

# ENERGY COMMISSION ACT 2001

## ACT 610

### Preamble

An Act to provide for the establishment of the Energy Commission with powers to regulate the energy supply activities in Malaysia, and to enforce the energy supply laws, and for matters connected therewith.

ENACTED by the Parliament of Malaysia as follows:

### PART I PRELIMINARY

#### 1. Short title, application and commencement.

(1) This Act may be cited as the Energy Commission Act 2001.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the Gazette.

(3) This Act applies throughout Malaysia.

(4) The Minister may by order published in the Gazette suspend the operation of the whole or any of the provisions of this Act in any part of Malaysia.

#### 2. Interpretation.

In this Act, unless the context otherwise requires-

"energy supply activities" includes-

(a) in relation to electricity-

(i) the supply and use of electricity to which the electricity supply laws apply; and

(ii) the generation, transmission and distribution of electricity for the supply and use of electricity under subparagraph (i) ;

(b) in relation to gas-

(i) the supply and use of gas to which the gas supply laws apply; and

(ii) the delivery, transportation, distribution and reticulation of gas for the supply and use of gas under subparagraph (i) ; and

(c) any other activity regulated under the energy supply laws;

"member" means the Chairman and other members of the Commission appointed under section 5;

"electricity" means electrical energy or electrical power when generated, produced, transmitted, distributed, supplied or utilised for any purpose except for the transmission of any communication or signal;

"gas" means methane, ethane, propane, butane or hydrocarbons which may consist of one or more of any of those gases, either in the form of gas or liquid;

"appointed day" means the day on which this Act comes into operation;

"committee" means any committee established by the Commission under section 12;

"Chief Executive Officer" means the Chief Executive Officer of the Commission, being the Chairman, and having the duties described in section 18;

"Fund" means the fund established under section 24;

"Minister" means the Minister for the time being charged with the responsibility for matters relating to electricity supply or gas supply, as the case may be, except-

(a) in Parts II and IV, in relation to the appointment, revocation of appointment or resignation of the Chairman and members of the Commission, means the Minister for the time being charged with the responsibility for matters relating to electricity supply with the concurrence of the Minister for the time being charged with the responsibility for matters relating to gas supply; and

(b) in Part V, means the Minister for the time being charged with the responsibility for matters relating to electricity supply;

"Minister of Finance" means the Minister for the time being charged with the responsibility for finance;

"officer" means any officer, servant or employee of the Commission appointed under this Act;

"Chairman" means the Chairman of the Commission appointed under paragraph 5(1) (a) ;

"installation"-

(a) in relation to electricity, has the meaning assigned to it by the electricity supply laws; and

(b) in relation to gas, has the meaning assigned to it by the gas supply laws;

"Commission" means the Commission established under section 3;

"renewable energy" means energy which is not depleted when used and includes energy obtained from energy sources such as biomass, hydro power, solar power, geothermal power, wind power, waves and tides;

"non-renewable energy" means energy which depletes when used and includes energy from energy sources such as coal, oil shale, tar sands, crude oil, oil, natural gas and nuclear power;

"electricity supply laws" means the Electricity Supply Act 1990 [Act 447] and includes-

(a) any subsidiary legislation made under the Electricity Supply Act 1990; and

(b) any other legislation relating to electricity under which the Commission is to exercise any function, including any subsidiary legislation made under such legislation;

"gas supply laws" means the Gas Supply Act 1993 [Act 501] and includes-

(a) any subsidiary legislation made under the Gas Supply Act 1993; and

(b) any other legislation relating to gas under which the Commission is to exercise any function, including any subsidiary legislation made under such legislation;

"energy supply laws" means-

- (a) this Act and any subsidiary legislation made under this Act;
- (b) the electricity supply laws;
- (c) the gas supply laws; and
- (d) any other written law under which the Commission is to exercise any function.

## PART II

### ENERGY COMMISSION

#### 3. Establishment of Commission.

- (1) There is hereby established a body corporate by the name of "Suruhanjaya Tenaga" with perpetual succession and a common seal, and which may sue and be sued in its corporate name.
- (2) Subject to and for the purposes of this Act, the Commission may enter into contracts and may acquire, purchase, take, hold, and enjoy movable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer, or otherwise dispose of, or deal with, any movable or immovable property or any interest vested in the Commission upon such terms as it deems fit.

