered in the area occasioning the Government through the then Provincial Administration and local leaders to arrive at a decision to relocate residents from the said area to allow for mining of the coal;

### **Response**

Following the geological mapping, exploration and appraisal drilling, the Ministry of Energy and Petroleum made a public pronouncement of the presence of viable coal deposits in 2010. The Ministry is not privy to the statement attributed to the then Provincial Administration and local leaders on the decision to relocate residents from the same area to allow mining of the coal.

The Ministry has maintained that due process will be followed in relocating residents following a complete feasibility study and Resettlement Action Plan to Internationally accepted Standard that will mainly affect the development areas identified in these studies and not the whole community in Mui Basin area.

3. **THAT**, on 27<sup>th</sup> day of April vide Gazette Notice No.389, the Cabinet Secretary for Mining gave a public notice on the application for mineral rights without following due process of law in particular without any civic education, public participation and/ or involvement of the people;

### **Response**

Most relevant to State Department of Mining



4. **THAT**, the community has never given consent for the mining in accordance with the provisions sections 37 (1) of the Mining Act with regards to the procedure for mining on private or community land;

**Response**

Most relevant to State Department of Mining

5. **THAT**, similarly, the Governor of the County Government of Kitui announced that mining activities would start in the next six months with effect from April, 2018 and that the local residents would be relocated to Kanyonyoo area in Kitui County, about 100km from their current residence;

**Response**

The process of engagement towards actual mining has not started the relocation will be done taking into account recommendations of the Environment Impact Assessment Studies, Feasibility Studies and Resettlement Action Plans.

6. **THAT**, the residents have buried their loved ones in the said area and it will be against the Kamba customs and cultural practices to unearth their loved ones or see their graves being destroyed by heavy machines;

**Response**

The Resettlement Action Plan will contain all aspects and include how to handle customary and cultural assets of the community in an agreed manner.

7. **THAT**, school going children, the elderly and the disabled will be negatively **affected** due to change of the environment as a result of relocation.

**Response**

Resettlement Action Plan and Environment Impact Assessment Studies will be done as required by our laws.

8. **THAT**, the land was not properly surveyed with many people possessing titles with errors in names and while others have less size than the actual parcel of land allocated.

**Response**

Most relevant to Ministry of Lands

9. **THAT**, during demarcation process, large parcels of land were left between the boundaries and/ or allocated to strangers who have no legal right over it;

**Response**

Most relevant to Ministry of Lands

10. **THAT**, Environmental Impact Assessment or the Environmental Management Plan were never conducted;

**Response**

Environment Impact Assessment Studies will be done at the appropriate stage.

11. **THAT**, the community has never been informed about compensation of their land and properties if any;

**Response**

The compensation stage has not reached as the area required for development will only be identified from the feasibility study.

12. **THAT**, efforts to resolve this matter with relevant stakeholders have been futile; and

**Response**

These matters are related to mining activities a stage which has not been reached.

13. **THAT**, the issues in respect of which this petition is made are

not pending before any court of law, constitutional or legal body.

**Response**

The Ministry agrees that the issues in respect on respect which this petition is made are not pending before any court of law, constitutional or legal body.



