

[EXECUTIVE ORDER NO. 172, May 08, 1987]

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, 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 reported 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 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, of 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 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 shall take effect fifteen (15) days after publication in the Official Gazette. It shall also perform such other acts as