

Malacañang

Manila

Executive Order No. 172

CREATING THE ENERGY REGULATORY BOARD

WHEREAS, the institutional setup in the energy sector is such that there are a number of regulatory bodies and supervisory Departments/Offices which provide the policy guidelines and regulatory framework for the activities and operations within the sector;

WHEREAS, in order to achieve a more coherent and effective policy formulation, coordination, implementation and monitoring within the energy sector, it is necessary to entrust in one body all the regulatory and adjudicatory functions covering the energy sector;

WHEREAS, the concerns for national security and public interest articulated in Republic Act 6178, which created the Oil Industry Commission, still contain their validity and urgency at present; and

WHEREAS, Executive Order No. 5 (1986) directs that necessary and appropriate changes in the organizational and functional structures of the government, its agencies and instrumentalities be effected to promote efficiency and effectiveness in the delivery of public services;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order:

SECTION 1. *Energy Regulatory Board.* – There is hereby created an independent [Energy Regulatory Board](#), hereinafter referred to as the [Energy Regulatory Board](#), the nucleus of which shall be the present Board of Energy. The [Board](#) shall be composed of four (4) Members to be appointed by the President, with the consent of the Commission on Appointments. The Chairman and the [Board](#) Members shall be natural-born citizens and residents of the Philippines. In addition, the Chairman and the [Board](#) Members shall be persons of good moral character, at least thirty-five (35) years of age, and of recognized competence in the field of law, economics, finance, banking, commerce, industry, agriculture, engineering, management or labor.

The term of office of the Chairman and the [Board](#) Members shall be four (4) years, but the first Chairman to be appointed shall hold office for four (4) years, and of the first four (4) Members, two (2) shall hold office for a term of two (2) years, and two (2) shall hold office for a term of three (3) years. No person may be appointed to serve more than two (2) successive terms in the Board.

Three (3) Members of the [Board](#) shall constitute a quorum and the vote of three (3) Members shall be necessary for the adoption of any rule, ruling, order, resolution, decision or other act of the [Board](#) in the exercise of its quasi-judicial functions. The [Board](#) shall have its office in Metro Manila or such other place as may be designated, and may hold hearings of any proceedings at such times and places within the Philippines, as it may provide by order in writing.

The Chairman and the [Board](#) Members shall devote their full time to the [Board](#) and shall not accept any other employment.

The Chairman of the [Board](#) shall receive a compensation equal to that of a Department Undersecretary while the [Board](#) Members shall each receive a compensation equal to that of an official next in rank to a Department Undersecretary.

The Chairman and the Members of the [Board](#), upon completion of their terms or upon becoming eligible for retirement under existing laws shall be entitled to the same retirement benefits and privileges provided for the Chairman and Members of the [Commission on Elections](#).

SEC. 2. Staff. – The [Board](#) shall appoint and maintain an adequate staff, which shall include an Executive Director who shall at least be a member of the Philippine Bar with at least five (5) years experience in the practice of law in the Philippines or in the discharge of an office requiring as an indispensable requisite admission to the practice of law in the Philippines. He shall be the recorder and official reporter of the proceedings of the [Board](#) and shall have authority to administer oaths in all matters falling within the jurisdiction of the [Board](#). He shall be the custodian of the records, maps, profiles, tariffs, reports and other documents and papers filed with in connection with any case or proceedings with the [Board](#). He shall likewise be responsible for the effective implementation of the policies, rules and directives promulgated by the [Board](#), shall coordinate and supervise the activities of the different operating units and shall perform such functions as may be assigned to him by the Chairman and/or by the [Board](#).

The Members of the technical staff, except those performing purely clerical functions, shall possess at least a bachelor's degree in the line of specialization required for their respective positions.

SEC. 3. *Jurisdiction, Powers and Functions of the Board.* – When warranted and only when public necessity requires, the [Board](#) may regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and distributing energy resources. Energy resource means any substance or phenomenon which by itself or in combination with others, or after processing or refining or the application to it of technology, emanates, generates or causes the emanation or generation of energy, such as but not limited to, petroleum or petroleum products, coal, march gas, methane gas, geothermal and hydroelectric sources of energy, uranium and other similar radioactive minerals, solar energy, tidal power, tidal power, as well as non-conventional existing and potential sources.

