3.0 CORPORATE GOVERNANCE OF CENTRAL ELECTR' BOARD/NATIONAL ELECTRICITY BOARD 1949 -1989

[Power Builds the Nation - 1991]

The Central Electricity Board was created in 1949 under the first deputy chairman and Chief Executive Officer Frank Egerton. It took over from the government electrical department the business of supplying electricity to operate as a commercial company to be run on commercial lines.

" *The Board is supposed to be just like any other commercial undertaking, with one fundamental difference, however, and that is that, while an ordinary commercial undertaking has to pay for its service of omission and commission, the Central Electricity Board can and does escape the consequences of its follies.*"

The Board would respect the wishes of government in respect of any matters of national interest, but the Government should not interfere with the Board as a statutory body in connection with the detailed execution of its functions."

(Speech by Tan Siew Sin, Fed. Legislative Council on electricity supply in Malacca in the Council, 31/1/52.)

In the Electricity Ordinance Act 1949, Central Electricity Board is almost a wholly autonomous organisation with complete control of its management, finances, staff and conditions of service. With unchallengeable authority, advises on the electricity policy of the country. The board comprising of a Chairman, a Deputy and 5 members, of whom at least three should not be government officers. The only limitation in reality however the government can appoint or remove any member of the board without assigning any reason therefore, i.e. veto power. The government's sanction was still required for capital borrowing, superannuation of staff, retirement and pensions schemes. It must produce annual reports to the government. Absorbing the assets and the employees of the electrical department in effect limited its salary scheme to be close to the government salary scheme.

Unsettled anomalies in the salary scheme, forced the Ministry of Dr. Tan Siew Sin (Minister of Commerce and Industry) to give it authority to issue directives in the first place on matters affecting the Federation and the Board. The Board have the right to object by referring to the Parliament.

Other than that ' *The Central Electricity Board will continue to conduct its affairs as a independent, self accounting, statutory corporation, free from ministerial interference in the day to day conduct of its affairs.*'

In 1973, in the Electricity Act 1973 Amendment the right to object was removed. By 1984 there were 8 members of the Board of Directors with a representation from the mining industry, one from the Treasury and the Chairman a political figure.

The first bank loan which required Federal Guarantee was in 1953 when Central Electricity Board borrowed 9 million from Chartered Bank. Taking loan from World

Bank for the Cameron Highland Hydro Scheme ended the monopoly of supply and services from British Company, end of the Crown Agent, and future tenders were to be on international basis. The World Bank's covenant imposed on Central Electricity Board among which is control of its tariff policies that it should always self-finance its development projects up to 30% (later increased to 40%). Another condition is the limit on excess capacity. The government gained its control by buying up all the issued stocks and by guaranteeing its loans.

In the award of a tender for the Cameron Highland 2nd phase there was a conflict between Management and the Board. Finally, Management's view was accepted based on the requirement of the World bank, the provider of funds. In this case it was alleged by Management that the contractor recommended by the majority of the Board members had received inside information regarding rivals bid. The World bank warned that it would not tolerate *'this sort of Dutch Auction'* regarding tenders and the Board's rejecting the advice of its professionals. The decision agreeing with management was made by Mohd . Khir Johari the Minister of Commerce and Industry when it was referred to him. The Minister was moved to another portfolio a week later and the General Manager went on leave prior to retirement one month later.

3.1 1965 - 1974

In 1965 the Central Electricity Board of Malaya changed its name to LEMBAGA ELEKTRIK NEGARA TANAH MELAYU or the National Electricity Board.

By 1965 the Board comprise of besides those representing special interests, were virtually all political appointees, not professionals or from commercial or industrial concerns. As a result some Board members showed little or no interest in the activities of the Board and have absented themselves from meeting after meeting. There were Board members who has served 26 years, 22 years, 16 years. They represent labour interest, tin mining industry, industry, the Colonial Development Corporation and the Pahang State Government(0.5% interest for Cameron Highland scheme). Pahang representation was stopped in 1976. Government representatives remained at 2. In 1973, by the Electricity (Amendment) Act the 'maximum' was converted to 'minimum'. In theory the whole board can be from the government. From 1973 onwards the Treasury's representative of the Board is the person with main influence. There were also political appointees from UMNO, MCA. After Dato Osman Talib and Tan Sri Abdul Kadir Shamsuddin, the Chairmen were from the government officers - the Chief Secretary.