#### 4. Common seal.

- (1) The Commission shall have a common seal which shall bear a device approved by the Commission and the seal may from time to time be broken, changed, altered and made anew as the Commission may think fit.
- (2) Until a seal is provided by the Commission, a stamp bearing the words "Suruhanjaya Tenaga" may be used and shall be deemed to be the common seal of the Commission.
- (3) The common seal shall be kept in the custody of the Chairman or any other person authorized by the Commission, and shall be authenticated by either the Chairman or such person as may be authorized by the Chairman in writing.
- (4) All deeds, documents and other instruments purporting to be sealed with the seal and duly authenticated shall, until the contrary is proven, be deemed to have been validly executed.
- (5) Any deed, document or other instrument which, if executed by a person not being a body corporate, is not required to be under seal may in like manner be executed by a member of the Commission or any other person authorized by the Commission on behalf of the Commission.
- (6) The common seal of the Commission shall be officially and judicially noticed.

#### 5. Membership of Commission.

- (1) The Commission shall consist of the following members who shall be appointed by the Minister:
  - (a) a Chairman;
  - (b) two members representing the Government; and
  - (c) not less than two but not more than four other members.
- (2) The Minister may appoint temporarily any member of the Commission to act as the Chairman for the period-
  - (a) when the office of the Chairman is vacant;
  - (b) when the Chairman is absent from duty or from Malaysia; or
  - (c) when the Chairman is, for any other reason, unable to perform the duties of his office.

#### 6. Approval to hold other office.

The Chairman shall not, while holding such office, hold any other office or employment, whether remunerated or not, without the Minister's prior written approval.

7. Tenure of office.

- (1) A member of the Commission shall hold office for a term not exceeding three years.
- (2) A member of the Commission shall be eligible for reappointment but no member shall hold office for more than two consecutive terms.

8. Remuneration and allowances.

- (1) The Chairman shall be paid such remuneration and allowances as the Minister may determine, after consultation with the Minister of Finance.
- (2) All other members of the Commission shall be paid such allowances at such rates as the Minister may determine, after consultation with the Minister of Finance.

9. Revocation of appointment and resignation.

- (1) The Minister may, at any time, revoke the appointment of any member of the Commission without assigning any reason for the revocation.
- (2) A member of the Commission may, at any time, resign from his appointment by giving a notice in writing to the Minister.

10. Vacation of office.

The office of a member of the Commission shall be vacated-

- (a) if he dies;
- (b) if there has been proved against him, or he has been convicted on, a charge in respect of:
  - (i) an offence involving fraud, dishonesty or moral turpitude;
  - (ii) an offence under any law relating to corruption; or
  - (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;
- (c) if his conduct, whether in connection with his duties as a member of the Commission or otherwise, has been such as to bring discredit on the Commission;
- (d) if he becomes a bankrupt;
- (e) if he is of unsound mind or is otherwise incapable of discharging his duties;
- (f) in the case of the Chairman, if he absents himself from three consecutive meetings of the Commission without leave of the Minister;
- (g) in the case of a member of the Commission other than the Chairman, if he absents himself from three consecutive meetings of the Commission without leave of the Chairman;
- (h) if his appointment is revoked by the Minister; or
- (i) if his resignation is accepted by the Minister.

11. Statutory declaration by members of Commission.

- (1) No person shall be appointed as a member of the Commission unless before such appointment such person makes a statutory declaration whether he has any interest, financial or otherwise, in any undertaking involving energy supply activities.
- (2) If a member of the Commission acquires any interest, financial or otherwise, in any undertaking involving energy supply activities he shall, within one month after such acquisition, give notice in writing to the Minister specifying the interest acquired, and the Minister may, after taking the matter into consideration, if he thinks fit, declare that the person has vacated his office.

12. Commission may establish committee.

- (1) The Commission may establish any committee as it considers necessary or expedient to assist it in the performance of its functions under the energy supply laws.