The [Board](#) shall, upon proper notice and hearing, exercise the following, among other powers and functions:

- (a) Fix and regulate the prices of petroleum products;
- (b) Fix and regulate the rate schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe system;
- (c) Fix and regulate the rates of pipeline concessionaires under [Republic Act No. 387](#), as amended, otherwise known as the "Petroleum Act of 1949," as amended by Presidential Decree No. 1700;
- (d) Regulate the capacities of new refineries or additional capacities of existing refineries and license refineries that may be organized after the issuance of this Executive Order, under such terms and conditions as consistent with the national interest;
- (e) Whenever the [Board](#) has determined that there is a shortage of any petroleum product, or when the public interest so requires, it may take such steps as it may consider necessary, including the temporary adjustment of the levels of prices of petroleum products and the payment to the Oil Price Stabilization Fund created under Presidential Decree No. 1956 by persons or entities engaged in the petroleum industry of such amounts as may be determined by the [Board](#), which will enable the importer to recover its cost of importation.

SEC. 4 *Reorganized or Abolished Agencies.* – (a) The Board of Energy is hereby reconstituted into the [Energy Regulatory Board](#), and the former's powers and functions under Republic Act No. 6173, as amended by Presidential Decree No. 1205, as amended, are transferred to the latter.

(b) The regulatory and adjudicatory powers and functions exercised by the Bureau of Energy Utilization under Presidential Decree No. 1206, as amended, are transferred to the [Board](#), the provisions of Executive Order No. 181 notwithstanding.

SEC. 5 *Other Transferred Powers and Functions.* – The power of the Land Transportation Commission to determine, fix and/or prescribe rates or charges pertaining to the hauling of petroleum products are transferred to the [Board](#). The power to fix and regulate the rates or charges pertinent to shipping or transporting of petroleum products shall also be fixed by the [Board](#).

The foregoing transfer of powers and functions shall include applicable funds and appropriations, records, equipment, property and such personnel as may be necessary; *Provided*, That with reference to paragraph (b) of Section 4 hereof, only such amount of funds and appropriations of the Bureau of Energy Utilization, as well as only the personnel thereof who are completely or primarily involved in the exercise by said Bureau, of its regulatory and adjudicatory powers and functions, shall be affected by such transfer: *Provided, further*, That the funds and appropriations as well as the records, equipment, property and all personnel of the reorganized Board of Energy shall be transferred to the [Energy Regulatory Board](#).

SEC. 6. *Power to Promulgate Rules and Perform Other Acts.* – The [Board](#) shall have the power to promulgate rules and regulations relevant to procedures governing hearings before it and enforce compliance with any rule, regulation, order or other requirements; *Provided* That said rules and regulations take effect fifteen (15) days after publication in the *Official Gazette*. IT shall also perform such other acts as may be necessary or conducive to the exercise of its powers and functions, and the attainment of the purposes of this Order.

SEC. 7. *Board Procedures.* – All inquiries, studies, hearings, investigations and proceedings conducted by the [Board](#) shall be governed by rules adopted by the [Board](#), and in the conduct of thereof the [Board](#) shall not be bound by the technical rules of evidence: *Provided*, That the [Board](#) may summarily punish for contempt by a fine not exceeding five thousand pesos or by imprisonment not exceeding thirty (30) days or both, any person guilty of such misconduct in the presence of the [Board](#) or so near thereto as to

seriously interrupt any hearing or session or any proceedings before it, including cases in which a person willfully fails or refuses, without just cause, to comply with summons, *subpoena ad testificandum*, *subpoena duces tecum*, decision or order, rules and regulations legally issued or promulgated by the [Board](#); or being present at a hearing, session or investigation, refuses to be sworn as a witness or to answer questions when lawfully required to do so, or to furnish information required by the [Board](#). The sheriff and other police agencies of the place where the hearing or investigation is conducted shall, upon request of the [Board](#), assist it to enforce the provisions of this Section.

The [Board](#) may, in any inquiry, study, hearing, investigation, or proceeding, by order in writing, cause the deposition of witnesses within or without the Philippines to be taken in the manner prescribed by the Rules of Court. Where witnesses reside in places distant from Manila and it would be convenient and expensive for them to personally appear before the [Board](#), the [Board](#), by proper order, commission any clerk of court of the Regional Trial Court or any Metropolitan, City or Municipal Trial Court judge of the Philippines to take the deposition of witnesses in any case pending before the [Board](#). It shall be the duty of the official so commissioned to designate promptly a date or dates for the taking of such deposition, reducing it to writing. After the depositions have been taken, the official so commissioned shall certify to the depositions taken and forward them as soon as possible to the [Board](#). It shall be the duty of the respective parties to furnish stenographers for taking and transcribing the testimony taken. In case there are no stenographers available, the testimony shall be taken in long hand by such person as the clerk of court, metropolitan, city or municipal trial court judge may designate. The [Board](#) may also commission a notary public to take the depositions in the same manner herein provided.

