

**A CRITICAL EXAMINATION OF THE ENERGY
COMMISSION ACT OF NIGERIA CAP E.10: LAWS OF THE
FEDERATION OF NIGERIA, 2004.**

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Abstract

Nigeria as an under developed country would require a constant and sufficient energy to be able to harness all the abundant natural and mineral resources in the country for its development. This is only achievable if there is a body such as the Energy Commission that would regulate and co-ordinate the various sources of energy in Nigeria. It is therefore a well thought policy by the Nigerian Government to enact the Energy Commission Act of Nigeria that provide for the composition, functions, administration and regulation of the various sources of energy in Nigeria. This article seek to critically examine the provisions of this Act and examine its adequacy or otherwise of the Act. In conclusion the writers shall profer some recommendation with a view to filling the missing gaps in the Act.

Key Words: Energy, Sources, Law, Commission, Functions, Benefits, Recommendation

Introduction

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The term " Law" when used in any academic or non -academic context has the tendency of stimulating various intellectual discussion. To some, in most circumstances, it makes them uncomfortable as it is construed as an instrument of coercion¹. Others find solace in the term, when viewed from the natural and utilitarian perspective as "an ordinance of reason for the common good, made by him who has care of the community and promulgated² to solve difficulties and adjust relation in social and commercial life.³ It is for this reason that the Energy Commission Act of Nigerian, is received and assimilated into the Nigerian legal system to enhance and ensure efficiency in the Nigeria Energy Industry.

This article work aims at taking a cursory study and examination of the Act in reference to the object or purpose it tends to achieve. The Energy Commission of Nigerian Act has one fundamental objective, as shown in the long title to the Act, to wit, "An Act to establish the Energy Commission of Nigerian and to charge it with responsibility to coordinate and general surveillance over the systematic development of the various energy resources of Nigerian". The crux of the matter is ensuring the development of the various energy resources of Nigerian.

This article is confined to the Energy Commission of Nigerian Act⁴ but relevant references would be made to other enactments, where and when necessary.

¹ The Austinian Theory of Law

² The Proposition of Thomas Aquinas. See Jim, Elegido; *Introduction to Jurisprudence* (p. 35)

³ Maclardie J. in *Prayer v Blastpiel, Stampard Heacock Ltd.* (1924) I K B 566 at 570

⁴ Cap. E10, Laws of the Federation of Nigeria, 2004, (herein referred to as the Act).

In view of the above position, this article is structured to include sub-topics as: the Energy Commission; Composition, Powers and Functions, Technical Advisory Committee and Ancillary Matters; it would conclude with useful recommendations, suggestions and/or observations that would enhance improvement in the energy industry.

Although, the Energy Commission of Nigerian Act is an innovation in energy industry; its relevance cannot be undermined, as it is a positive step in the energy industry

The Energy Commission

The term Commission is defined in the Act as "the Energy Commission of Nigeria established under section 1 (1) of this Act⁵, other definitions include:

"a body of persons acting under lawful authority to perform certain public services"⁶

The Dictionary⁷ further defines public service commission as:

"a commission created by a legislature to regulate public utilities or public service corporations⁸".

The fulcrum or crux of these definitions is the performance of certain public duties or services by a body clothed with the authority to so act. The Energy Commission, like other commissions, has, as most fundamental duty, the performance

⁵ Section 9 of the Energy Commission of Nigeria Act, Cap E 10 2004.

⁶ Black's Law Dictionary, 8th Edition, at 286

⁷ *Ibid*

⁸ *Ibid*

of public services. This is expressly reflected in the establishment section.

Section 1, sub-section 1 provides:

"There is hereby established a body to be known as the Energy Commission of Nigeria ...which shall have the functions specified in the Act" (These functions are treated *futurio*).

For an effective exercise and performance of the specified functions in the Act, certain departments have been established and this article examine them.