- (2) The Commission may elect any of its members to be the chairman of a committee.
- (3) The Commission may appoint any person to a committee.
- (4) A member of a committee shall hold office for such term as may be specified in his letter of appointment and is eligible for reappointment.
- (5) The Commission may revoke the appointment of any member of a committee without assigning any reason for the revocation.
- (6) A member of a committee may, at any time, resign by giving a notice in writing to the chairman of the committee.
- (7) The Commission may, at any time, discontinue or alter the constitution of a committee.
- (8) A committee may regulate its own procedure.
- (9) A committee shall be subject to, and act in accordance with, any direction given to it by the Commission.
- (10) The meetings of a committee shall be held at such times and places as the chairman of the committee may determine.
- (11) A committee may invite any person to attend any of its meetings for the purpose of advising it on any matter under discussion but that person shall not be entitled to vote at the meeting.
- (12) The members of a committee and any person invited under subsection (11) shall be paid such allowances and other expenses as the Commission may determine.

### 13. Schedule.

- (1) The Schedule applies to members of the Commission.
- (2) The Minister may amend the Schedule by order published in the Gazette.

## PART III

### FUNCTIONS AND POWERS OF COMMISSION

#### 14. Functions and powers of Commission.

- (1) The Commission shall have all the functions imposed on it under the energy supply laws and shall also have the following functions:
  - (a) to advise the Minister on all matters concerning the national policy objectives for energy supply activities;
  - (b) to advise the Minister on all matters relating to the generation, production, transmission, distribution, supply and use of electricity as provided under the electricity supply laws;
  - (c) to advise the Minister on all matters relating to the supply of gas through pipelines and the use of gas as provided under the gas supply laws;
  - (d) to implement and enforce the energy supply laws;
  - (e) to regulate all matters relating to the electricity supply industry and to protect any person from dangers arising from the generation, production, transmission, distribution, supply and use of electricity as provided under the electricity supply laws;
  - (f) to regulate all matters relating to the supply of gas through pipelines and to protect any person from dangers arising from the supply of gas through pipelines and the use of gas as provided under the gas supply laws;
  - (g) to promote efficiency, economy and safety in the generation, production, transmission, distribution, supply and use of electricity and in the supply of gas through pipelines and the use of gas supplied through pipelines;
  - (h) to promote and safeguard competition and fair and efficient market conduct or, in the absence of a competitive market, to prevent the misuse of monopoly or market power in respect of the generation, production, transmission, distribution and supply of electricity and the supply of gas through pipelines;
  - (i) to promote the use of renewable energy and the conservation of non-renewable energy;
  - (j) to promote research into, and the development and the use of, new techniques relating to-

- (i) the generation, production, transmission, distribution, supply and use of electricity; and
- (ii) the supply of gas through pipelines and the use of gas supplied through pipelines;
- (k) to encourage and promote the development of the electricity supply industry and the supply of gas through pipelines including in the area of training;
- (l) to encourage and promote self-regulation in the electricity supply industry and the supply of gas through pipelines;
- (m) to carry out any function conferred by or under the energy supply laws;
- (n) to review the energy supply laws and to make the necessary recommendations to the Minister; and
- (o) to carry on all such activities as may appear to the Commission requisite, advantageous or convenient for the purpose of carrying out or in connection with the performance of its functions under the energy supply laws.

(2) The Commission shall have all such powers as may be necessary for, or in connection with, or reasonably incidental to, the performance of its functions under the energy supply laws.

#### 15. Delegation of Commission's functions or powers.

- (1) The Commission may, in writing, delegate any of its functions or powers, other than its power to make subsidiary legislation, to-
- (a) the Chairman of the Commission;
  - (b) a member of the Commission;
  - (c) a committee established by the Commission; or
  - (d) an officer of the Commission.

(2) A person or committee, as the case may be, delegated with such function or power shall be bound to observe and have regard to all conditions and restrictions imposed by the Commission and all requirements, procedures and matters specified by the Commission.

(3) A function or power delegated under this section shall be performed and exercised in the name and on behalf of the Commission.

(4) A delegation under this section shall not preclude the Commission itself from performing or exercising at any time any of the delegated functions or powers.

