

18 March 2009

Energy Industry Act, B.E. 2550

This Act was published on 10 December 2007, and became effective on 11 December 2007. Regulations and notifications which have been published are listed at the end of this paper.

This Act established a new regulatory regime for electricity and natural gas business. One of the purposes of the Act was to restructure the energy industry management by separating policy making, regulation and operating functions.

- The Energy Regulatory Commission was established, comprising one Chairman and six other members. The Chairman and six members were appointed on 1 February 2008.
- The Office of Energy Regulatory Commission was established on 10 December 2007 by virtue of Energy Industry Act, B.E. 2550, as a state agency with status of juristic person, and to work under the supervision of the Commission.

The Rationale attached to the bill read as follows:

“Since the petroleum industry is essential to national social, economic and environmental structures, it is necessary to restructure the energy industry management by distinctly separating the policy-making, regulation and operating functions of the energy industry from each other, in order to enhance greater participation and roles of the private sector, communities as well as the general public so that the energy industry operation would be efficient, secure, adequate and extensive with reasonable prices and quality according to the standard and to respond to the domestic demand and sustainable development of the country in terms of social economic and environmental aspects pursuant to the principles of Sufficiency Economy Philosophy. It is therefore deemed necessary that the Energy Regulatory Commission be established to regulate the energy industry. To this effect, the Commission shall be responsible for the prevention of abusive use of monopoly power and the protection of energy consumers and those adversely affected from the energy industry operation. In order that the Commission could execute their authority and duties efficiently, the Energy Regulatory Commission Office shall be established, being a state agency with the status of a juristic person, to function as the Secretariat to the Commission. It is, therefore, essential to enact this Act.”

EPPO website: <http://www.eppo.go.th>

SUMMARY OF PROVISIONS OF ENERGY INDUSTRY ACT

Introductory provisions

- Section 1.** The name of the Act is the “Energy Industry Act, B.E. 2550”.
- Section 2.** The Act comes into force the day following the date of publication, i.e. 11 December 2007.
- Section 3.** The Act does not apply to:
- (1) petroleum business under the Petroleum Act.
 - (2) petroleum business under the Thailand-Malaysia Joint Development Authority.
 - (3) safety standards re transportation and storage of fuel oil under the Fuel Oil Control Act.
 - (4) provisions of the Act on Fuel Oil Trade.

Section 5. Certain of the key definitions include:

“**Energy**” means electricity or natural gas.

“**Renewable energy**” means renewable energy under the law on the National Energy Policy Council (NEPC).

“**Energy industry**” means the electricity business, the natural gas business or the energy network system business.

“**Electricity business**” means the production, procurement, transmission and distribution of electricity or control of a power system.

“**Natural gas business**” means the natural gas transmission through pipelines through natural gas network system, natural gas storage and transformation of natural gas from liquid to gas, natural gas procurement and wholesale, or natural gas retail through natural gas distribution system, exclusive of the natural gas business operation in the transportation sector.

“**Energy network system**” means a power network system or a natural gas network system.

“**Power network system**” means a power transmission system or a power distribution system.

“**Natural gas distribution system**” means a pipeline system connecting with the natural gas transmission system, including the equipment or any other thing necessary for the distribution of natural gas.

“**Fund**” means the Power Development Fund.

“**License**” means a license for the energy industry operation.

Section 6. The Minister of Energy shall administer the Act, and have authority to issue ministerial regulations.

Division 1: General Provisions

Section 7. The objectives of the Act:

- (1) promote adequate and secure energy service provision, while maintaining fairness for energy consumers and licensees;
- (2) protect energy consumers’ benefits in terms of both tariffs and service quality;
- (3) promote competition in the energy industry and prevent abusive use of dominance in the energy industry operation;
- (4) promote fairness and transparency of the service provision of the energy network systems, without unjust discrimination;
- (5) promote the efficient energy industry operation and ensure fairness for licensees and energy consumers;

- (6) protect the rights and liberty of the energy consumers, local communities, general public and licensees in terms of participation, accessibility, utilization and management of energy under rules that are fair for all parties;
- (7) promote economical and efficient use of energy and resources in the energy industry operation, with due consideration of the environmental impact and equality of the natural resources; and
- (8) promote the use of renewable energy that has less adverse impact on the environment in the electricity industry operation.

