

ENERGY COMMISSION OF SABAH ENACTMENT 2023

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STATE OF SABAH

I assent,

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TUN DATUK SERI PANGLIMA (DR) HAJI JUHAR
BIN DATUK HAJI MAHIRUDDIN,
Yang di-Pertua Negeri.

10TH JANUARY, 2023.

No. 11 of 2022

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

ENACTED by the Legislature of the State of Sabah as follows:

PART I

PRELIMINARY

Short title, application and commencement

1. (1) This Enactment may be cited as the Energy Commission of Sabah Enactment 2023.

(2) This Enactment comes into operation on 10 January 2023.

Interpretation

2. In this Enactment, unless the context otherwise requires —

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

“Chief Executive Officer” means the Chief Executive Officer of the Commission having the duties described in section 19;

“Commission” means the Commission established under section 3;

“committee” means any committee established by the Commission under section 12;

“energy supply activities” includes —

- (a) the supply and use of gas to which the gas supply laws apply; and
- (b) the delivery, transportation, distribution and reticulation of gas for the supply and use of gas under paragraph (a);

“energy supply laws” means —

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

“Fund” means the fund established under section 26;

“gas supply laws” means the Gas Supply Enactment 2023 and includes —

- (a) any subsidiary legislation made under the Gas Supply Enactment 2023; 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;

“Government” means the Government of the State of Sabah;

“installation” has the meaning assigned to it under the gas supply laws;

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

“Minister” means the Minister for the time being charged with the responsibility for matters relating to gas supply;

“Minister of Finance” means the Minister for the time being charged with the responsibility for finance; and

“officer” means any officer, servant or employee of the Commission appointed under this Enactment.

PART II

ENERGY COMMISSION OF SABAH

Establishment of Commission

3. (1) A body corporate by the name “Energy Commission of Sabah” is established.

(2) The Commission shall have perpetual succession and a common seal.

(3) The Commission may sue and be sued in its name.

(4) Subject to and for the purposes of this Enactment, the Commission may, upon such terms as the Commission deems fit —

- (a) enter into contracts;

- (b) acquire, purchase, take, lease, hold, sell and enjoy any movable and immovable property or any interest in such property vested in the Commission; and
- (c) 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 in such property vested in the Commission.

Common seal

4. (1) The Commission shall have a common seal which shall bear such device as the Commission shall approve and such seal may be broken, changed, altered or made anew as the Commission thinks fit.

(2) Until a seal is provided by the Commission, a stamp bearing the words “Energy Commission of Sabah” 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.

Membership of Commission

5. (1) The Commission shall consist of the following members who shall be appointed by the Minister:

- (a) the Chairman;
- (b) the Chief Executive Officer;
- (c) two members representing the Government; and
- (d) not more than five members, who, in the opinion of the Minister, have experience and shown capacity and professionalism in matters relating to finance, engineering, business or administration, or are otherwise suitable for appointment because of their special knowledge, expertise and experience.

(2) The Minister may appoint temporarily any member of the Commission, other than the Chief Executive Officer, 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 Sabah; or
- (c) when the Chairman is, for any other reason, unable to perform the duties of his office.

Approval to hold other office

6. 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.

Tenure of office

7. (1) Subject to such conditions as may be specified in his instrument of appointment, a member of the Commission shall, unless he sooner resigns or vacates his office or his appointment is sooner revoked, hold office for a term of two years.

(2) A member of the Commission shall be eligible for reappointment but no member shall hold office for more than three terms.

(3) This section shall not apply to the Chief Executive Officer.

Remuneration and allowances

8. (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.

Revocation of appointment and resignation

9. (1) The Minister may, at any time, revoke the appointment of any member of the Commission, other than the Chief Executive Officer, without assigning any reason for the revocation.

(2) A member of the Commission, other than the Chief Executive Officer, may, at any time, resign from his office by giving notice in writing to the Minister.

Vacation of office

10. The office of a member of the Commission, other than the Chief Executive Officer, 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.

Statutory declaration by members of the Commission

11. (1) No person shall be appointed as a member of the Commission unless before such appointment such person makes a statutory declaration as to 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.

Commission may establish committee

12. (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 shall be subject to, and act in accordance with, any direction given to it by the Commission.

(9) 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.

(10) The members of a committee and any person invited under subsection (9) shall be paid such allowances and other expenses as the Commission may determine.

Schedule

13. (1) The provisions of the Schedule shall apply to the members of the Commission and the members of a committee appointed under section 12.

- (2) The Minister may amend the Schedule by order published in the *Gazette*.

PART III

FUNCTIONS AND POWERS OF THE COMMISSION

Functions and powers of the Commission

14. (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 state policy for energy supply activities;
- (b) 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;
- (c) to implement and enforce the energy supply laws;
- (d) 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;
- (e) to promote efficiency, economy and safety in the supply of gas through pipelines and the use of gas supplied through pipelines;
- (f) 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 supply of gas through pipelines;
- (g) to promote research into, and the development and the use of, new techniques relating to the supply and use of gas through pipelines and the use of gas supplied through pipelines;

- (h) to encourage and promote the development of the supply of gas through pipelines including in the area of training;
- (i) to encourage and promote self-regulation in the supply of gas through pipelines;
- (j) to carry out any function conferred by or under the energy supply laws;
- (k) to review the energy supply laws and to make the necessary recommendations to the Minister; and
- (l) 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.

Delegation of Commission's functions or powers

15. (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.

Direction by Minister

16. The Minister may, from time to time, give directions of a general character, consistent with the provisions of the energy supply laws, not inconsistent with the provisions of this Enactment as to the performance of the functions and the exercise of the powers of the Commission under this Enactment and it shall be the duty of the Commission to give effect to such directions.