# Appendix I

## MUI BASIN COAL BLOCKS A, B, C & D

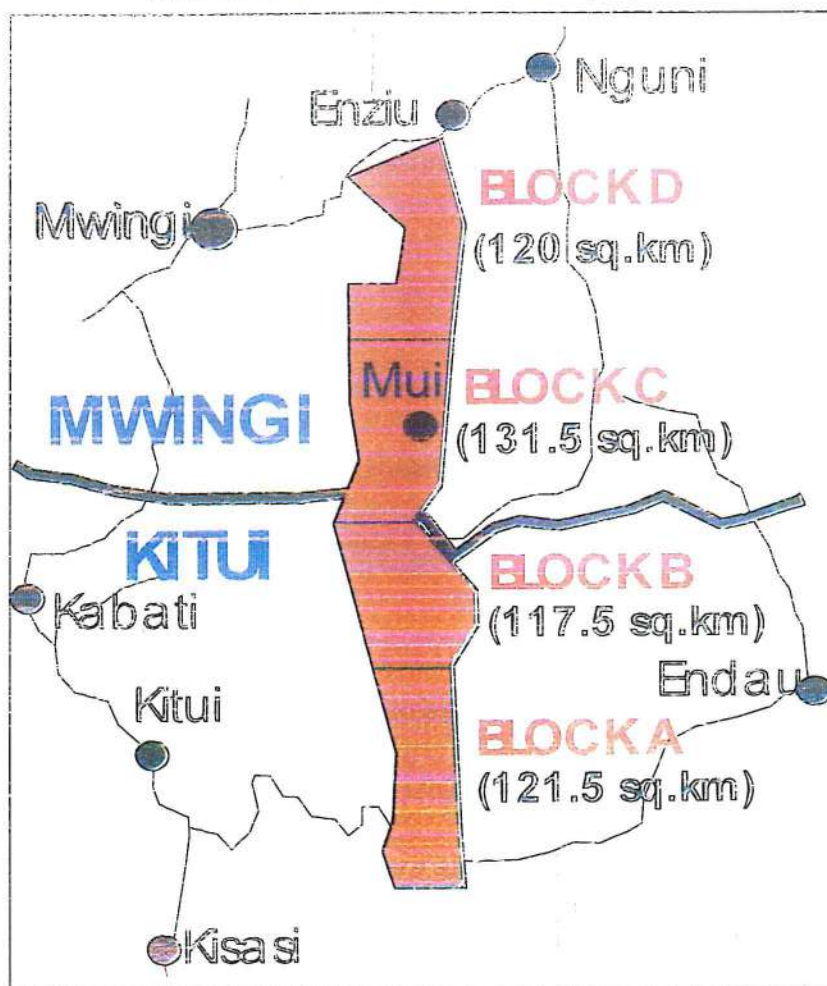


Table 1: Size and Location of Mui Basin Coal Blocks

Coal Block	Size Sq.km	Location		
		Sub County	Constituency	Sub County km2
A	121.5	Mutitu	Kitui East	121.5
B	117.5	Mutitu	Kitui East	112.5
		Kitui Central	Kitui Central	5
C	131.5	Mwingi East	Mwingi Central	120.5
		Mutitu	Kitui East	8
		Kitui Central	Kitui Central	3
D	120	Mwingi East	Mwingi Central	57
		Mwingi Central	Mwingi Central	63





# A MEMORUNDUM ON COAL MINING

BY THE MUI COAL BASIN COMMUNITY TO BE PRESENTED TO THE  
PARLIAMENTARY SELECT COMMITTEE ON ENERGY AT MATHUKI MUI  
WARD MWINGI EAST DISTRICT KITUI COUNTY ON 16 MAY 2019.

The community that lives within the Mui Coal Basin and have nowhere else to call home totally opposes the government proposition to mine coal in the Mui Basin. The community totally opposes coal mining because of a number of reasons some of which are enumerated here under: -

1. Coal mining will affect very adversely the health of both animal and plant life. This is mainly due to the acute poisoning of water and air. This problem will not only affect people living within the Mui Valley but also their neighbours.
2. The government thinks of relocating people from the basin but relocation has its negative effects such as destroying families, interfering with peoples' culture and traditions. For instance, cultural ties would be affected negatively. Besides, the living and the dead have many things in common and so for the living to leave behind the tombs of the dead ancestors is a curse. The proposal to exhume the bones of the dead ancestors is culturally a taboo and so we cannot do it.
3. Coal mining will, pollute the environment far and wide and this is why if we think of clean environment we should not think of coal mining unless we want to be people of double standards. Global warming is escalating and will become even worse if coal mining is carried out.
4. In fear of the aforementioned reasons and many others given hereafter we filed a case in the high court of Kenya case No. 305 of 2012 whose verdict dictates that the Environmental Impact Assessment must precede the concenssioning and carrying out of the coal mining. This EIA has not been done yet. Even if the impact assessment is done we do not expect positive result since China has closed down 151 coal fired power plants and the United States of America has closed down 531 coal fired power plants due to the negative effects of coal mining. Further to above Mpumalanga Province in South Africa is the most polluted area in the world due to coal mining.





