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PETROLEUM PRODUCTS PRICING REGULATORY AGENCY (ESTABLISHMENT, ETC.) ACT

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An Act to establish the Petroleum Products Pricing Regulatory Agency; and for related matters.

[2003 No. 8]

[27/h May, 2003]

[Commencement. J

PART I

Establishment and Governing Board of the Petroleum Products Pricing Regulatory Agency

1. Establishment of Petroleum Products Pricing Regulatory Agency

(1) There is established an agency to be known as the Petroleum Products Pricing Regulatory Agency (in this Act referred to as "the Agency").

(2) The Agency-

- (a) shall be a body corporate with perpetual succession and a common seal; and

(b) may sue and be sued in its corporate name.

(3) The Agency shall be located in the Federal Capital Territory, Abuja and shall not be subject to the direction, control or supervision of any other authority in the performance of its functions under this Act other than the President.

2. Establishment of Covering Board of the Agency

(1) There is established for the Agency a Governing Board which shall be responsible for the running of the Affairs of the Agency.

(2) The Agency shall consist of-

(a) a chairman;

(b) one representative each of the following-

(i) the Nigerian Chamber of Commerce, Industry, Mining and Agriculture;

(ii) the Manufacturers Association of Nigeria;

(iii) the Nigeria Labour Congress;

(iv) the Major Oil Marketers;

(v) the Independent Oil Marketers;

(vi) the Petroleum and Natural Gas Senior Staff Association;

(vii) the Transport Owners;

(viii) the Nigerian Employers Consultative Association;

(ix) the Nigerian Media (on rotation in every year between the Guild of Editors), the Nigeria Union of Journalists and the Newspapers Proprietors Association of Nigeria

(x) the Federal Office of Statistics;

(xi) the National Union of Road Transport Workers;

(xii) the Ministry of Petroleum Resources;

(xiii) the Federal Ministry of Employment, Labour and Productivity;

(xiv) the Federal Ministry of Transport;

(xv) the Federal Ministry of Finance;

(xvi) the Central Bank of Nigeria;

(xvii) the Presidency;

(xviii) the National Manpower Board;

(xix) the Nigerian National Petroleum Corporation;

(xx) the Nigerian Institute of Management;

(xxi) the National Union of Petroleum and Natural Gas Workers (NUPENG);

(xxii) the Trade Union Congress (TUC);

(xxiii) the Depot and Petroleum Products Marketers Association of Nigeria (DAPMAN);

(xxiv) Petroleum Equalisation Fund (PEF); and

(xxv) the Executive Secretary.

(3) The Chairman and other members of the Board shall-

(a) be persons of proven integrity who possess the requisite experience;

(b) in the case of persons specified in paragraph (b) (i) to (xi) of subsection (1) of this section, be nominated by the bodies they represent; and

(c) be appointed by the President of the Federal Republic of Nigeria.

(4) The supplementary provisions set out in the First Schedule to this Act shall have effect with respect to the proceedings of the Board and the other matters contained therein.

[First Schedule.]

3. Tenure of office, etc.

The Chairman and other members of the Board, other than *ex officio* members-

(a) shall hold office on such terms and conditions as may be specified in their letters of appointment; and

(b) may be reappointed for one further term and no more.

4. Removal from office, etc.

(1) Notwithstanding the provisions of section 3 of this Act, a member may at any time be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct.

(2) A member of the Board may resign his appointment by a notice in writing under his hand, addressed to the President and that member shall, on the date of the receipt of the notice by the President cease to be a member of the Board.

5. Emoluments, etc.

A member of the Board shall be paid such emoluments, allowances and benefits as the President may, from time to time, approve.

6. Disclosure of interest

(1) A member of the Board who is directly or indirectly interested in any matter being deliberated on by the Board or is interested in any contract made or proposed to be made by the Agency shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under subsection (1) of this section shall be recorded in the minutes of meetings of the Board and the member concerned shall-

(a) not, after the disclosure, take part in any deliberation or decision of the Board;and

(b) be excluded for the purpose of constituting a quorum of any meeting of the Board for any deliberation or decision, with regard to the subject matter in respect of which his interest is so disclosed.

PART II

Functions and Powers of the Agency

7. Functions of the Agency

The functions of the Agency are to-

- (a) determine the pricing policy of petroleum products;
- (b) regulate the supply and distribution of petroleum products;
- (c) establish an information and data bank through liaison with all relevant agencies to facilitate the making of informed and realistic decisions on pricing policies;
- (d) moderate volatility in petroleum products prices, while ensuring reasonable returns to operators;
- (e) oversee the implementation of the relevant recommendations and programmes of the Federal Government as contained in the White Paper on the report of the Special Committee on the review of Petroleum Products Supply and Distribution specified in the Second Schedule to this Act as they relate to its functions, taking cognisance of the phasing of specific proposals;

[Second Schedule.]