Returns, reports, accounts and information

17. 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.

Restriction on the use of the symbol or representation of the Commission

18. (1) The Commission shall have the exclusive right to the use of such symbol or representation as the Commission may select or devise and thereafter displayed or exhibited in connection with its activities or affairs.

(2) The symbol or representation selected or devised by the Commission shall be published in the *Gazette*.

(3) Any person who uses a symbol or representation of the Commission or any resemblance thereof, or creates any symbol or representation which refers to the Commission so as to deceive or cause confusion, or to be

likely to deceive or to cause confusion, commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

PART IV

OFFICERS OF THE COMMISSION

Chief Executive Officer

19. (1) The Minister shall appoint a Chief Executive Officer on such terms and conditions as he considers desirable.

(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 other 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.

Temporary exercise of functions of Chief Executive Officer

20. The Minister may appoint temporarily any officer of the Commission to act as the Chief Executive Officer for the period when —

(a) the office of the Chief Executive Officer is vacant;

- (b) the Chief Executive Officer is absent from duty or from Sabah; or
- (c) the Chief Executive Officer is, for any other reason, unable to perform the duties of his office.

Appointment of officers of the Commission

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

Conditions of service

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

Loans, scholarships and advances

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

Payment of retirement benefits, etc.

24. 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.

Commission may adopt regulations, etc.

25. The Commission may, with the approval of the Minister, adopt with such modifications as it deems fit any regulations, rules, policies, circulars or directives enacted or issued by the Government.

PART V

FINANCE

Fund

26. (1) There is hereby established, for the purposes of the energy supply laws, a fund to be known as the “Sabah Energy Fund” to be administered and controlled by the Commission.

(2) The Fund shall consist of —

- (a) such sums as may be provided by Legislative Assembly 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 moneys derived as income from investments by the Commission;
- (d) all moneys derived from the sale, disposal, lease or hire, or any other dealing with, any property, mortgages, charges or debentures vested in or acquired by the Commission;
- (e) all moneys earned from consultancy and advisory services and any other service provided by the Commission;
- (f) all other moneys 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 31; and
- (h) all other moneys lawfully received by the Commission, including interest.

(3) For the purpose of paragraph (2)(b), all moneys collected which are in excess of the financial requirements of the Commission for the performance of its functions under this Enactment may be paid into the State Consolidated Fund.

Expenditure to be charged on Fund

27. The Fund shall be expended for the purposes of —

- (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 granting loans and advances, superannuation allowances, retirement benefits, pensions and gratuities;
- (c) paying any other expenses, costs, expenditure or grants or other payments properly incurred or 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 and the exercise of its powers under the energy supply laws;
- (e) repaying any moneys borrowed under section 31 and the interest due on such moneys;
- (f) granting loans, scholarships and advances to its officers under section 23; and
- (g) generally, paying any expenses for carrying into effect the provisions of the energy supply laws.

Conservation of Fund

28. It shall be the duty of the Commission to conserve the Fund by so performing its functions and exercising its power under this Enactment 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.

Expenditure and preparation of estimates

29. (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.

Bank accounts

30. The Commission shall open and maintain an account or accounts with such bank or banks in Malaysia as the Commission thinks fit, after consulting the Minister, and every such account shall be operated upon in such manner as may be authorized by the Commission for such purpose from time to time.

Power to borrow

31. 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 functions or powers under the Enactment.

Investment

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

Limitation on contracts

33. The Commission shall not, without the approval of the Minister and the concurrence of the Minister of Finance, enter into any contract under which the Commission is to pay or receive an amount exceeding ten million ringgit.

Financial procedure

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

Financial year

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

Accounts and reports

36. (1) The Commission shall cause proper accounts of the Fund and proper reports of its activities 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) a statement of accounts of the Commission which shall include the balance sheet and account of income and expenditure; and
- (b) a report of its activities.

(2) The Commission shall, as soon as possible, send a copy of the statement of accounts certified by the auditors and a copy of the auditors' report to the Minister who shall cause them to be laid before the Legislative Assembly.

(3) The Statutory Bodies (Supplementary Provisions) Enactment 1997 [No.9 of 1997] shall apply to the Commission.

PART VI

GENERAL

Prosecution

37. No prosecution for an offence under this Enactment shall be instituted except by or with the consent in writing of the Public Prosecutor.

Public servant

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

Public Authorities Protection Act 1948

39. 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.

Power to employ

40. 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 Enactment.

Obligation of secrecy

41. (1) Except for any of the purposes of this Enactment 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 his duties and which is not published in pursuance of this Enactment; 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.

Representation in civil proceedings

42. Notwithstanding the provision of 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.

Acts and things done in anticipation of the enactment of this Enactment

43. All acts and things done on behalf of the Commission in preparation for or in anticipation of the enactment of this Enactment and any expenditure incurred in relation thereto shall be deemed to have been authorized under this Enactment, provided that the acts and things done are consistent with the general intention and purposes of this Enactment, and all rights and obligations acquired or incurred as a result of the doing of those acts or things including any expenditure incurred in relation thereto shall upon the coming into operation of this Enactment 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 times and places as the Chairman may determine, 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.

(3) The meetings of a committee shall be held at such times and places as the chairman of the committee may determine.

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 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 and committee 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 Enactment 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 the Commission

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

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Tuesday, the 10th day of January, 2023.

DATUK SERI PANGLIMA HAJI KADZIM BIN HAJI M. YAHYA,
Speaker,
State Legislative Assembly.