

Regulation of the Energy Regulatory Commission
Regarding Energy Industry Operation License and Application Procedure
B.E.2551 (2008)

By the virtue of the Article 50 of the Energy Industry Act B.E. 2550 (2008), which contains some provisions concerning the limitation of the people rights and liberties that is permissible by the provisions of section 29 together with section 33, section 41, section 42 and section 43 of the Constitution of the Kingdom of Thailand, the Energy Regulatory Commission hereby issues the Regulation as follows:

Article 1 This Regulation shall be entitled as “Regulation of the Energy Regulatory Commission regarding Energy Industry Operation License and Application Procedure B.E.2551 (2008)”

Article 2 This Regulation shall enter into force the next day after its publication in the Government Gazette.

Article 3 The following Regulations shall be repealed:

(1) Regulation of the National Energy Policy Committee regarding criteria, procedure and condition on energy industry operation license and application procedure B.E. 2551 (2008)

(2) Regulation of the National Energy Policy Committee regarding criteria, procedure and condition regarding energy industry operation B.E. 2551

(3) Regulation of the National Regulatory Commission regarding criteria, procedure and condition regarding renewable energy power plant operation license and application procedure B.E. 2551

Article 4 Any person who wishes to operate the energy business shall have the following qualifications:

(1) Be an ordinary person, having the following qualification:

(a) Have Thai nationality;

(b) Must not be adjudged incompetent or quasi-incompetent;

(c) Have financially and technically potential for construction and operation of energy business;

(d) Have not been ordered to be under the receivership or the bankruptcy in the last three year period counting from the license application date until the license-receiving date;

(e) Must not be a person whose license has been suspended or revoked within a period of two year prior to the application date;

(f) Must not be a person sentenced to imprisonment except that it is an offense committed through negligence or contravention;

(g) Have right, possessory right or right to use on land or property used for the business operation.

(2) Be a partnership or limited corporation according to the Civil and Commercial Code, or be a public corporation or a foreign juristic person which has its branch office in Thailand, which have the following qualifications:

(a) Have financially and technically potential for construction and operation of energy business;

(b) A license has not been suspended or revoked within a period of two year prior to the application date;

(c) Ordered by the court to be under the receivership or under the rehabilitation according to the bankruptcy law which empowers the creditor or third person appointed by the creditor to replace the former board of directors, or ordered to enter the bankruptcy proceeding or adjudged bankruptcy;

(d) Have right, possessory right or right to use on land or property used for the business operation;

(e) A delegate, representative of a juristic person or a juristic person manager must have qualifications specified in (1) (a) (b) (d) (f) and (g)

(3) Be a ministry, agency, governmental department, local governmental office, state enterprise, or a juristic person established by law.

Article 5 Prior to the application of energy industry operation license, if the applicant has to construct or establish the buildings or a factory for the purpose of energy industry operation as specified in the Article 48 of the Act, the applicant can submit the application form attached with concerned document/evidence required by those related respective laws together with the energy industry operation license application form at the ERC office or its branch office, as the case may be.

Article 6 A license applicant shall apply for the license by submitting the application form, prescribed by the Secretary General, which is clearly identified type of energy industry license applying for. Submission shall be made at the ERC office or its branch office as the case may be, with the following attachment:

(1) In case of an ordinary person;

(a) A copy of identification card

(b) Financial document and evidence e.g. a bank guarantee letter or a property right document

(c) Document and evidence showing related energy business operation performance and those beneficial to energy business operation

(d) Energy business operation plan, containing details of business applying for e.g. investment plan, efficient servicing plan, readiness in the business operation

(e) Document and evidence concerning with management of the energy business operation being applied e.g. experiences or numbers of employee, efficient environmental protection system, safety operation system, and related training plan

(f) Other additional document and evidence as necessary and specifically required by the type of license prescribed in Article 6

(2) In case of a partnership, limited corporation, public corporation or a foreign juristic person having its branch in Thailand;

(a) A copy of a partnership or juristic person registration certificate. In case of a registration certificate of a foreign juristic person, a guarantee letter from a respective embassy or consular office or a foreign affairs ministry, notary public, or other organization authorized to issue a guarantee letter of such country, attached with a copy of a business registration certificate of its Thailand branch office of such foreign juristic person.