#### 16. Direction by Minister.

- (1) The Commission shall be responsible to the Minister.
- (2) The Minister may give to the Commission directions of a general character, consistent with the energy supply laws, relating to the performance of the functions and powers of the Commission and the Commission shall give effect to such directions.

#### 17. Commission to furnish information.

The Commission shall furnish to the Minister, and any public authority as may be specified by the Minister, such returns, reports, accounts and information with respect to its activities, its finances and the policy it is pursuing or proposes to pursue in the performance of any of its functions under the energy supply laws as the Minister may require from time to time.

### PART IV OFFICERS OF THE COMMISSION

#### 18. Chief Executive Officer.

- (1) Without prejudice to the other provisions of this Act, the Chairman shall also be the Chief Executive Officer of the Commission.
- (2) The Commission shall vest in the Chief Executive Officer such power and impose upon him such duties as may be determined by the Commission.
- (3) The Chief Executive Officer shall be responsible for the overall administration and management of the functions and the day to day affairs of the Commission.
- (4) The Chief Executive Officer shall have general control of the other officers of the Commission.
- (5) The Chief Executive Officer shall perform such further duties as the Minister and the Commission may direct from time to time.
- (6) In discharging his duties, the Chief Executive Officer shall act under the general authority and directions of the Commission.

#### 19. Appointment of officers of Commission.

The Commission may appoint such number of officers as it thinks desirable and necessary, who shall be paid such remuneration, allowances and benefits, and whose appointment shall be, on such terms as the Commission considers appropriate, for carrying out the purposes of the energy supply laws.

#### 20. Conditions of service.

The Commission may, with the approval of the Minister, determine the conditions of service of its officers.

#### 21. Loans and advances.

The Commission may grant loans and make advances to its officers for such purposes and on such terms as the Commission may determine.

#### 22. Payment of retirement benefits, etc.

The Commission may make arrangements for the payment to its officers and their dependants of such retirement benefits, gratuities and other allowances as the Commission may determine.

#### 23. Commission may adopt regulations, etc.

In making any regulations under this Part, the Commission may, with the approval of the Minister, adopt with such modifications as it deems fit any regulations, rules, policies, circulars and directives enacted or issued by the Federal Government.

### PART V FINANCE

#### 24. Fund.

- (1) There is hereby established, for the purposes of the energy supply laws, a Fund to be administered and controlled by the Commission.
- (2) The Fund shall consist of-
  - (a) such sums as may be provided by Parliament for the purposes of the energy supply laws from time to time;
  - (b) all or any part of the licence or other fees, administration charges, levies or other charges imposed by or payable to the Commission under the energy supply laws;
  - (c) all monies derived as income from investments by the Commission;
  - (d) all monies derived from the sale, disposal, lease or hire of, or any other dealing with, any property, mortgages, charges or debentures vested in or acquired by the Commission;

- (e) all monies earned from consultancy and advisory services and any other service provided by the Commission;
  - (f) all other monies and property which may in any manner become payable to or vested in the Commission in respect of any matter incidental to its functions and powers;
  - (g) sums borrowed by the Commission under section 29; and
  - (h) all other monies lawfully received by the Commission, including interest.
- (3) For the purpose of paragraph 24(2) (b) , all monies collected which are in excess of the financial requirements of the Commission for the performance of its functions under this Act may be paid into the Consolidated Fund.

25. Expenditure to be charged on Fund.

The Fund shall be expended for the following purposes:

- (a) paying any expenditure lawfully incurred by the Commission including legal fees and costs and other fees and costs;
- (b) paying for the remuneration, allowances and other expenses of the members of the Commission, members of committees, and officers of the Commission, including the granting of loans and advances, superannuation allowances, retirement benefits, pensions and gratuities;
- (c) paying any other expenses, costs, expenditure, grants or other payments properly incurred, accepted or deemed fit by the Commission in the performance of its functions or the exercise of its powers under the energy supply laws;
- (d) purchasing or hiring equipment, machinery and any other materials, acquiring land and any assets, and erecting buildings, and carrying out any other works and undertakings in the performance of its functions or the exercise of its powers under the energy supply laws;
- (e) repaying any monies borrowed under section 29 and the interest due on such monies; and
- (f) generally, paying any expenses for carrying into effect the provisions of the energy supply laws.