- (f) establish parameters and codes of conduct for all operators in the downstream petroleum sector;
- (g) maintain constant surveillance over all key indices relevant to pricing policy and periodically approve benchmark prices for all petroleum products;
- (h) identify macro-economic factors with relationship to prices of petroleum products and advise the Federal Government on appropriate strategies for dealing with them;
- (i) establish firm linkages with key segments of the Nigerian society, and ensure that its decisions enjoy the widest possible understanding and support;
- (j) prevent of collusion and restrictive trade practices harmful in the sector;
- (k) exercise a mediatory role as necessary for all stakeholders in the sector;
- (l) other functions, which the National Assembly may confer on the Agency from time to time; and
- (m) carry out such other activities as appear to it necessary or expedient for the full and efficient discharge of its functions under this Act.

PART III

Staff of the Agency

8. Executive Secretary of the Agency

- (1) There shall be, for the Agency, an Executive Secretary who shall be appointed by the President.
- (2) The Executive Secretary shall be-
 - (a) a person of proven integrity and with extensive relevant experience;

(b) the Chief Executive and Accounting Officer of the Agency;

(c) responsible for the execution of the policy and the day to day administration of the affairs of the Agency.

(3) The Executive Secretary shall hold office-

(a) for a term of four years in the first instance and may be reappointed for a further term of four years and no more; and

(b) on such terms and conditions as may be specified in his letter of appointment.

9. Other employees of the Agency

(1) The Board shall appoint, for the Agency, such officers and other employees as it may, from time to time, deem necessary for the purposes of the Agency.

(2) The terms and conditions of service (including remuneration, allowances, benefits and pensions) of officers and employees of the Agency shall be as determined by the Board.

PART IV

Financial Provisions

10. Fund of the Agency

The Agency shall establish and maintain a fund into which shall be paid and credited-

(a) the take-off grant from the Federal Government;

(b) annual subvention from the Federal Government;

(c) loans and grants-in-aid from national, bilateral and multilateral agencies;

(d) rents from the Agency's property, fees and other internally generated revenue arising from the services provided by the Agency; and

(e) all other sums accruing to the Agency, from time to time.

11. Expenditure of the Agency

The Agency may, from time to time, apply the proceeds of the Fund to----

(a) the cost of administration of the Agency;

(b) the paying of the emoluments, allowances and benefits of members of the Board and for reimbursing members of the Board or of any committee set up by the Board for such expenses as may be expressly authorised by the Board;

(c) the payment of salaries, fees or other remuneration or allowances, gratuities and pensions, and other benefits payable to the offices and other employees of the Agency, so however that no payment of any kind under this paragraph (except such as may be expressly authorised by the Board) shall be made to any person who is in receipt of emoluments from the Federal or State Governments;

(d) the development and maintenance of any property vested in or owned by the Agency; and

(e) any matter in connection with all or any of its functions under this Act.

12. Annual estimates and accounts

(1) The Agency shall, not later than 30th September in each year, submit to the President an estimate of its expenditure and income (including payments to the Agency) for the next succeeding year.

(2) The Agency shall keep proper accounts in respect of each year and proper records in relation to those accounts and shall cause its accounts to be audited within six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General of the Federation.

13. Annual reports

The Agency shall prepare and submit to the Federal Executive Council, through the President, not later than six months after the end of each year, a report in such form as he may direct on the activities of the Agency during the immediate preceding year, and shall include in such report a copy of the audited accounts of the Agency for that and the auditor's report on the accounts.

14. Power to accept gift

(1) The Agency may accept any gift of land, money or other property on such terms and conditions, if any, as may be specified by the person or organisation making the gift.

(2) The Agency shall not accept any gift if the conditions attached by the person or organisation offering the gift are inconsistent with the functions of Agency.

15. Power to borrow

(1) The Agency may, from time to time, borrow by overdraft or otherwise such sums as it may require for the performance of its functions under this Act.

(2) The Agency shall not, without the approval of the President, borrow money which exceeds, at any time, the amount set by the President.

(3) Notwithstanding subsection (1) of this section, where the sum to be borrowed is in foreign currency, the Agency shall not borrow the sum without the prior approval of the President.