As far back as 1970 there was a special Board meeting in which a board member stated "*This is not intended to be a "confrontation" of members of the Board with Management, but rather an exercise to find ways and means of protecting the interests of the Board in the presentation of memorandum by Management. This is to ascertain why memoranda, to the Board or its committees were often incomplete in information that members of the Board generally felt unable to arrive at equitable, fair and quick decisions.*"

The Board criticised management for incomplete memoranda and last minute updates. " *Consultants are employees of the Board, and not the other way round and should take instruction from the Board.*"

From than on guidelines were drawn up regarding the drafting and presentation of memoranda to the Board to avoid misunderstanding. In the power plant project the Board had to accept a high cost of financing recommended by the government when Central Electricity Board could have sourced a cheaper financial arrangement.

The Finance Minister once queried on the award of Board to the 2nd lowest and instructed the Board to stop all work on the contract. After a long and detailed explanation the treasury relented to the Board's decision.

3.2 *1974-1984*

It had become established practice since Sharples was the General Manager that senior management sit in the Board meetings and to participate in discussions with no membership status. This was stopped from September 1975 when Tan Sri Abu Zarim was the General Manager. They can only attend when called upon to provide information and answer questions on specific items.

The Board composition still was a mix between government nominees, politicians and special interests (mining and labour)
The government involvement with the Board was increased in 1974 by the addition of members from Malaysian Industrial Development Authority. Tan Sri Abdul Kadir Shamsuddin was the first of a succession of Chief Secretaries to the Government to be appointed as non executive Board Chairman of National Electricity Board. The government clear indicated its intention that National Electricity Board should conform

as closely as possible to the overall strategy of economic development of the nation laid down by the government.

In 1972 Tun Razak the Prime Minister suggested in the National Operation Council meeting that "*the Board projects itself as a service organisation and not one that is profit motivated.*"
The suggestions was translated into command.

"*It is the duty of National Electricity Board of Malaya as an organisation providing service to the public, to ensure that its revenue, after meeting all outgoing including depreciation and interest on capital, is utilised to finance a proportion of its capital development programme to meet the country's intensive need in the field of electricity supply necessitates the deployment of almost all of the balance of its revenue towards meeting the capital development programme.*"

This led to its forced effort to go into the losing venture of rural electrification at the time of increasing fuel price. Under the 3rd Malaysia Plan the government agreed to finance the cost of rural electrification and become the guarantor of loans raised by National Electricity Board.

There was a tariff increase of 13% over the 1958 rate in October 1979. National Electricity Board was exempted from all duties and rural electrification was financed by the Government.

In 1978 National Electricity Board came under the Ministry of Energy, Telecommunication and Post. This was the real beginning of having a Minister fully making its presence felt in the making of National Electricity Board OF Malaya's policy. The Minister attended Board's meeting 1st time in March 1979 by delivering the opening speech on what was expected of the Board.

The award of the hydro-electro project also saw the Treasury's attempt to direct the Board against its will. It ended up with the Chairman having to bypass the Treasury and Finance Ministry and to appeal directly to the Prime Minister. The Prime Minister responded categorically in agreement with the Board. There was a delay in the award.

Awards of contracts must maximise the involvement of local Malaysian firms for mammoth projects. Civil works, subcontracts, consultancy, forwarding and freight must be awarded to local firms. International consultants must have local partners. This policy caused clashes between the World Bank, the Board and the Treasury. World Bank withdrew it financing of a project became the Board did not heed the advice of the consultant. Contract awards were closely linked with the financing not technical which most in management would like it to be.

By 1984 the largest source of finance was Japan RM442 million and World Bank 2nd with RM359 million, Amanah Merchant Bank RM194 million, British source RM92 million, Germany RM105 million, French, Scandinavia, India and Yugoslavia RM171 million. RM710 million were from abroad more than double the amount from 1949-1974 period. The Government gave approximately same amount and RM1,180 came from its own source. Only by 1984 sources from local banks were taken i.e. RM218 million. In 1974 apart from the Government all loans were sourced abroad. The move was initiated by the Treasury.

One amendment passed in 1973 to the Electricity Act permitted National Electricity Board to go into manufacturing i.e. electrical cables and later transformers.

3.3 Gilbert/Commonwealth International Incorporation[GCI] Report 1984

A lot of suspicion was created in the Government, Treasury and amongst the political circle that the frequent and severe shortages and breakdowns in the early seventy's were due to deficiencies in National Electricity Board, not external causes. This resulted in the appointment of Gilbert/Commonwealth International Incorporation[GCI] as the management consultant to examine the organisational structure and functions of National Electricity Board and to make necessary recommendations. It includes effectiveness in management, information flow between its agencies/departments, planning system and use of resources, tariff structure and costs and its service to consumers. The Report was to be addressed to the Minister of Energy, Telecommunication and Post.

