



BERMUDA

ENERGY ACT 2009

2009 : 36

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SCHEDULE 1

SCHEDULE 2

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Short title

1 This Act may be cited as the Energy Act 2009.

Definitions

2 In this Act, unless the context otherwise requires—

“commodity” means any good or service;

“Commission” means the Energy Commission established under section 3;

“energy related” means related to the production or supply of power for sale or distribution to the public, including electrical power;

“Minister” means the Minister responsible for energy;

“prescribed” means prescribed by regulations made under section 22;

“regulations” means regulations made under section 22;

“specified business” means an energy related business that is specified in the first column of Schedule 2;

“specified commodity” means an energy related commodity that is specified in the second column of Schedule 2.

[Section 2 "Minister" deleted and substituted by BR 5 / 2011 para. 5 effective 25 February 2011]

PART 1
ENERGY COMMISSION

Establishment of Energy Commission

3 (1) There shall be established a body to be called the Energy Commission which shall advise the Minister in the discharge of the Minister's functions under this Act, and discharge the functions that are conferred upon the Commission by this Act or any other statutory provision.

(2) Subject to subsection (3), the Commission shall consist of a chairman and four other members, all of whom shall be appointed by the Minister.

(3) For the purposes of any inquiry under this Act, the Minister may appoint to the Commission an additional member who, in the Minister's opinion, is by reason of their special qualifications or experience able to assist the Commission in its inquiry, and the person appointed shall, for the duration and purposes of that inquiry, be deemed to be a member of the Commission.

(4) The provisions contained in Schedule 1 shall have effect in relation to the Commission.

Delegation of functions

4 (1) The Minister may, in writing, delegate to the Commission or any member of the Commission, or to any public officer, either generally or for any particular occasion, any of the Minister's functions under this Act that the Minister considers necessary:

Provided that—

- (a) no delegation made under this subsection shall preclude the Minister from exercising or performing at any time any of the functions delegated under this section;
- (b) nothing in this subsection shall authorize the Minister to delegate any power to—
 - (i) delegate under this section any of the Minister's functions,
 - (ii) grant, amend, suspend, revoke or transfer a licence under section 8, 10 or 11,
 - (iii) vary a direction of the Commission under section 14,
 - (iv) make an order under section 16,
 - (v) make regulations under section 22, or
 - (vi) make an order under section 26;
- (c) no delegation made under this subsection shall prevent a person from making representations to the Minister after receiving written notice under section 10(1) from the Minister or the Minister's delegated representative; and

(d) no person to whom the Minister has, under this section, delegated any function shall delegate that function to any other person.

(2) A reference in this Act to the Minister includes, in relation to any particular function of the Minister under this Act, a reference to any person to whom that function has been delegated under this section.

Minister may require Energy Commission to conduct inquiry

5 (1) The Minister may at any time require the Commission to inquire into—

- (a) any matter which may affect the exercise by the Minister of the Minister's powers under this Act;
- (b) the price or charge made for any energy related commodity, whether or not the commodity is a specified commodity; or
- (c) such other matters as the Minister may specify concerning the cost or supply of any energy related commodity.

(2) Upon being required under subsection (1) to inquire into a matter, the Commission shall conduct an inquiry and report its findings to the Minister after completion of the inquiry.

Power to obtain information

6 (1) For the purpose of an inquiry under this Act, the Commission shall have power by order under the hand of the Chairman to require any person to attend before it and give evidence on oath or otherwise, and to require the production of accounts, records and other documents, so as to elicit all such information relevant to the matter inquired into as the Commission may think necessary.

(2) A person who—

- (a) fails without reasonable excuse to attend before the Commission in compliance with an order under subsection (1); or
- (b) when in attendance before the Commission refuses to make an oath, or refuses to produce a document, or refuses to give evidence, in compliance with such order as aforesaid,

commits an offence:

Punishment on summary conviction: a fine of \$5,000.00:

Provided that a person shall not be punished for refusing to answer any question or to produce any document which they could not be required to answer or produce before a court in Bermuda, or for failing or refusing to answer any question or produce any document which is not relevant to the matters in issue.