The Act provides:

The Commission shall consist of the following departments, that is - Energy Information System (including library and computer services); Energy Planning and Analysis (including Energy Efficiency Demand Management and Conservation, Rural Energy, Alternative and New and Renewable Energy sources); Training and Manpower Development; Administration and Finance; and Such other Departments as may be approved by the Commission on the recommendation of the Director – General.⁹

These departments as provided for in the Act are quite useful and needful in the Energy industry, and thus, the creation of such departments is a commendable effort. More so, the creation of

⁹ *Ibid.* Section 1 Sub - Section 2, Paragraph a-e.

specific commission for the management of the energy industry is a laudable achievement. The inclusion of the department of Energy Planning and Analysis which, in extension, includes conservation of energy, alternative, and new and renewable Energy sources, if efficiently managed and utilised, would, to a large extent, solve the problem of total reliance on Hydro-Power source of energy which has existed in the country from independence till date. Other sources of energy, such as solar, wind, nuclear, atomic and others would be tapped to enhance efficiency in the industry. The importance of information to enable the Commission to liaise with developed countries to acquire recent technological information in the energy industry. Again, training and manpower development would ensure expertise in the industry and make for continuity of efficient administration and production in the industry.

These remarkable points notwithstanding, it is pertinent to quickly state that in various enactments creating similar bodies or institutions with similar responsibilities, inclusion of these departments has always been; this, therefore, shows that this effort is not new in the Nigerian Energy Commission Context. But the basic problem bedeviling the realization of the set goals is attitudinal, both from the government and individuals, which form the functionary mechanics of the Commission. If this problem does not affect this Commission, the writers believe that much success and improvement would be recorded in the energy industry; and incorporation of other useful departments, as allowed by the Act, would be an added advantage which gives room for growth.

Composition

The composition of the Energy Commission is expressed in the Act as follows:

The Commission shall consist of the President as the Chairman,

and in the absence of the President, such other person as may be designated by him in that behalf to act as chairman and the following other members that is-
the ministers charged with the responsibility for the following matters, that is

- i). Power and Steel;
- ii) Petroleum Resources;
- iii) Science and Technology;
- iv) Defense;
- v) Agriculture and Rural Development;
- vi) Water Resources;
- vii) External Affairs;
- viii) Finance; the Director- General of the Commission who shall be the Secretary of the Commission.¹⁰

The Act further provides that:

There shall be appointed by the President, a Director - General who shall be responsible for the day- to- day running of the affairs of the Commission. The other staff of the Commission shall be officers in the civil service of the Federation.¹¹

The composition of the Commission no doubt, includes Ministers with useful portfolio or offices which are necessary for an effective and efficient running of the energy industry. But the inclusion of the "President" as the chairman of the Commission, to me, would introduce into the Commission some unwarranted bureaucratic bottle-necks. Although, the President is the Chief Executive officer

¹⁰ *Ibid*, Section 2, (a &b).

¹¹ *Ibid*, Section 7, Sub - Section 1 &2.

of the Nigeria Nation, a commission constituted for a specialized area of operation should have its constituents made up of experts in relevant fields, and independent of any political influence or interest. The commission can exist without making the President a member or the chairman, although, the President could be empowered by the Act to appoint the chairman - as a Director - General - to the exclusion of the President as the Chief instructor of policy initiative or operation. For instance, the Act provides that:

The President may give to the Commission directions of a general or special nature as to the manner in which the Commission is to exercise its powers and it shall be the duty of the Commission to give effect to any such direction.

And that:

No policy initiated by the Commission shall be implemented without prior reference to and approval by the President.¹²

This section has the tendency of whittling or curtailing such free exercise of power and functions of the Commission, and thus makes the Commission an appendage of the presidency, with Presidential monitory scheme. This is capable of dwindling or incapacitating efficiency in the industry, considering the bureaucratic processes of approval.

Section 7¹³ would have been sufficient in making reference to the President to the extent of him having power to appoint a Director - General who shall be responsible for the day-to-day running of the affairs of the Commission; and in conjunction with other members

¹² *Ibid.* Section 6 Sub-Section 1 & 2.

