

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 consolidate and 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 No. 6173, which created an independent Oil Industry Commission, still retain 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 Board, the nucleus of which shall be the present Board of Energy. The Board shall be composed of a Chairman and 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 be a member of the Philippine Bar with at least five (5) years experience in the active 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 in connection with any case or proceedings before 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 for those performing purely clerical functions, shall possess at least a bachelor's degree in the line of specialization required by 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, marsh gas, methane gas, geothermal and hydroelectric sources of energy, uranium and other similar radioactive minerals, solar energy, 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 the provisions of 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 are consistent with the national interest;

(e) Whenever the Board has determined that there is a shortage of any petroleum product, or when 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. 1208, 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. 131 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 exercised 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 of 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 shall 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 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 a 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 the 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 the witnesses residing 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 inconvenient and expensive for them to appear personally 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, giving timely notice to the parties, and on said date to proceed to take the 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 as herein provided.

The Board may also, by proper order, authorize any of its lawyer members, or lawyer members of its staff, or any of the attorneys of the legal branch to hear and investigate any case filed with the Board and, in connection therewith, to receive such evidence as may be material thereto. At the conclusion of the hearing or investigation, the attorney or branch chief so authorized shall submit the evidence received by him to the Board to enable the latter to render its decision.

SEC. 8. *Authority to Grant Provisional Relief* - The Board may, upon the filing of an application, petition or complaint or at any stage thereafter and without prior hearing, on the basis of supporting papers duly verified or authenticated, grant provisional relief on motion of a party in the case or on its own initiative, without prejudice to a final decision after hearing, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support the provisional order: Provided, That the Board shall immediately schedule and conduct a hearing thereon within thirty (30) days thereafter, upon publication and notice to all affected parties.

SEC. 9. *Effectivity of Board's Decision or Orders*. - All decisions or orders of the Board to continue an existing service or determining, fixing and prescribing rates to be charged shall be immediately operative; and all other decisions or orders shall become effective upon the dates specified thereon: Provided, however, That decisions, orders or resolutions in controverts matters and not referring to the continuance of an existing service or determining, fixing and prescribing rates to be charged shall take effect thirty (30) days after notice to the parties; unless otherwise provided by the Board.

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 the 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 by the Supreme Court 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 for 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 Department of Energy, Environment and Natural Resources, the National Economic and 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 18 of Republic Act No. 6173, as amended, sections 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 transfers 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. 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 Executive Order No. 131 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*. - This Executive Order shall take effect immediately.

DONE in the City of Manila, this 18th day of May in the year of Our Lord, nineteen hundred and eighty-seven.

(Sgd.) CORAZON C. AQUINO

By the President:

(Sgd.) JOKER P. ARROYO
Executive Secretary