Annual report

7 The Commission shall, not later than March 31 after the end of each calendar year, submit a report to the Minister on its activities for that year.

PART 2

LICENCE

Licence for production or supply of electrical power or specified commodity

8 (1) No person shall produce or supply electrical power in Bermuda for sale or distribution to the public, or sell or distribute a specified commodity to the public in Bermuda, without first obtaining a licence from the Minister under this Act, or without otherwise being authorized by law.

(2) The grant of a licence, under this Act, shall be in the discretion of the Minister, except where a licence is required in order to comply with any statutory provision rendering the establishment or production of electrical power, or a specified commodity, mandatory.

(3) A licence shall be valid for the period, or until the day, prescribed but, save as otherwise prescribed, may be renewed.

(4) A licence shall be subject to the terms and conditions (if any) prescribed and to such other terms and conditions as the Minister specifies on the grant or renewal of the licence, being terms and conditions that the Minister considers necessary for the purposes of carrying out the provisions and purposes of this Act.

Offence

9 (1) A person who contravenes section 8 is guilty of an offence and is liable—

- (a) on conviction by a court of summary jurisdiction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years, or to both such fine and imprisonment; or
- (b) on conviction on indictment to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 5 years, or to both such fine and imprisonment.

(2) Where any such offence is a continuing offence, the person guilty of the offence shall, in addition to any punishment provided in this section, be liable in respect of each day during which the offence continues to a fine of \$5,000.

Minister may suspend or revoke licence

10 (1) The Minister may, after giving the holder of a licence written notice and affording the holder a reasonable opportunity to make representations, suspend or revoke any licence granted under section 8 where—

- (a) the holder has wilfully or negligently failed to carry out its operations with regard to the production or supply of electrical power, or with regard to the sale or distribution of a specified commodity, as the case may be, in accordance with the regulations or the terms or conditions of the licence;
- (b) false statements of material facts, fraud or misrepresentation have been made or committed by the holder in the application for the licence or

related to any subsequent statement in connection with it required by the holder; or

- (c) the Minister is satisfied that there is other just and reasonable cause for revoking or suspending the licence.

(2) Notwithstanding subsection (1), the Minister may revoke or suspend any licence without giving the holder thereof written notice or affording him an opportunity to make representations if the holder thereof fails to pay any fees relating to the licence in the manner prescribed.

Transfer of licence

11 A licence may be transferred only with the consent of the Minister and subject to the terms and conditions (if any) prescribed and to such other terms and conditions as the Minister specifies, being terms and conditions that the Minister considers necessary for the purposes of carrying out the provisions and purposes of this Act.

PART 3

CONTROL OF ENERGY PRICES AND CHARGES

Notice of intention to vary price or charge

12 (1) No specified business shall vary the price or charge for a specified commodity or any published schedule of prices or charges for that commodity unless notice in writing of the intention to vary the price or charge, and the amount of the variation, has been given to the Commission.

(2) Any variation in installation charges, labour charges for repairs or other charges made in connection with the installation or use of any apparatus used for the supply of or necessary for the beneficial enjoyment of a specified commodity, or of the delivery charges for such commodity, shall be deemed not to be a variation of the price or charge of such commodity for the purposes of subsection (1).

(3) When notice of intention to vary prices or charges to which subsection (1) applies has been given to the Commission, those prices or charges shall not be varied otherwise than—

- (a) in the event of the Commission giving a direction under section 13 within a period of sixty days beginning with the date on which that notice of intention was given, or such longer period as the Minister may allow, to the extent and in the amount that may be permitted by the direction; and
- (b) in any other case, until after the expiration of the period of sixty days, or such longer period as the Minister may allow, referred to in paragraph (a).