5. Mr. Omenge the current permanent secretary Ministry of Energy was the chief geologist during coal prospection. As the chief geologist he did not share with the community information on coal particularly its effects on human, animal and plant life. Infact he down played the effects of coal mining. However, we thank God that later we were able to access information on coal mining and we now know coal mining is a destroyer of the ozone layer, ecology and ecosystem. It is for this reason that we appeal to members of the parliamentary select committee to advise the government against coal mining. In Kenya we have been blessed with many other sources of energy. If well harnessed these other sources of energy will help the country to improve its economy with extremely minimal negative effects. As I pen off I wish to draw your attention to Chapter 4 (42) of the Kenya Constitution 2010 which specifies that every person has the right to a clean and healthy environment. This in essence means coal mining will violate the constitution of Kenya 2010.

In conclusion I on behalf of the community of the Mui coal basin do thank you all for patiently listening to our grievances and hope that you will do the needful. May God bless you abundantly.

Documented by: -

1. Julius M. Ndumbu

2. Peter M. Musyoka

The block contains two handwritten signatures. The first signature, corresponding to Julius M. Ndumbu, is written in dark ink and is a stylized, cursive script. The second signature, corresponding to Peter M. Musyoka, is also in dark ink and is a more complex, cursive script with some loops and flourishes.



**THE COMMUNITY IS TOTALLY AGAINST COAL MINING DUE TO THE FOLLOWING NEGATIVE EFFECTS:**

1. Coal mining leads to atmospheric pollution
2. Coal burning produces hundreds of millions of solid waste products annually including fly ash, bottom ash flue gas and desulfurization sludge that contain mercury, uranium, thorium, arsenic and other heavy metals.
3. Coal burning also leads to coal particulates pollution estimated to shorten approximately one million (1,000,000) lives annually worldwide.
4. Strip mining in particular alters the land scape, which reduces value of the natural environment in the surrounding land. Hence population must be resettled off the mining site and economic activities like agriculture e.t.c are no longer possible
5. Strip mining eliminates existing vegetation, destroys genetic soil profile, displaces or destroys wild life and habitat, alters current land uses and to some extent permanently changes the general topography of the area mined.
6. Geomorphic and geophysical features and outstanding scenic resources are sacrificed by indiscriminate mining
7. Paleontological, cultural and other historic values may be endangered by activities such as blasting, ripping, and excavation.
8. Archeological and historic features are destroyed unless they are removed before hand
9. Quantity of dust around mining operations degrades air quality in the immediate area and has adverse effects on vegetative life and constitutes health and safety hazards for mine workers and nearby residents.
10. Surface mining disrupts virtually all aesthetic elements of the landscape
11. Removal of the soil and rock leads to loss of top soil and creates large infertile waste land.
12. Soil removed from the area to be surface mined alters and destroys many natural soil characteristics and reduces its biodiversity and productivity for agriculture
13. Soil structure may be disturbed by pulverization or aggregate break down.
14. Mine collapses have the potential to produce the major effects aboveground e.g. damaged houses.
15. Open pit mining requires large amounts of water for coal preparation plants and dust suppression which leads to water shortage for animal and human consumption





16. Surface mining impairs ground water e.g. lowering water level, changing flow direction, contamination of usable aquifer, poor quality water for /animal/human consumption
  17. Surface water is rendered unfit for agriculture, human consumption, bathing or other household uses
  18. Surface mining causes direct and indirect damage to ecosystem/ecology
  19. Degradation of aquatic habitats is a major impact by surface mining
  20. When coal surfaces are exposed pyrite comes into contact with water and air and forms sulfuric acid
  21. Coal produces methane which is said to have a global warming potential 21 times greater than that of carbon dioxide over a 100 years' timeline.
  22. The process of coal mining releases pockets of methane which may pose a threat to coal miners as well as a source of air pollution
  23. Coal also contains low levels of uranium, thorium which leads to RADIO ACTIVE ISOTOPES whose release into the environment may lead to RADIOACTIVE CONTAMINATION.
  24. Chronic lung diseases such as pneumococcus (black lung) are a common feature where coal mining takes place. Pneumoconiosis or black lung disease is caused by breathing in coal dust and carbon which harden the lung.
  25. Cardiopulmonary diseases, chronic obstructive pulmonary disease, hypertension, lung disease and kidney disease have been found in higher than normal rates among residents who live near coal mines.
  26. Toxic level of arsenic fluorine, mercury and selenium are emitted by coal fires entering the air and the food chain of those living nearby.
  27. Toxic levels found in coal fueled power plant waste leads to contaminated water supplies and accumulate in livestock and crops that we feed on.
  28. Arsenic has been associated with cancer, cardiovascular and neurological damage.
  29. Cadmium has been linked with kidney damage, plus risks of prostate cancer and respiratory cancer.
  30. Lead is extremely dangerous to children as it has been linked to developmental delay in them.
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### **China halts more than 150 coal-fired power plants**

Beijing finalises move to stop or delay new projects, but the list of affected plants is smaller than previously suggested

China is to stop or delay work on 151 planned and under-construction coal plants as Beijing struggles to respond to a flat-lining of demand for coal power.