SEC. 10. *Review of the Board's Decision or Orders.* – A party adversely affected by a decision, order or ruling of the [Board](#), may, within thirty (30) days from notice of such decision, order or ruling, or in case of a denial of a motion for reconsideration thereof, within fifteen (15) days after notice of such denial, file a petition to be known as petition for review, with the [Supreme Court](#), which shall have jurisdiction to review such decision, order or ruling and to modify or set aside the same when it clearly appears that there was no evidence before the [Board](#) to support reasonably such decision, order or ruling, or that the same is contrary to law, or that it was without the jurisdiction of the [Board](#). The evidence presented to the [Board](#), together with the record of the proceedings before the [Board](#), shall be certified by the Executive Director of the [Board](#) to the [Supreme Court](#). Said petition shall be placed on file in the office of the Clerk of the [Supreme Court](#) who shall furnish copies thereof to the Executive Director of the [Board](#) and other parties interested.

Any decision, order or ruling of the [Board](#) may likewise be reviewed by the [Supreme Court](#) upon a writ of certiorari in appropriate cases. The procedure for review except as herein provided, shall be in accordance with the rules prescribed by the [Supreme Court](#).

The filing of a petition for a writ of certiorari or other special remedies in the [Supreme Court](#) shall in no case supersede or stay any decision, order or ruling of the [Board](#), unless the [Supreme Court](#) shall so direct and the petitioner may be required to give bond in such form and of such amount as may be deemed proper.

SEC. 11. *Benefits of Personnel Who may be Laid Off and Incentives to Employees.* – Employees of agencies abolished or otherwise affected by this reorganization, who are separated from the service as a result of the implementation of this Order, shall be entitled to the benefits and privileges provided under existing retirement laws; otherwise, they shall be paid the equivalent of one-month basic salary for every year of service, or the equivalent nearest fraction thereof favorable to them on the basis of the highest salary received, but in no case shall such payment exceed the equivalent of 12 months salary.

SEC. 12. *Coordination with Other Agencies.* – The Board shall coordinate with the [Departments of Energy, Environment and Natural Resources](#), the [National Economic Development Authority](#), the [National Electrification Administration](#) and other appropriate Government agencies in the exercise of its pertinent functions that have relation to the functions of the above-mentioned agencies, particularly as these pertain to the policies, plans, programs and activities in the field of energy.

SEC. 13. *Penalties for Violations.* – The provisions of Section 17 of Republic Act 6173, as amended, Section 7 (e) of Presidential Decree No. 1206, as amended, and Sections 21 to 28, inclusive, of Commonwealth Act No. 146, as amended, pertaining to the penalties for violation of or non-compliance with the terms and conditions of any certificate, license or permit or any order, decision, rule or regulation of the abolished Oil Industry Commission, Bureau of Energy Utilization and Public Service Commission, shall, to the extent applicable and appropriate in the light of the foregoing transfer of powers and functions, apply to and may be imposed by the [Board](#).

SEC. 14. *Applicability Clause.* – The applicable provisions of Commonwealth Act No. 146, as amended, otherwise known as the "Public Service Act"; Republic Act No. 6173, as amended, otherwise known as the "Oil Industry Commission Act"; Republic Act No. 6395, as amended, revising the charter of the National Power Corporation under C.A. No. 120;

Presidential Decree No. 269, as amended, also referred to as the "National Electrification Administration Decree"; and Presidential Decree No. 1206, as amended, creating the [Department of Energy](#), shall continue to have full force and effect, except insofar as inconsistent with this Order.

SEC. 15. *Supervision and Control.* – The [Board](#) shall be under the administrative supervision of the Office of the President.

SEC. 16. *Separability Clause.* – If any provision of this Order or the application thereof to any person or circumstances is held invalid, the remainder of the Order and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 17. *Repealing Clause.* – Section 4, paragraph 4, and Section 5 (c) of Presidential Decree No. 181 are hereby repealed. All laws, decrees, executive orders, administrative orders, rules and regulations inconsistent herewith are hereby repealed, amended or modified accordingly.

SEC. 18. *Effectivity.* – The Executive Order shall take effect immediately.

DONE in the City of Manila, this 8th day of May, in the year of Our Lord, nineteen hundred and eighty-seven.

CORAZON C. AQUINO

President of the Philippines

By the President:

JOKER P. ARROYO

Executive Secretary