Direction by Commission

13 (1) On receipt of a notice given under section 12, the Commission may, after making any inquiry in the matter that they may think fit for the purpose of ascertaining

that the variation is just and reasonable, give any one or more of the following directions, namely a direction—

- (a) approving the variation;
- (b) disallowing the variation either wholly or in part;
- (c) specifying the date when the variation is to take effect; or
- (d) otherwise setting out terms and conditions upon which the variation may be made.

(2) In the exercise of its discretion under subsection (1), the Commission shall have regard to—

- (a) the cost to the specified business of the specified commodity;
- (b) the needs of the specified business for adequate working capital and reasonable reserves;
- (c) the need to afford investors a reasonable rate of return on their investment;
- (d) the public interest; and
- (e) any other matters which, to the Commission, appear relevant.

(3) The burden of proof to show that any variation in the price or charge of a specified commodity is just and reasonable is upon the specified business that seeks the variation.

(4) The Commission shall, not later than three working days after the date on which it gives a direction, provide to the specified business concerned the Commission's reasons for giving the direction.

Appeal to Minister

14 (1) A specified business which is aggrieved by a direction of the Commission under section 13 may, within twenty-one days of being notified of the direction, or such longer period as the Minister may allow, by notice in writing appeal to the Minister.

(2) On an appeal under this section the Minister may vary any direction of the Commission and any variation shall take effect on a date to be determined by the Minister, but until such variation takes effect the direction of the Commission shall continue to have effect.

(3) Notwithstanding subsection (2), the Minister may suspend the implementation of a direction of the Commission that is the subject of an appeal pending the outcome of the appeal.

(4) The Minister shall make a decision on an appeal as soon as possible after the hearing of an appeal but in any event no later than 60 days after receipt of the notice of appeal.

Power of Minister regarding provision of information and keeping of records

- 15 (1) The Minister may by notice to a specified business require that business to—
- (a) provide the Minister and the Commission, whether by periodical returns or other means, with estimates or other information specified or described in the notice; and
 - (b) keep such records as may be specified or described in the notice.
- (2) A notice under this section may specify the way in which, and the time during which, it is to be complied with.
- (3) A specified business which fails to comply with a notice under this section commits an offence:

Punishment on summary conviction: a fine of \$5,000.00.

Minister may amend Schedule 2

- 16 (1) The Minister may by order published in the Gazette amend Schedule 2 by the addition of any business or commodity if the Minister is of the opinion that—
- (a) any business or group of businesses are in substantial control of the production or supply of any energy related commodity; or
 - (b) any agreements or arrangements, whether legally enforceable or not, are in operation between businesses which in any way prevent or restrict competition in relation to any energy related commodity,
- (2) The Minister may by order published in the Gazette delete from Schedule 2 any specified business or specified commodity, or amend the description of any specified business or specified commodity.
- (3) The negative resolution procedure applies to an order made under this section.

Offence

- 17 (1) A specified business shall be guilty of an offence if it—
- (a) varies any price or charge or published schedule of prices or charges for a specified commodity without giving notice as required under section 12(1) or before the expiration of the relevant period under section 12(3); or
 - (b) refuses or fails to comply with a direction of the Commission under section 13 or, as the case may be, a direction of the Commission as varied by the Minister.

Punishment on summary conviction: in the case of paragraph (a), a fine of \$5,000, and in the case of paragraph (b), a fine of \$5,000 for each day during which the refusal or failure continues.

Excess prices and charges unenforceable

18 Any price or charge made by a specified business for a specified commodity in excess of any amount permitted by a direction under section 13 shall be unenforceable to the extent of the excess.

Injunction

19 (1) The Minister shall be entitled to apply to the Supreme Court for an injunction restraining any breach or anticipated breach by any person of any provision of this Act, and the Supreme Court shall have jurisdiction to entertain any such application and to grant such an injunction in such terms as it may think fit.

(2) An injunction granted under this section shall be enforceable by attachment or committal or otherwise as the court thinks just.

(3) In this section, "injunction" includes an interlocutory, permanent or mandatory injunction or any temporary relief by way of injunction.

PART 4

GENERAL

Designation and powers of inspectors

20 (1) The Minister may designate any officer of the Department of Energy to be an inspector for the purposes of this Act.