26. Conservation of Fund.

It shall be the duty of the Commission to conserve the Fund by so performing its functions and exercising its power under this Act as to secure that the total revenue of the Commission are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital taking one year with another.

27. Expenditure and preparation of estimates.

- (1) The expenditure of the Commission up to such amount as may be authorized by the Minister for any one year shall be defrayed out of the Fund.
- (2) Before 1 September each year, the Commission shall submit to the Minister an estimate of its expenditure (including the expenditure for research and development programmes) for the following year in such form and containing such particulars as the Minister may direct.
- (3) The Minister shall, before 1 January the following year, notify the Commission of the amount authorized for expenditure generally or of the amount authorized for each description of expenditure based on the estimate prepared under subsection (2).
- (4) The Commission may, at any time, submit to the Minister a supplementary estimate of its expenditure for any one year and the Minister may allow the whole or any part of the additional expenditure included therein.

28. Bank accounts.

The Commission shall open and maintain an account or accounts with such financial institution or institutions in Malaysia as the Commission thinks fit, after consulting the Minister; and every such account shall be operated upon as far as practicable by cheques signed by such person or persons as may be authorized by the Commission from time to time.



29. Power to borrow.

The Commission may, from time to time, borrow in such form and at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise, as the Minister may, with the concurrence of the Minister of Finance, approve, any money required by the Commission for meeting any of its obligations or discharging any of its duties.

30. Investment.

The monies of the Commission shall, in so far as they are not immediately required to be expended by the Commission under this Act, be invested in such manner as the Minister may, with the concurrence of the Minister of Finance, approve.

31. Financial procedure.

Subject to this Act and the approval of the Minister, the Commission shall determine its own financial procedure.

32. Financial year.

The financial year of the Commission shall begin on 1 January and end on 31 December of each year.

33. Accounts.

(1) The Commission shall cause proper accounts of the Fund to be kept and shall, as soon as practicable after the end of each financial year, cause to be prepared for that financial year a statement of accounts of the Commission which shall include a balance sheet and an account of income and expenditure.

(2) The Commission shall cause the statement of accounts to be audited by independent auditors appointed by the Commission.

(3) The Commission shall as soon as possible send a copy of the statement of accounts certified by the auditors and a copy of the auditor's report to the Minister who shall cause them to be laid before both Houses of Parliament, together with a report dealing with the activities of the Commission for the preceding financial year.

34. Non-application of Statutory Bodies (Accounts and Annual Reports) Act 1980.

The Statutory Bodies (Accounts and Annual Reports) Act 1980 [Act 240] shall not apply to the Commission.

PART VI  
GENERAL

35. Prosecution.

No prosecution shall be instituted for any offence under this Act without the consent in writing of the Public Prosecutor.

36. Public servant.

All members of the Commission and of any of its committees, and all officers and agents of the Commission, while discharging their duties under this Act as such members, officers or agents, shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

37. Public Authorities Protection Act 1948.

The Public Authorities Protection Act 1948 [Act 198] shall apply to any action, suit, prosecution or proceedings against the Commission or a member of the Commission, a member of a

committee, and an officer or agent of the Commission in respect of any act, neglect or default done or committed by him in good faith or any omission omitted by him in good faith, in such capacity.

38. Power to employ.

The Commission may employ and pay agents and technical advisers, including advocates and solicitors and other persons, in the performance of its functions, the exercise of its powers or for the better carrying into effect of the purposes of this Act.

39. Obligation of secrecy.

(1) Except for any of the purposes of this Act or for the purpose of any civil or criminal proceedings under any written law or where otherwise authorized by the Commission-

(a) no member of the Commission or any of its committees or any officer or agent of the Commission or any person attending any meeting of the Commission or any of its committees, whether during his tenure of office or during his employment or after that, shall disclose any information which has been obtained by him in the course of performing his functions and which is not published in pursuance of this Act; and

(b) no other person who has by any means access to any information or document relating to the affairs of the Commission shall disclose such information or document.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

40. Representation in civil proceedings.

Notwithstanding any other written law-

(a) in any civil proceedings by or against the Commission; or

(b) in any other civil proceedings in which the Commission is required or permitted by the court to be represented, or to be heard, or is otherwise entitled to be represented or to be heard, any person authorized by the Commission for that purpose may, on behalf of the Commission, institute such proceedings or appear in such proceedings and may make all appearances and applications and do all acts in respect of the proceedings on behalf of the Commission.