The newly released list implements a target announced by premier Li Keqiang in March to stop, delay and close down at least 50,000 megawatts of coal-fired power plant projects in 2017.

The list affects coal power plants with capacity equal to the combined operating capacity of Germany and Japan (95,000 megawatts) costing around US\$60 billion (389 billion rmb).

The amount of capacity affected hence exceeds the target set for this year but is still well short of the total of 150,000 megawatts the government says is needed by 2020.

However the number of plants on the list has shrunk by around 15% from an original list of 182; a watering down of earlier plans after intense political negotiations. Also, the majority of the plants are technically only "delayed", putting off the final decision to cancel the projects.

Building new coal-fired power plants doesn't directly increase CO2 emissions, because coal-fired generation in China is limited by lack of demand. But it does create a conflict between dirty and clean energy in the grid, because the grid operators tend to favor coal power plant operators when dispatching electricity.

### **Fewer plants hit**

The coal industry bastion of Shanxi has managed to remove 6,000 megawatts of capacity from the list, despite having one of the worst overcapacity situations in the country.

Construction of coal-fired power plants remains a coveted source of economic activity and of demand for locally mined coal for many provinces but the boom in China's renewable industry and a slow-down in demand has left China with hundreds of coal plants it doesn't need.

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### **What is over-capacity?**

After a long period of rapid growth, the amount of power generated from coal flat-lined in 2014.

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The change came thanks to China's renewable energy boom and a slow-down in power-demand as the country moved away from heavy industry.

Yet the country kept building coal plants leaving China with power-stations often operating at less than half their capacity.

China hit the brakes on approvals of new coal-fired power plant projects on the second half of 2016, but previously approved plants have continued coming online at a rate of almost one large plant per week.

Last year, China set a target of stopping or delaying at least 150,000 megawatts of coal-fired power plant projects to alleviate the looming overcapacity problem with the new list marking the start of this process.

### **Renewables boom**

The task of addressing coal power overcapacity is made more urgent by newly increased targets for wind and solar power capacity, which will bring more clean energy to the market in the next few years.

The government's recent efforts to clamp down on the red-hot real estate sector and local government debt spending – key drivers of China's heavy industry volumes and power demand – will also leave less space for coal-fired power generation.





## Utilities Closed Dozens Of Coal Plants In 2017. Here Are The 6 Most Important.

Energy Innovation: Policy and Technology Contributor i  
Dec 18, 2017, 08:00am 18,527 views #PowerUp

Post written by

Silvio Marcacci

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- Building new coal is more expensive than building new renewable energy across the U.S.
- Presidential rhetoric can't trump market economics - coal-fired plant closures will continue in 2018

Utility coal power closures driven by market economics were a regular occurrence throughout 2017. While President Donald Trump's "Energy Dominance" agenda gave the false impression that federal efforts could revive coal, 27 coal-fired plants totaling 22 gigawatts (GW) of capacity were announced for early closure or conversion in 2017 – roughly one every 15 days since Trump's election.

U.S. electricity generation economics have completely reversed. Building new coal is more expensive than building new renewable energy across the U.S., and in many parts of the country, keeping *existing* coal plants open is more expensive than building new wind turbines (and solar, in some places). From 2007 to 2016, 531 coal units representing 55.6 GW of capacity were retired across the U.S., at an increasingly rapid pace.

Retired coal generation in U.S. from 2007-2016 Kleinman Center for Energy Policy  
The coal plants announced for early closure in 2017 are younger in age and larger in size than ever before, and utilities are replacing shuttered capacity with clean energy. The reasons why utilities are choosing to close coal plants are just as informative as how they're choosing to replace them. Six specific closures show why this trend will continue into 2018 despite Trump's bluster.