(2) An inspector may at any reasonable time enter any premises for the purpose of inspecting any energy related apparatus, or any record maintained in connection with that apparatus which is—

- (a) required to be kept by any provision of this Act or the regulations; or
- (b) kept by the holder of a licence granted under section 8.

(3) The Minister shall provide every inspector with a written instrument of appointment and on entering any premises, pursuant to subsection (2), an inspector shall, if required to do so, produce their instrument of appointment to the person in charge of the premises.

(4) The owner or person in charge of any premises, entered by an inspector pursuant to subsection (2) and every person found in the premises, shall give the inspector all reasonable assistance in their power, and shall furnish the inspector with any information that he may reasonably require.

(5) For the purposes of this section, "inspector" includes the public officer who fills the position of Director of Energy in the Department of Energy without that officer having to be appointed as an inspector.

Offence

21 Any person who wilfully obstructs an inspector in the exercise of any power conferred upon him or them, by this Act commits an offence:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$5,000 or both such imprisonment and fine.

Regulations

22 (1) The Minister may, after consultation with the Commission, make regulations for the proper carrying out of the provisions and purposes of this Act, including, without prejudice to the generality of the foregoing, regulations—

- (a) regarding the grant, revocation, suspension, renewal or transfer of a licence under section 8, 10 or 11, as the case may be; and
- (b) prescribing anything which is authorized, or required, under this Act to be prescribed.

(2) The negative resolution procedure applies to regulations made under this section.

Immunity of Commission and its members

23 No action, suit, prosecution or other proceedings shall lie against the Commission, the Chairman or any other member of the Commission or any person acting on behalf of the Commission in respect of any act or omission done or made in good faith in execution or intended execution of any function under this Act.

Offences by corporations

24 Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any default on the part of a director, manager, secretary or other similar officer of the body corporate, or any other person who is purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against accordingly.

Forfeiture

25 A magistrate may, upon application by or on behalf of the Minister or by any public officer, order that any energy related commodity or apparatus in respect of which there has been a contravention or attempted contravention of this Act shall be forfeited, whether or not proceedings have been taken against any person in respect of the contravention or attempted contravention.

Exemption

26 (1) The Minister may by order exempt any person, or any class of persons, any energy related commodity or apparatus, or any class of energy related commodity or apparatus, from this Act or the regulations, or from any provision of this Act or the regulations, as the Minister sees fit.

(2) Any order under subsection (1) may be made subject to any conditions that the Minister considers appropriate.

(3) The negative resolution procedure applies to an order of the Minister under this section.

Confidentiality of information

26A (1) A person providing any information to the Minister or the Commission pursuant to this Act or the regulations may designate such information as confidential on the grounds that it is—

- (a) a trade secret;
- (b) financial, commercial, scientific or technical information which is confidential in nature and is consistently treated as such by the person; or
- (c) information which, if made public, is likely to—
 - (i) result in material financial loss or gain to any person;
 - (ii) prejudice the competitive position of the person or others; or
 - (iii) prejudice contractual or other negotiations.

(2) A person claiming confidentiality in respect of any information under subsection (1) must provide full justification for their claim and must also provide a version of such information without the confidential provisions and in a form that may be made available to the public.

(3) Upon receipt of a confidentiality claim by a person pursuant to subsection (1) and after considering any representations of interested persons, the Minister or the Commission, as the case may be, shall assess such claim having regard to the public interest in disclosure, as well as the private interests of the person making the claim and other persons identified by that person, and shall determine whether disclosure of the relevant information is in the public interest.

(4) Following a decision by the Commission regarding disclosure of information, the person making the claim or any interested person may appeal such decision to the Minister within five days of the decision and the Minister shall render a decision on any appeal within a further seven days.

(5) On appeal, the Minister may uphold or vary any disclosure decision of the Commission as the case may be.

(6) A decision of the Minister under subsection (3) or (5) may be appealed to a Judge in Chambers.