¹³ *Ibid.*

of the Commission. Freedom of exercise of expertise should have been allowed by requiring that the Director - General to be appointed must be expert in the field of energy. Further requirement for report to be made to the President in view of the success, progress or problems and failures of the Commission would have been included, rather than a presidential membership. The department of "Defence" included would be an advantage if measures will be taken to utilize the ministry in protecting installations, machines and technical facilities - thereby minimizing or eradicating vandalism of energy installations.

The Technical Advisory Committee

The Act created a Technical Advisory Committee as an arm of the Commission and specified its Composition as follows:

There shall be established a technical arm of the Commission to be known as the Technical Advisory Committee which shall consist of the Director - General of the commission as chairman:

The other members shall be professionals representing the following Ministries, Government Agencies or professional organizations, that is to say;

- (a) Petroleum Resource;
- (b) Power and Steel;
- (c) Science and Technology;
- (d) Agriculture and Rural Development;
- (e) Water Resources;
- (f) Finance;
- (g) Defence;
- (h) Industries;
- (i) Education;
- (j) Communication;
- (k) Environment;

- (l) Solar Energy Society of Nigerian;
- (m) Nigerian Mining and Geosciences. Societies;
- (n) Centers for Energy Research and Development at the Ahmedu Bello, University, Zaria, Qbafemi Awolowo University, Ile Ife; Usmanu Danfodio University, Sokoto, University of Nigeria, Nsuka and any new energy centers that may be established from time to time;
- (o) Nigeria Society of Engineers;
- (p) Nigeria Mining Corporation;
- (q) Nigeria Coal Corporation;
- (R) National Electric Power Authority;
- (S) Nigeria National Petroleum Corporation. The committee may co-opt, when necessary, any suitable Nigerian whose contributions may be needed by the committee¹⁴

The composition of the "Technical Advisory Committee" is quite embracing and would enhance efficiency in the energy industry, if a viable cross -breed of intellectualism and expertise would be effectively utilized.

Power and Functions

The Powers and Functions of the Commission is provided for in the Act as follows:

Subject to this Act, the Commission is hereby charged with the responsibility for the strategic planning and co-ordination of national policies in the field of energy in all its ramifications and, without prejudice to the generality of the foregoing, the Commission shall -

- (a) serve as a center for gathering and disseminating of information relating to national policy in the energy

¹⁴ *Ibid*, Section 3, Sub-Section 1&2.

- development;
- (b) serve as a center for solving any inter-related technical problems that may arise in the implementation of any policy relating to the field of energy;
 - (c) advise the Government of the Federation or a State on question relating to such aspects of energy as the Government of the Federation or a State may, from time to time, refer to it;
 - (d) prepare, after consultation with such agencies of government whose functions relate to the field of energy development or supply as the Commission considers appropriate, periodic master plans for the balanced and co-ordinated development of energy in Nigeria and such plans shall include -
 - (i) recommendations for the exploitation of new source of energy as and when considered necessary; and
 - (ii) such other recommendations to the Government of the Federation relating to its functions under this Act as the Commission may consider to be in the national interest.
 - (e) lay down guidelines on the utilization of energy types for specific purposes and in a prescribed sequence.
 - (f) inquire into and advise the Government of the Federation or of the State on adequate funding of the energy sector including research and development, production and distribution;
 - (g) collate, analyze and publish information relating to the field of energy from all sources, where such information is relevant to the discharge of its functions under this Act;
 - (h) monitor the performance of the energy sector in the

- execution of government policies on energy;
- (i) liaise with all international organization in energy matters such as the international Atomic Energy Agency, World Energy Conference and other similar organizations;
 - (j) promote training and manpower development in the energy sector; and
 - (k) carry out such other activities as are conducive to the discharge of its functions under this Act.¹⁵

This extensive enumeration of the functions of the Commission is quite comprehensive and most useful aspects in the sector. The relevance of each paragraph as exemplified above, is deductible from the intelligent wording of the contents. Some of these wordings include - monitoring the performance of the sector, liaising with international organizations in energy matters, promoting training and manpower development in the sector and advising government on adequate funding of the sector. If these functions are diligently carried out, the Nigeria energy sector would be a transformed or a rejuvenated sector.