(b) A copy of a list of shareholders or board of directors certified by a registrar

(c) A copy of an identification card of a delegate, representative of a juristic person or a juristic person manager

(d) A power of attorney

(e) Document and evidence as described in (1) (b) to (g)

(3) in case of a ministry, agency, governmental department, local governmental office, state enterprise, or a juristic person established by law;

(a) A power of attorney

(b) Other document and evidence as necessary which are required by the Commission

Article 7 A license applicant shall submit additional document and evidence according to the type of license applying for as follows:

(1) Electricity industry operation

(a) Electricity generation license

1) Project proposal comprises a location of the electricity generation facility to be applied for a license, a map showing direction and location of the facility, business plan, capital cost and operating capital, and objective of the electricity generation. If its objective is to sell to the electricity industry licensee and end user, a power purchase agreement or sale and purchase agreement shall be shown.

2) Details of electricity generation process, type and source of fuel, annual fuel consumption, and machine and equipment.

3) Electricity industry operation plan together with calculation items showing details of a power plant building plan, location plan of the machines attached with a list of machine and equipment. All of them shall be certified by an engineer according to the prescription in the engineering profession law.

4) A fire extinguishing system

5) An emergency operation plan in case of incident and fire

6) Electricity industry operation diagram, comprising details of a location map and the power plant boundary, a single line diagram showing electricity generation system, protection and control system.

7) A copy of document issued by the local government identifying that the land to be used for the construction of the power plant is not forbidden by the town planning law and it can be used for power plant construction.

8) Power plant information, comprising details of rational, necessity and objective of the project, synopsis of the project, implementing body, location, implementing procedure and time, output and outcome, impact to people and environment, prevention, mitigation or remediation measure. However, in case of the project or business that is required to make the environmental impact assessment (EIA) report, the applicant may submit the EIA report that was approved by the technical committee according to the Article 49 of the Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 for a consideration of the Commission instead.

b) Electricity transmission license

1) Work plan of the electricity transmission to the distribution system which presents details of capital cost, transmission line, connection of the transmission systems, and technical and safety standards.

2) A diagram showing direction and transmission system boundary

3) Transmission system information, comprising details of rational, necessity and objective of the project, synopsis of the project, implementing body, location, implementing procedure and time, output and outcome, impact to people and environment, prevention, mitigation or remediation measure.

c) Electricity distribution system license

1) Work plan for delivery of electricity from transmission or generation system to the end user comprising capital cost, connection of the distribution systems, technical and safety standards, distribution area, electrical system to be sale, scale of the distribution area, lines and numbers of the main power line as well as equipments necessary for a construction of the distribution system.

2) A diagram showing direction and distribution system boundary

3) A consent letter specifying a permission to use or to connect with other licensee's energy network if necessary.

(d) Electricity selling license

1) A copy of the electricity selling business operation contract including a copy of power purchase agreement made with every customer except the Metropolitan Electricity Authority and the Provincial Electricity Authority, which the original PPAs shall be submitted together with number of customers in each category.

2) Work plan on electricity selling or electricity supply presenting details of the selling or supply of electricity.

3) Numbers of the end user, monthly electricity demand of each user, estimation of maximum monthly consumption and demand and numbers of unit to be sold. These exclude the MEA and PEA, which such information shall be submitted by each user category.

(e) Electricity system operation license

1) Electricity generating process i.e. electricity generation plan, maintenance plan, fuel operation plan, coordination plan for fuel amount and supply, and power purchase agreement.

2) Document needed for machine operation, which comprises standards of electricity operation system, grid code, emergency response plan for fuel and electricity, and system restoration plan after blackout.

3) Human resource information

4) Other document related with the electricity system operation center

(2) Natural gas industry operation

(a) License for natural gas transmission via pipeline

1) Pipeline transmission plan, which comprises details of investment plan, investment cost, system and depth of pipeline, as well as any other executions according to the requirements of the natural gas transmission law such as standard color code for pipeline system or type of pipeline.

2) A diagram used for transmission of natural gas comprising details of pipeline laying route, transmission boundary, distance from community, and pipeline laying diagram.

3) Security and accident or danger prevention to people and property plans, which have details of prevention measures, warning system, as well as emergency plan for accident and fire.

4) Plans for pipeline maintenance, system inspection and testing, leak detection, and system improvement

5) Information on natural gas transmission via pipeline, which contains details of rational, necessity and objective of the project, project synopsis, implementing body, location, implementing procedure and time, output and outcome, possible effects to people and environment, prevention, mitigation or remediation measures.

(b) License for natural gas supply and wholesaling

1) Supply and wholesaling plan which comprises details of supplying natural gas amount and source, and investment plan

2) Detail of natural gas price structure

3) A copy of purchase agreement or sale and purchase agreement

(c) License for natural gas retailing via natural gas sale system

1) Plan for natural gas retailing via natural gas sale system

2) Detail of natural gas price structure

3) A copy of purchase agreement or sale and purchase agreement

(d) License for natural gas storage and liquid-to-gas processing

1) Storage plan containing details of the executions in compliance with natural gas storage law.