Section 8. Energy industry policy guidelines to be established:

- (1) Procure energy to adequately meet the demand, with good quality, security as well as reasonable and fair prices, emphasizing full exploitation and development of renewable energy and indigenous energy resources for the purpose of sustainable development of the country in social, economic and environmental aspects, including reducing dependency on imported energy.
- (2) Promote economical, efficient and worthwhile use of energy, including the promotion of application of efficient technologies as well as the distributed generation system in power generation, in order to reduce the investment in energy consumption, fuel costs in the manufacturing processes, health impacts and associated impacts resulting from energy production and utilization, while increasing the economic competitive edge of the country.
- (3) Promote the participation of the local communities and general public in the management and monitoring of energy-related operations to ensure that the management and tariff determination are carried out with transparency, with the establishment of an energy operation regulatory body to protect energy consumers and to ensure fairness for all stakeholders.
- (4) Promote knowledge, awareness and proper behavior for economical, efficient and worthwhile use of energy.
- (5) Promote electricity industry for fundamental public utilities, preservation of security and reliability of power system, with the state being responsible for power network system operation, power system operator, hydropower plant, with EGAT as the power transmission operator, and with MEA and PEA as the power distribution system operators and maintenance of appropriate proportion of power generation capacity of state electricity business.

Section 9. Powers of the Minister:

- (1) propose to the cabinet the policy on the energy industry structure.
- (2) recommend to the NEPC the policy on the energy procurement and the policy on diversification of fuel sources and types for power generation to ensure efficiency and security of the electricity business;
- (3) consider the power development plan, the investment plans of the electricity business, the natural gas procurement plan and the energy network system expansion plans, on which the Commission has provided opinion under Section 11(5), for submission to the cabinet for approval;

- (4) propose to the NEPC the policy on the protection against and solution to energy shortages;
- (5) propose to the NEPC the policy, targets and general strategies of the energy industry operation;
- (6) set the policy on service quality standards and energy industry operation standards;
- (7) set the policy on extensive provision of energy services as well as energy services for the underprivileged, including the policy dealing with the energy consumers' complaints;
- (8) recommend to the NEPC the policy on the contributions to be made to the Fund and on the spending of the Fund;
- (9) consider the operational plan of the Commission and the budget of the Office for submission to the cabinet for approval;
- (10) approve the rules and Codes of Conduct of the Commission members and the competent officials as proposed by the Commission under Section 11(8); and
- (11) perform other duties as stipulated under this Act.

Division 2: Regulatory body for energy industry operation

Part 1: Energy Regulatory Commission

Sections 10–29. The Commission includes a Chairman and 6 members, and has the powers listed in Section 11. Sections 12-16 prescribe qualifications and procedures to select members, who will serve 6-year terms.

Part 2: Office of Energy Regulatory Commission

Sections 30–46. The Office is a state agency with status as a juristic person. There is a Secretary General who is responsible for operation of the Office, and has the power to legally bind the Office in matters with third parties. The Secretary General is appointed by the Commission. Section 40 provides that in the event that revenue is not adequate to meet expenditure, the government shall allocate money from the government budget.

The current Secretary General is Mr. Kawin Thangsupanich, who was appointed by notification dated 19 September 2008 for a five-year term commencing 1 October 2008.

The Office of the Commission is 19th Chamchuri Square, 319 Payathai Road, Pathumwan, Bangkok 10330.

Division 3: Regulation of the Energy Industry Operation

Part 1: License for the Energy Industry Operation

Sections 47–63. Operators of an energy industry must obtain a license from the Commission. The Commission will announce the type and terms of license that corresponds with the capacity and characteristics of each industry category, taking into account impact on people, economic, social and investment worthiness including the competitive features of each industry category, and may impose conditions on a case-by-case basis. Exemptions may be prescribed by Royal Decree.