### Public Service Company of New Mexico Decides To Go Coal-Free

New Mexico's largest utility, Public Service Company of New Mexico (PNM), released its 2017-2023 integrated resource plan (IRP) in April to examine future scenarios and determine which power mix could meet its expected demand at lowest cost. The results were surprising for a utility that served its 510,000 customers with 56% coal in its total generation portfolio in 2015: PNM's best option for low-cost and reliable power was to start retiring coal in 2022, completely end coal generation by 2031, and replace it with solar energy, natural gas, and energy storage, along with expanded transmission to cheap wind power in eastern New Mexico.

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PNM estimates that by 2035 its most cost-effective portfolio would be composed of nearly 36% renewables and 33% natural gas, up from 11% and 6% respectively in 2017. PNM cites improved grid flexibility under this approach, compared to an alternative portfolio which continues burning coal, where customers would be exposed to higher costs and the utility would risk declining revenue as it ran its coal plants less and less. PNM also began studying the benefits of joining the Western Energy Imbalance Market, which has generated nearly \$200 million in savings to utilities and customers since late 2014, to help enable its shift to a coal-free future.

### **MORE FROM FORBES**

#### **We Energies Closes 1.2 GW Prairie Plains, Will Build Wisconsin's Largest Solar Array**

We Energies is Wisconsin's largest utility, with more than 2.2 million customers, and coal supplied 50.6% of its total generation capacity in 2015. This November, the utility decided to close its 1.2 GW Pleasant Prairie coal plant in early 2018, despite having only been in operation since 1985 and undergoing \$325 million on pollution controls in recent years. The plant routinely operated at reduced capacity in recent years, and did not operate at all for three months this spring.

Under the closure, We Energies will replace part of the plant's generation capacity with Wisconsin's largest solar array, a 350 megawatt (MW) plant expected to go online by 2020. For comparison, the state had 25 MW installed capacity at the end of 2016 and its largest planned array will have a 100 MW capacity. For We Energies, solar makes more sense than coal. "We are looking for a clean, reliable energy future for our customers," said a company spokeswoman.

#### **Luminant Shuttters 4.1 GW Worth of "Economically Challenged" Texas Coal Plants**

In early October, competitive power provider Luminant, which operates nearly 18 GW of Texas generation, announced it would close the 1.8 GW Monticello Power Plant by January 2018 due to ERCOT's "unprecedented low power price environment." A week later, Luminant announced it would close two "economically challenged" coal plants with 2.3 GW capacity due to low wholesale power prices, abundant renewables, and low natural gas prices. All told, within a week, Luminant decided to close 4.1 GW installed coal capacity – roughly 12% of Texas' total coal power capacity.

Luminant, a subsidiary of the Dallas-based Energy Future Holdings Corp., implodes their Winfield South Mine's cross-pit spreader and bucket wheel excavator in Winfield, Texas. Idle for the past year, the Winfield South Mine spreader and bucket system stood 24 stories high, was said to be as long as four football fields and weighed as much as 10 commercial 747 airplanes. (AP Photo/Marcia Davis-Seale)

Luminant's closures significantly underscore the economic reality facing coal in Texas' wholesale power market, where consumers have saved billions by shifting to clean energy and coal closures occur without threatening grid reliability. 2016 research classified two of the Luminant plants as at risk of closing and emblematic





of how coal power was “unlikely to recover in the face of rising competition from other energy sources.” ERCOT says installed Texas wind capacity could pass 21 GW by the end of 2017, forecasts 14-27 GW of solar will be added statewide by 2030, and approved the three closures after determining they would not impact grid reliability.

**Ameren to Retire Half Its Missouri Coal Fleet for \$1 Billion New Renewables**  
Missouri’s largest utility, Ameren Missouri, announced in late September it would invest \$1 billion in 700 MW of new wind capacity and 100 MW new solar by 2020 while closing half its coal fleet as part of an initiative to cut carbon emissions 80% by 2050. Coal power currently makes up 5.3 GW of Ameren’s 10.2 GW generation capacity, and the utility only has 11 MW total renewables capacity today. “We expect this tremendous growth in wind generation to provide great value to our customers, who will save money on energy costs,” said CEO Michael Moehn. Ameren’s plans recognize clean power can save customers money without risking grid reliability. The utility’s carbon cutting initiative also includes using energy efficiency to reduce demand by 570,000 megawatt-hours within three years and expanding customer-connected microgrids.