16. Investment

The Agency may, subject to the provisions of this Act and the conditions of any trust created in respect of any property, invest all or any of its funds in any security prescribed by the Trustee Investments Act or in such other securities as may, from time to time, be approved by the President.

[L.F.N. 2004 Cap. T221

17. Exemption from tax

(1) The Agency shall be exempt from the payment of income tax on any income accruing from investments made by the Board for the Agency or otherwise.

(2) The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Agency or the Board.

PART V

18. Limitation of suits against the Agency, etc.

(1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against an officer or employee of the Agency.

[L.F.N. 2004 Cap. P41.]

(2) Notwithstanding anything contained in any other enactment, no suit against a member of the Board or the Executive Secretary or any other officer or employee of the Agency for any act done in pursuance or execution of this Act or any other enactment or law, or of any public duty or authority in respect of any alleged neglect or default in execution of this Act or any other enactment or law, duty or authority, shall lie or be instituted in any court unless it is commenced-

(a) within three months next after the act, neglect or default complained of; or

(b) in the case of a continuation of damage or injury, within six months next after the ceasing thereof.

(3) No suit shall be commenced against a member of the Board or the Executive Secretary or any other officer or employee of the Agency before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Agency by the intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

19. Service of documents

A notice, summons or other document required or authorised to be served on the Agency under the provisions of this Act or any other enactment or law may be served by delivering it to the Executive Secretary or by sending it by registered post addressed to the Executive Secretary at the principal office of the Agency.

20. Restriction on execution against property of the Agency

(1) In any action or suit against the Agency, no execution or attachment of process in the nature thereof shall be issued against the Agency unless not less than three months notice of the intention to execute or attach has been given to the Agency.

(2) Any sum of money which by the judgment of any court has been awarded against the Agency shall subject to any direction given by the COUI1, where notice of appeal against the judgment has been given, be paid from the fund of the Agency.

21. Indemnity of officers

A member of the Board or the Executive Secretary or any officer or employee of the Agency shall be indemnified out of the assets of the Agency against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Executive Secretary, officer or other employee of the Agency.

22. Secrecy

(1) A member of the Board or the Executive Secretary or any other officer or employee of the Agency shall-

(a) not, for his personal gain, make use of any information which has come to his knowledge in the exercise of his powers or is obtained by him in the ordinary course of his duty as a member of the Board or as the Executive Secretary, officer or employee of the Agency;

(b) treat as confidential any information which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties under this Act; and

(c) not disclose any information referred to under paragraph (a) of this subsection, except when required to do so by a court or in such other circumstances as may be prescribed by the Board, from time to time.

(2) Any person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine of not less than N20,000 or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

23. Directives by the President, etc.

The President may give to the Agency or the Executive Secretary such directives of a general nature or relating generally to matters of policy with regard to the exercise of its or his functions as he may consider necessary and the Agency or the Executive Secretary shall comply with the directive or cause them to be complied with.

24. Regulations

The Agency may with the approval of the President, make such regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this Act and for the due administration of its provisions.

25. Interpretation

In this Act-

"Agency" means the Petroleum Products Pricing Regulatory Agency established under section 1 of this Act;

"Board" means the Governing Board established for the Agency under section 2 of this Act;

"functions" includes powers;

"President" means the President of the Federal Republic of Nigeria.

26. Short title

This Act may be cited as the Petroleum Products Pricing Regulatory Agency (Establishment, etc.) Act, 2003.

SCHEDULES

FIRST SCHEDULE

[Section 2 (4).]

SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD, ETC.

Proceedings of the Board

1. Subject to this Act and section 27 of the Interpretation Act (which provides for decision of statutory body to be taken by a majority of its members and for the person presiding at any meeting, when a vote is ordered, to have a second or casting vote), the Board may make standing orders regulating its proceedings or that of any of its committees.

[L.F.N. 2004 Cap. 123.]

2. At every meeting of the Board, the Chairman shall preside and in his absence the members present at the meeting shall appoint one of their members to preside at the meeting.

3. The quorum at a meeting of the Board shall consist of the Chairman or, in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule, and ten other members or 50 percent of the membership of the Board.

4. The Board shall for the purposes of this Act, meet not less than three times in each year and subject thereto, the Board shall meet whenever it is summoned by the Chairman, and if required to do so, by notice given to him by not less than seven other members, he shall summon a meeting of the Board to be held within 14 days from the date on which the notice is given.

5. Where the Board desires to obtain the advice of any person on a particular matter, the Board may co-opt him to the Board for such period as it thinks fit, but a person who is a member by virtue of this subparagraph shall not be entitled to vote at any meeting of the Board, and shall not count towards a quorum.