(7) A decision of the Minister under subsection (3) or (5) shall be suspended pending the outcome of the appeal to the Judge in Chambers under subsection (6).

(8) When a decision has been rendered, and any appeals have been completed, under this section, the person making the claim shall forthwith comply with the decision.

Unauthorized disclosure of confidential information an offence

26B (1) Neither the Minister nor any member of the Commission, or the Department of Energy, shall reveal or in any manner communicate to any other person, except for the purposes of this Act and the regulations or as required by law—

- (a) any information for which a confidentiality claim has been made by a person under section 26A and not withdrawn by that person or denied in accordance with that section; or
- (b) any information in respect of any person which is prescribed as confidential.

(2) Any person who contravenes subsection (1) commits an offence:

Punishment on summary conviction: imprisonment for 1 year or a fine of \$2,000 or both such imprisonment and fine.

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$5,000 or both such imprisonment and fine.

Commencement

27 (1) This Act comes into operation on a day to be appointed by the Minister by notice published in the Gazette.

(2) The Minister may appoint different days for different provisions of the Act.

SCHEDULE 1

(Section 3)

1 A member of the Commission shall be appointed for a period of three years beginning on such day as may be determined by the Minister.

2 A member of the Commission may resign their office at any time by notice in writing given to the Minister.

3 The Minister may declare the office of a member of the Commission vacant if the Minister is satisfied that the member—

- (a) is unable through mental or physical incapacity or absence from Bermuda to perform their functions as a member of the Commission;
- (b) has failed, without adequate cause, to attend three successive meetings of the Commission;
- (c) has been sentenced to imprisonment for the commission of a criminal offence; or
- (d) is otherwise unable or unfit to discharge their functions as a member of the Commission.

4 A person appointed to fill the place of a member of the Commission before the end of the member's term of office shall hold office so long only as the vacating member would have held office.

5 Where a member of the Commission is absent from Bermuda, ill or otherwise temporarily incapacitated from performing their functions as a member, the Minister may appoint a person to act in the place of that member during the period of the member's incapacity and any person so appointed shall, while so acting, be deemed to be a member of the Commission.

6 A person who has held office as a member of the Commission shall be eligible for re-appointment.

7 No member of the Commission shall take part in an inquiry or decision relating to any specified business in which the member or their spouse is a member or shareholder or has any private interest, direct or indirect, whereby that interest may conflict with their duties as a member; and the Minister may appoint a person to act in place of such member for the purposes of such inquiry or decision and any person so appointed shall while so acting be deemed to be a member of the Commission.

8 The Commission may act notwithstanding any vacancy in its membership, and no act of the Commission shall be deemed to be invalid only by reason of a defect in the appointment of a member of the Commission.

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9 The Commission shall meet as often as may be necessary for it to dispatch its business under this Act.

10 A minute shall be made of every decision of the Commission in such form as the Minister may direct.

11 The quorum of the Commission shall be three.

12 The Minister shall designate any public officer to be Secretary to the Commission.

13 Any direction of the Commission given under the Act shall be deemed to be duly authenticated if it is given under the hand of the Chairman or, in the absence of the Chairman, the Secretary of the Commission.

14 In any matter before the Commission, the Chairman or person acting as Chairman shall have a deliberative as well as a casting vote.

15 A notice may be given to the Commission by service upon the Secretary of the Commission.

16 Subject to the foregoing provisions of this Schedule, the Commission may determine its procedure.

17 Fees shall be paid to members of the Commission in accordance with the provisions of the Government Authorities (Fees) Act 1971.

For the purposes of this Schedule a reference to a member or the membership of the Commission shall, unless the context otherwise requires, be construed as including the Chairman.

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SCHEDULE 2

(Section 2)

<u>First column</u>	<u>Second column</u>
(Specified businesses)	(Specified commodities)
The Bermuda Electric Light Company Limited	Production and supply of electrical power

[Assent Date: 15 July 2009]

[Operative Date: 28 November 2009]

[Amended by:
BR 5 / 2011]