#### **Xcel Continues Closing Colorado Coal on “Fundamental Economics” of Renewables**

In late August Xcel Energy, which relies on coal for 46% of its Colorado power supply, announced it would close two units of the Comanche Generation Station totaling 660 MW of capacity by 2025. Xcel will replace that generation with up to \$2.5 billion investment in 1 GW of wind and 700 MW of solar, along with other resources. This trend is not new for Xcel – the utility has closed multiple Colorado coal plants totaling 1.1 GW since 2011 – but what is new is that these closures happened for economic reasons, not environmental.

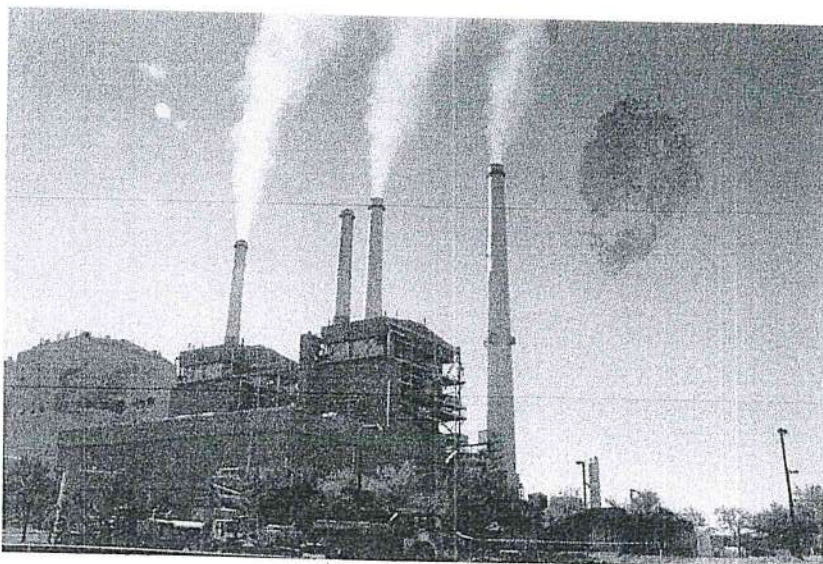
“It is really about the economics,” said Xcel President David Eves. “From the company’s perspective, this plan is a response to our customers.” In 2016 financial modeling showed that building new wind was cheaper than operating existing coal power in Colorado and 6,000 gigawatt-hours of coal generation could be replaced with 2 GW of wind at less cost to consumers without threatening reliability. In addition, financial tools proposed in 2017 would allow utilities to retire uneconomic coal power in Colorado and generate millions in dedicated transitional funding for communities affected by the closures.

#### **➤ One Of America's Biggest Polluters Could Close Two Decades Early**

In September, a consortium of utilities edged closer to closing Montana’s 2.2 GW Colstrip Power Plant – one of America’s biggest greenhouse gas emitters – by 2027, nearly two decades earlier than the plant’s owners estimated just five years ago. Unlike most other coal plant closures announced in 2017, Colstrip’s looming closure results from customer demand in primary plant owner Puget Sound Energy’s (PSE) Oregon and Washington State service territory.

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FILE - In this July 1, 2013, file photo, smoke rises from the Colstrip Steam Electric Station, a coal burning power plant in Colstrip, Mont. President Donald Trump says withdrawing from a global climate change agreement will boost the U.S. economy but existing market forces have had far more of an effect on the fossil fuel industries than climate regulations. For at least three years now, the coal industry has been reeling from growing competition from natural gas, wind and solar power.

Natural gas and renewable energy are expected to make up for the closed generation capacity, and PSE would dedicate \$10 million to help the affected community transition through Colstrip's closure, both with just a .9% rate increase to cover costs. State regulators subsequently approved PSE's plan to end its financial involvement in Colstrip in December.

### **Consumer Benefits Accelerate Apace of Coal Closures**

In every corner of America – even conservative states without pro-renewable policies – utilities are choosing clean energy because closing coal saves customers money, improves their bottom line, and boosts grid flexibility. Presidential rhetoric can't trump market economics - coal-fired plant closures will continue in 2018 .

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