Committees

6. (1) Subject to its standing orders, the Board may appoint such number of standing and *ad hoc* committees as it thinks fit to consider and report on any matter with which the Agency is concerned.

(2) A committee appointed under this paragraph shall-

(a) consist of such number of persons (not necessarily members of the Board as may be determined by the Board), and a person, other than a member of the Board, shall hold office on the committee in accordance with the terms of his appointment; and

(b) be presided over by a member of the Board.

(3) The quorum of any committee set up by the Board shall be as may be determined by the Board.

(4) A decision of a Committee of the Board shall be of no effect until it is confirmed by the Board.

Miscellaneous

7. The fixing of the seal of the Agency shall be authenticated by the signature of the Chairman, the Executive Secretary or any other person generally or specifically authorised by the Board to act for that purpose.

8. Any contract or instrument which, if made by a person not being a body corporate, would

not be required to be under seal may be made or executed on behalf of the Agency by the Executive Secretary or by any other person generally or specially authorised by the Board to act for that purpose.

9. Any document purporting to be a contract, instrument or other document duly signed or sealed on behalf of the Agency shall be received in evidence and shall, unless the contrary is proved, be presumed without further proof to have been so signed or sealed.

10. The validity of any proceedings of the Board or of any of its Committees shall not be affected by-

- (a) any vacancy in the membership of the Board or Committee; or
- (b) any defect in the appointment of a member of the Board or Committee; or
- (c) reason that any person not entitled to do so took part in the proceedings of the Board or Committee.

11. A member of a Committee who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Committee shall forthwith disclose his interest to the Committee and shall not vote on any question relating to the contract or arrangement.

12. No member of the Board shall be personally liable for any act or omission done or made in good faith while engaged on the business of the Agency.

SECOND SCHEDULE

[Section 7 (1) (e).]

PROGRAMMES FOR IMPLEMENTATION

PROGRAMME FOR 4TH QUARTER, 2000 - 1 ST QUARTER, 2001

4th Quarter - 2000

The Nigerian National Petroleum Corporation shall immediately repair and replace all the faulty facilities at the Atlas Cove Complex which hinder the receiving and pumping of products to Mosimi Depot.

The Facilities include, but are not limited to, the satellite Depot facilities, vandalised/ ruptured portions of pipelines.

All coastal supplies of Automotive Gas Oil through company nominated vessels should be stopped immediately.

The Nigerian National Petroleum Corporation shall expand the loading capability of all marine-fed depots such as Mosimi and Calabar, the expansion shall take cognisance of the need to massively load products on bridging ex - the depots during the period of pipeline vandalisations.

1st Quarter - 2001

The Nigerian National Petroleum Corporation shall increase the number and undertake a phased rehabilitation of all associated pipeline equipment, e.g. pumps, generators, loading arms and metres, fire trucks, valves, etc.

The Nigerian National Petroleum Corporation shall immediately embark on public enlightenment campaigns to educate the public on the dangers of vandalisation of pipelines and

other equipment and the campaign shall start immediately and be sustained in the first six months to prepare the ground for the take-off of the phased reforms.

Federal Government shall establish a Pipelines Management Authority for the management of the pipelines and depots both in the pre- and post-privatisation era, which will charge both private and public users a tariff per throughput litre of products.

PROGRAMME FOR 2ND QUARTER, 2001-3RD QUARTER, 2001

2nd Quarter - 2001

The Nigerian National Petroleum Corporation shall institute a policy of replacement of aged and obsolete equipment and a programmed and effective preventive maintenance culture.

The Nigerian National Petroleum Corporation shall intensify regular land, sea and aerial surveillance of critical segments of the pipeline system by a Task Force which shall be established.

3rd Quarter - 2001

The Nigerian National Petroleum Corporation shall institute effective and efficient telemetry systems for monitoring oil movement operations nationwide.

The Nigerian National Petroleum Corporation shall be restructured with a view to making it efficient and profit-oriented with the provision of a Board of Directors and a Management with appropriate empowerment at subsidiary levels.

PROGRAMME FOR 2ND QUARTER, 2001 - 1ST QUARTER, 2002

2nd Quarter - 2001

Federal Government shall have all the Refineries privatised and shall encourage the establishment of private refineries in any part of the country by any individual, company or association, indigenous or foreign, ensuring that safety and environment conditions are met.

1st Quarter .. 2002

Federal Government shall design, adopt and implement a 10-year Master Plan to develop the petro-chemical sector with adequate regime of fiscal incentives to attract private investment.

SUBSIDIARY LEGISLATION

No Subsidiary Legislation