41. Things done in anticipation of the enactment of this Act.

All things done by any person or public authority on behalf of the Commission in the preparation of and towards the proper implementation of this Act, and any expenditure incurred in relation thereto, in anticipation of the enactment of this Act shall be deemed to have been authorized by this Act, and all rights acquired or obligations incurred on behalf of the Commission from anything so done shall upon the coming into operation of this Act be deemed to be the rights and obligations of the Commission.

## SCHEDULE

[Section 13]

### TIMES AND PLACES OF MEETINGS

1. (1) The Commission is to hold as many meetings as are necessary for the efficient performance of its functions and such meetings are to be held at such places and times as the Chairman may decide, provided that the Chairman shall not allow more than two months to lapse between meetings.

(2) The Chairman shall call for a meeting if requested to do so in writing by the Minister or by at least two members of the Commission.

#### Quorum

2. The quorum of the Commission shall be half or more than half of the number of members of the Commission.

#### Casting vote

3. If on any question to be determined by the Commission there is an equality of votes, the Chairman shall have a casting vote in addition to his deliberative vote.

#### Commission may invite others to meetings

4. (1) The Commission may invite any person to attend any meeting or deliberation of the Commission for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the meeting or deliberation.

(2) A person invited under subparagraph (1) shall be paid such allowances as may be determined by the Commission.

#### Resolutions without meetings

5. (1) A resolution is taken to have been passed at a meeting of the Commission if-

- (a) all members of the Commission have been informed of the proposed resolution, or reasonable efforts have been made to inform all members of the Commission of the proposed resolution; and
- (b) without meeting, a majority of the members of the Commission indicate agreement with the resolution in accordance with the method determined by the Commission under subparagraph (2)

(2) Subparagraph (1) applies only if the Commission-

- (a) decides that subparagraph (1) applies; and
- (b) decides the method by which members of the Commission are to indicate agreement with resolutions.

#### Minutes

6. (1) The Commission and every committee shall cause minutes of all their meetings to be maintained and kept in a proper form.

(2) A committee shall cause copies of the minutes of all its meetings to be submitted to the Commission as soon as practicable.

(3) Any minutes made of meetings of the Commission or a committee, if duly signed, shall be admissible in any legal proceedings as prima facie evidence of the facts stated in them without further proof and every meeting of the Commission or committee in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members at the meeting to have been duly qualified to act.

#### Procedure

7. The Commission may regulate its own procedure.

#### Disclosure of interest

8. (1) A member of the Commission or any committee having any interest in any matter under discussion by the Commission or committee shall disclose to the Commission or committee, as the case may be, the fact of his interest and its nature.

(2) For the purpose of subparagraph (1), a member of the Commission or committee shall be deemed to have an interest in the matter under discussion if he has interest in any company carrying on activities similar or related to the matter under discussion.

(3) A disclosure under subparagraph (1) shall be recorded in the minutes of the Commission or committee, as the case may be, and, after the disclosure, the member having an interest in the matter-

(a) shall not take part nor be present in any deliberation or decision of the Commission or committee, as the case may be; and

(b) shall be disregarded for the purpose of constituting a quorum of the Commission or committee, as the case may be.

(4) No act or proceedings of the Commission or any committee shall be invalidated on the ground that any member of the Commission or committee has contravened the provisions of this paragraph.

#### Validity of acts and proceedings

9. No act done or proceeding taken under this Act shall be questioned on the ground of-

(a) any vacancy in the membership of, or any defect in the constitution of, the Commission;

(b) a contravention by any member of the Commission or a committee of the provisions of paragraph 8; or

(c) any omission, defect or irregularity not affecting the merits of the case.

#### Members to devote time to business of Commission

10. The members of the Commission shall devote such time to the business of the Commission as is necessary to discharge their duties effectively.