Howbeit, the provision of *Section 6, Sub - Section 1 and 2*¹⁶ of the Act has the tendency of intercepting the free exercise of these functions so enumerated in the Act. This arises from the fact that every policy initiated by the commission is required to have the approval of the President before execution, and that the President, as well, can “*suomotu*” give direction or instructions to the Commission (which must be observed and implemented without protest) in any way it pleases him, as to the exercise of the powers and functions of the Commissions. Such exercise of the

¹⁵ *Ibid*, Section 5, Paragraph a – k.

¹⁶ *Ibid*.

Commission's powers and functions would have been made independent of the President's interruption or interception; and left to experts control and regulation. It is my humble opinion, therefore, that section 6 as stated above be reviewed in the Act.

The preceding observation notwithstanding, the functions of the commission as specified is aimed at good governance.

Ancillary Matters and Funding of the Commission

The funding of every institution, whether in form of commission or other forms is the life-wire or enabling factor to the success of such institution. The Energy Commission, as an institution requires adequate funding to enable it successfully exercise or execute its functions.

The Act provides for the Commission as follows:

The funds of the Commission shall consist of such sums as may, from time to time, be provided by the Federal Government and the State Governments.

The Commission shall not later than three months to the end of the financial year or so soon thereafter as the chairman may in a proper case allow, submit to the chairman for approval its estimates of revenue and expenditure in respect of the next succeeding financial year.

The Commission shall keep proper accounts in respect of each financial year, proper records in relation to those accounts and shall submit same from time to time, but not less frequently than annually, for auditing by the Auditor - General

for the Federation.¹⁷

The provision of section 8 (1) on funding of the Commission by the Federal and State Governments create a vague perception of the real intent of the Act as to funding. The Commission being a Federal Commission, of course, would have its fund from the Federation account or budget. This means that the Federal Government would be responsible for the funding of the Commission.

The Act did not expressly define the source, extent and nature of state funding of the Commission. It is not stated that State funding would be from its monthly allocation or by way of allotment or gift from the states. This omission could create conflict between the Federal and State Governments and would affect smooth operation of the Commission.

Therefore, the Act should further define the extent of funding by each arm of government so that the Commission would not be starved of fund.

Conclusion

The Energy Commission Act which establishes the Energy Commission is an innovation in the energy sector and a welcome development for effective growth in the energy industry.

This innovation notwithstanding, certain pertinent questions arise from the composition of the Commission, powers and functions of the Commission, legal personality of the Commission and mode of funding the Commission.

In order to address these salient observations arising from the Act,

¹⁷ *Ibid*, Section 8 (1) (2) and (3).

and to ensure improvement, which is the sole purpose for the enactment of the Energy Act, the following recommendations are a *sine qua non*; and, if effectively applied would enhance the realization of this purpose.

- i) The Commission should be made a legal personality capable of suing and being sued. It should be entitled to own asset as well as liability.
- ii) There should exist a legal department charged with the responsibilities of handling legal issues arising from the activities of the Commission.
- iii) The Commission should be under the sole control and management of the Director General, independent of the President. The functions and policies of the Commission should be handled by the organs of the Commission under the supervision of the Director General, with reports of success and failures being made to the President. In this regard, Section 6 Sub 1 & 2 should be reviewed.
- iv) The Commission should have branches in both States and Local Government Areas. This would enhance effective circulation of information management as to the needs and demands in the energy sector arising from these localities.
- v) There should exist monitoring teams in both Federal States and Local Governments supervising the activities of the members of the Commission.
- vi) The Act should distinctively separate the responsibilities of the Federal Government from that of the State Government, in terms of supervision and funding of the Commission. This will reduce the tendency of "conflict of interest."

If these recommendations, are effected in the Act and applied in

the management and function of the Commission, the energy sector in Nigeria would witness a rapid growth to be in line with what is obtainable in developed jurisdictions.