Section 48. Provides that the Commission shall have authority in respect of granting approval of factory licenses, building permits, town planning, and law on energy development and promotion.

Qualifications of license applicants, rules, procedures and conditions of application for licenses, and license issuance (including license fees and fees for operation) shall be in line with regulations announced by the Commission.

Section 50. Provides for the Commission to issue regulations re qualifications of license applicants, rules, procedures and conditions for applying for licenses, and license fees.

Part 2: Tariffs for the Energy Industry Operation

Sections 64–71. The Minister, with the approval of the NEPC, shall establish the policy and guidelines for fixing tariffs for energy industry operation. The Commission shall prescribe the rules for fixing tariffs of licensees of each type.

Part 3: Establishment of Standard and Safety of Energy Industry Operation

Sections 72– 78. Energy industry operators must observe the engineering and safety standards prescribed by the Commission.

Part 4: Energy Network Systems and Energy Network System Operators

Sections 79–88. Energy network system operators are subject to supervision by the Commission. An operator which is a state agency will develop expansion plans for submission to the Minister and the Cabinet. An operator which is not a state agency will develop expansion plans for submission to the Commission. Section 81 provides that an operator must allow other licensees or operators to utilize or connect their systems in accordance with terms prescribed.

Division 4: Energy Consumer Protection

Part 1: Service Standards and Extensive Service

Sections 89–92. Licensees will provide energy services according to technical, engineering and service quality standards prescribed by the Commission. The Commission has the authority to prescribe a standard form of contract for providing energy services.

Part 2: Power Development Fund

Sections 93–97. A fund will be established in the Office, called the “Power Development Fund”, with objectives to provide financial support for provision of power services in localities, develop local communities affected by power plant operation, and to promote the use of renewable energy. The Fund will be managed by the Office. A licensee operating an electricity business will make contributions to the fund in accordance with rules prescribed by the Commission. The Fund may be used for the following activities:

“**Section 97.** The Fund shall be used for the following activities:

- (1) to compensate and subsidize electricity business licensees who have provided services for underprivileged power consumers or to enhance extensive

electrification or to support the policy on the development decentralization to provincial areas;

- (2) to compensate the power consumers who have to pay more expensive electricity rate due to the violation of a licensee who has a power system operator of Section 87 paragraph two;
- (3) to develop or restore the localities affected by the operation of a power plant;
- (4) to promote the use of renewable energy and technology used in electricity business operation that has less impact on the environment;
- (5) to encourage society and public to have knowledge, awareness and participation in respect of electricity;
- (6) to be spent as expenses for managing the Fund.

The spending of the money of the Fund under (1), (2), (3), (4) and (5) shall be made in accordance with the regulations prescribed by the Commission under the scope of policy of the NEPC under Section 11(10), and there must be distinct separation of accounts according to the activities for which expenses were spent.”

Part 3: Regional Energy Consumer Committee

Sections 98–103. The Commission will appoint a Regional Energy Consumer Committee in each region for the purpose of protecting energy consumers. Committees will have the following functions:

“**Section 99.** The Regional Energy Consumer Committee has the following authority and duties:

- (1) deal with complaints from energy consumers and give advice to energy consumers as stipulated by the Commission;
- (2) give advice to the Commission on energy consumer protection;
- (3) propose corrective and improvement measures regarding energy service provision;
- (4) co-ordinate with energy industry operators to acquire the information related to the complaints of energy consumers with a view to improving service quality and finding solutions to the complaints; and
- (5) perform any other task as may be assigned by the Commission.”

Division 5: Utilization of Immovable Property

Section 104. Licensee that is a government agency: the expropriation of property is made by the Office.

Section 105. Provision for temporary use of land by a licensee, with approval of the Commission.

Section 106. Provisions for description of route or site by licensee, approval by the Commission, and announcement by the Office.

Section 107. Licensee shall have authority to act to construct, etc.

Section 108. Actions required to be taken by licensee: 108(2) provides for payment of compensation, per rules announced by the Commission.

Section 109. Authority of the licensee to repair and maintain an energy network system.