2) A diagram used for natural gas transmission, presenting details of storage site and facility which have a safety distance from community, as prescribed by the Commission, in compliance with such respective law.

3) Security and accident or danger prevention to people and property plans, which have details of prevention measures, warning system, as well as emergency plan for accident and fire.

4) Information on natural gas storage and liquid-to-gas processing process , which contains details of rational, necessity and objective of the project, project synopsis, implementing

body, location, implementing procedure and time, output and outcome, possible effects to people and environment, prevention, mitigation or remediation measures. However, in case of the project or business that is required to make the environmental impact assessment (EIA) report, the applicant may submit the EIA report for a consideration of the Commission instead.

Article 8 After receiving the application form for energy industry operation license, the Office shall:

(1) Check the qualifications mentioned in Article 4, documents and evidences mentioned in Article 5, Article 6, and Article 7, as the case may be.

(2) If necessary, it may go inspect facilities or materials used in the business operation. In this case, the license applicant shall facilitate the inspection appropriately.

(3) After (1) or (2) is checked, the Office shall propose comment to the Commission for consideration of a license within 45 days since the Office or its branch office receives the complete application form and concerned document and evidence.

Article 9 After receiving the application form and concerned document and evidence, as well as comment from the Office, the Commission shall complete a license application consideration within 30 days since a date of receiving comment from the Office.

Article 10 The Commission shall take the following matters into consideration when considering a license application:

(1) Benefits to consumer, service user, industry, economy, state security, and other public interests as well as a fair competitiveness.

(2) Potential and capability in financing and managing the business firmly and continuously.

(3) Correspond and congruence with the Power Development Plan, power business investment plan, natural gas procurement plan, and energy network development plan, as the case maybe.

(4) Potential in securing fund to support the investment plan in a normal state and unexpected state.

(5) Technical plan which is rational and consistent with service plan that encourages efficient use of resources.

(6) Safety standards and environmental impacts.

Anyhow, the Commission will not issue a license to any applicant who fails to comply with other concerned laws.

Article 11 After a license is approved by the Commission, the Office shall notify the applicant this approval and required period of the fee payment.

After the applicant pays the fee in a required period as mentioned in the first paragraph, the Commission shall issue a license to the applicant.

If the applicant fails to pay the fee within the required period, it shall be assumed that the applicant no longer need a license and the Commission shall order the Secretary General to write this license off.

Article 12 A license shall be made in comply with a form prescribed by the Secretary General as approved by the Commission.

Article 13 In issuing a license, the following conditions shall be prescribed and executed by a licensee:

(1) Self operation of the energy business except a transfer of right is approved by the Commission as mentioned in Article 55 of the Act.

(2) Doing business in compliance with the law required standards.

(3) Conditions of service charging, maintenance of facilities and equipments, safety and environmental standards, submission of information regarding energy business operation, or other conditions concerned with energy business operation, as prescribed by the Commission.

Article 14 If a licensee wishes to change a permitted item that is not significant, a licensee shall submit a request to the Office or its branch office, as the case maybe.

If an item applying for a change is considered as significant and its change may effect to production capacity, safety standard, or environment, a request for change shall be approved by the Commission.

Article 15 If a license is lost, destroyed or significantly damaged, a licensee shall submit a request to the Office for a license substitute. After considering, the Office shall issue a license substitute, which shall be in compliance with a prescription of the Secretary General, to a licensee.

Article 16 In issuing the electricity transmission license, distribution system license, or selling license to Electricity Generating Authority of Thailand, Metropolitan Electricity Authority and Provincial Electricity Authority mentioned in Article 150 of the Act, licenses shall be issued by the region.

Article 17 Electricity business operation licenses issued under the Regulations of the National Energy Policy Committee regarding criteria, procedure and condition of a license application, and regarding the energy business operation B.E. 2551 (2008), the Regulation of the National Energy Policy Committee regarding criteria, procedure and condition on energy industry operation license and application procedure B.E. 2551 (2008), and the Regulation of the Energy Regulatory Commission regarding criteria, procedure and condition of a license application, and the renewable energy power plant operation B.E. 2551 (2008) shall be valid until an expiry date of such license.

Announced on 4th December B.E.2551 (2008)

Mr. Direk Lawansiri

Chairman of the Energy Regulatory Commission

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