Section 110–118. The Act includes provisions dealing with rights and obligations of licensees within zones announced under Section 106.

Division 6: Deliberation of Disputes and Lodging of Appeals

Sections 119– 21.

Division 7: Competent Officials

Sections 122– 26.

Division 8: Administrative Enforcement

Sections 127–128.

Division 9: Punishment

Sections 129–141.

Transitional Provisions

Section 142. Selection of Commission will be completed within 120 days after the Act comes into force. In meantime, NEPC will perform duties of the Commission.

Section 147. All powers of EGAT, MEA and PEA under the EGAT Act, MEA Act and PEA Act will continue to the extent they are not contrary to this Act.

Section 148. The provisions relating to acquisition of immovable property through expropriation by EGAT, MEA and PEA will continue in force.

Section 149. Special provisions deal with PTT, which is subject to two Royal Decrees until PTT receives a license under the Act.

Section 150. Within 180 days from the effective date of the regulations of the Commission under Section 50, the Commission will issue licenses to EGAT, MEA, PEA and PTT.

Section 151. Within 180 days from the effective date of the regulations of the Commission under Section 50, the Commission will issue licenses to energy operators in the JDA.

Section 154. A generator operating before the effective date of the Act, may continue energy operation until a license is received. An application must be filed within 60 days from the effective date of regulations of the Commission under Section 50. Energy operations shall be subject to permission under NEC. 58 (concession to produce), law on energy development and promotion, law on EGAT, law on factories, until a license is received.

IMPLEMENTATION OF ENERGY INDUSTRY ACT

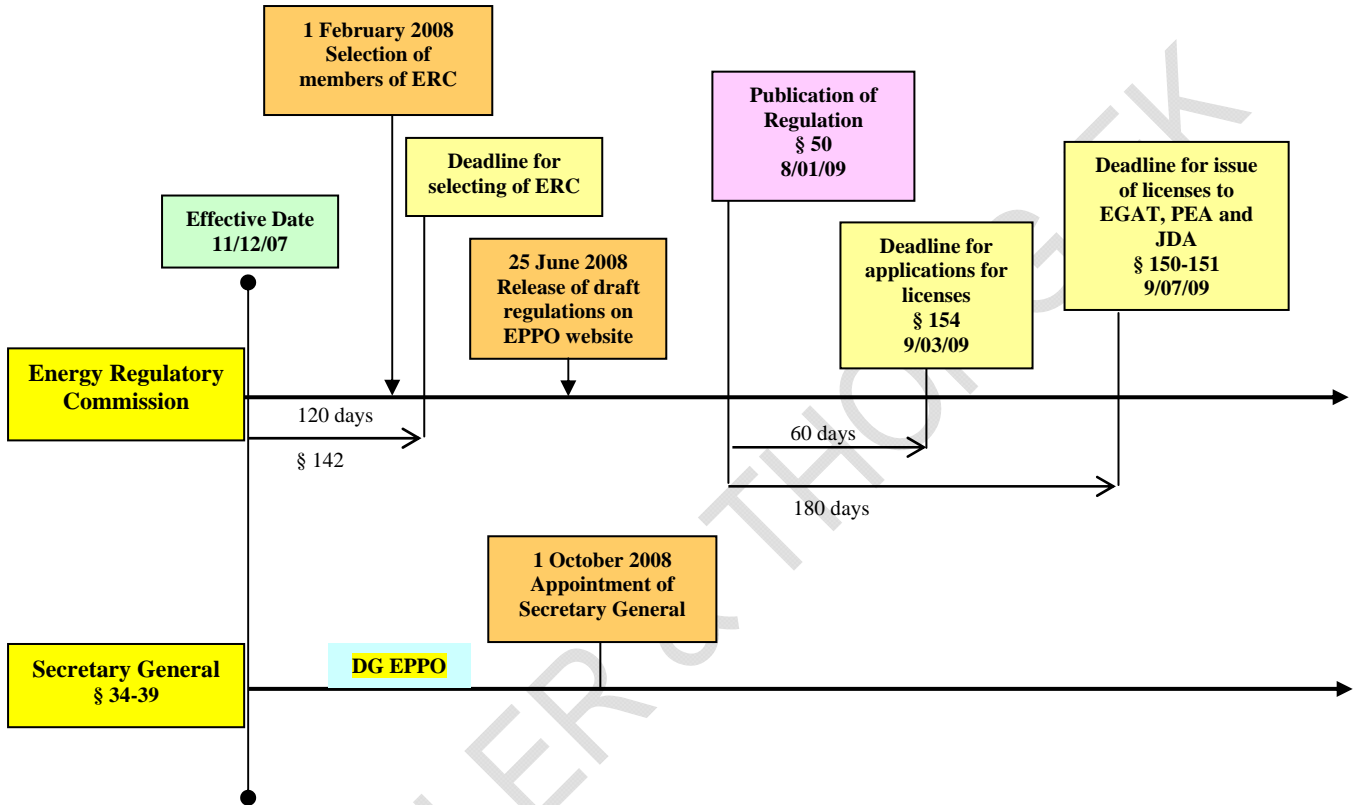
As of March 2009, the following regulations and notifications under the Act have been published:

1. Regulations of the Energy Regulatory Commission under Sections 50 and 54 re Prescription of Rate of Fees for Permission and Energy Industry Operation, B.E. 2551, dated 4 December 2008.
2. Regulations of the Energy Regulatory Commission under Section 50 re Governing Application for a License and Permission for Energy Industry Operation, B.E. 2551, dated 4 December 2008.
3. Regulations under Sections 33(7) and 40 on remittance of state revenue and deduction of expenses for operation and appropriate burdens of the Office of the Energy Regulatory Commission, B.E. 2551, dated 4 December 2008.
4. Notification of the Energy Regulatory Commission under paragraph two of Section 47 re Prescription of types and Terms of Energy Industry Operation Licenses, B.E. 2551, dated 4 December 2008.
5. Notification of the Energy Regulatory Commission under paragraph four of Section 47 re Prescription of Energy Industry Operations exempt from applying for a license as those required to be notified, B.E. 2551, dated 4 December 2008.
6. Notification of the Energy Regulatory Commission under paragraph three of Section 54 re Prescription of Rules, Procedures and Conditions for Renewal of Licenses, B.E. 2551, dated 4 December 2008.

On March 3, 2009, the Cabinet approved the draft royal decree stipulating types, sizes and natures of the energy business which do not require to obtain the energy operation licenses:

1. Power generating business with total production capacity of each production site lower than 1 MW.
2. Power distribution system business of which the power generating operator uses the production for his own business.
3. Power distribution business having the size of distribution lower than 1 MW through the power distribution system.
4. Power system control center business which normally has no duty to directly control the power generating.
5. Storage and transformation of natural gas from liquid to gas with the total storage of liquefied natural gas of each storage lower than 50,000 litres.

TIME FRAMES



1. Royal decree prescribing the types, sizes and natures of energy industry operations exempt from applying for an energy industry operation license. Approved by Cabinet on 3/03/09.
2. Regulations of the ERC under Sections 50 and 54 prescribing rate of fees for permission and energy industry operation, dated 4 December 2008, published 8/01/09.
3. Regulations of the ERC under Section 50 governing application for a license and permission for energy industry operation, dated 4 December 2008, published 8/01/09.
4. Regulations under Sections 33(7) and 40 on remittance of state revenue and deduction of expenses for operation and appropriate burdens of the Office of the Energy Regulatory Commission, B.E. 2551, dated 4 December 2008.
5. Notification of the ERC under Section 47(2) re prescription of energy industry operations exempt from applying for a license as those that must be reported, dated 4 December 2008, published 8/01/09.
6. Notification of the ERC under Section 47(4) re prescription of types and terms of energy industry operation licenses, dated 4 December 2008, published 8/01/09.
7. Notification of the ERC under Section 54(3) re prescription of rules, procedures and conditions for renewal of licenses, dated 4 December 2008, published 8/01/09.