The Report praises Tenaga Nasional Berhad's image of reliability, good management staff relationship, completeness of its resources and the wealth of expertise deterioration in employees morale, delays in decision making caused by insufficient delegation of authority, overlapping functions, lack of co-ordination and not clearly defined areas and specifications of work. The chain of command and techniques of management was weak. Lack of co-ordination and the concentration of too much authority at the top and a consequent lack of initiative below. There was absence of effective guidelines or definitions of objectives and work functions.

INFLUENCE OF EXTERNAL FACTORS.

"If the above are not resolved, the level of service provided will remain at a level below adequate. The Tariff structure lacked correlation between pricing and actual cost [as is recurring with the power purchase from the Independent Power Producers(IPPs)]"

The Report also touched on the critical Board-Government relationship saying that the intervention by the Government or Government Agencies have given rise to problems, citing incidences and the dangers of not making proper allowances for technical considerations on which the original decision had been based. There were ad hoc directives given to the Board by the Government, which did not always permit important policy proposals to be studied thoroughly before being approved for implementation.

Under "threats" in the Report it says:

"The National Electricity Board of Malaya, as a statutory body, operates in a context of government policies; procurement, personnel, development planning,

planning, education, land and others. These constraints, combined with dual responsibilities, have exacted a price in terms of effectiveness and cost. A delicate balance is necessary between control and autonomy"

In summary, the Report revealed some deficiencies, but at the same time revealed major difficulties stemmed from weaknesses coming from outside and that the steady erosion of National Electricity autonomy had not been necessarily to the national advantage.

3.4 1984-1989

The GCI's Report was seen to be American in style. Implementation of its recommendation was vigorous at operational and administrative level but not beyond. By that time the Government has made the decision to privatise National Electricity Board. In spite of that, the Boards evolution still remained unchanged.

In 1985 there was a tariff revision with a significant reduction of more than 10% across the board. Discount of another 5% was given to its industrial, commercial and mining consumers.

There was a deadlock in March 1985 in the negotiation of the natural gas price with PETRONAS. The cabinet decreed a protem price of RM6.33/mbtu although National Ellectricity Board had consented to pay only RM5/mbtu. Finally, in February 1987 the Government decided that the gas price was to be fixed at RM5/mbtu for the East Coast and RM6/mbtu in the West Coast, subject to review at the end of 10 years, and thereafter every 5 years.

In the award of the consultancy job of Port Klang Phase II power station the Prime Minister's "Buy British Last" resulted in Ewbank Preece losing the job to EPDC of Japan. The 1st phase was earlier carried out successfully by Ewbank Preece.

A year later the Prime Minister intervened again, to reverse a Treasury decision regarding a tender for electrical equipment in favour of a French firm instead of a Japanese as proposed by the Board. The directive was a little too late but it resulted in the price reduced to that offered by the Japanese firm. Deutsche- Babcock-C.Ito[DBCI] lost the boiler contract in Kapar project to Mitsui of Japan as a result of Treasury's intervention.

In 1984 the Treasury reversed the Board's decision to award the fuel-oil contract for a newly completed power station to SHELL in favour of PETRONAS which could cost National Electricity Board RM39 million more over the following 3 years as a result. Protest by the General Manager fell to deaf ears but subsequently Petronas was made to come down in contract price to the level of the original SHELL bid.

In 1984 there was also a disagreement over the award of the tender for civil engineering works for the 2nd stage of Kapar project. The board refused to accept the Treasury's decision that led to the Board appealing to Daim Zainuddin, the Finance Minister but with no effect. The Treasury finally gave way and permitted the original award to go through.

3.5 THE BALANCING ACT:- A QUESTION OF AUTONOMY

" *It is the conclusion of the sub-committee that the Board is currently not in an ideal corporate position. The degree of control exercisable by the Government over the Board far outweighs the independent status and powers of the Board.* "

Report by Sub-Committee on the Board's autonomy, appointed by Management, June 1984.

GCI's report concerning the Board's relationship with the Government and its agencies recommended that there should be a redefinition of the roles and responsibilities of each in relation to the other. A sub-committee was formed to look into this issue as it stood in the mid-80's. Its term of reference was to ascertain the Board's degree of autonomy as laid down by the Electricity Act(as amended in 1973) to identify area of control exercised by the Central Government and/or its agencies over the Board's autonomy and further enhancing it. It was found to be heavily tilted to the Government.

" There is a great deal of uncertainty on the part of the management of the Board as well as on the part of the various external bodies dealing with the Board as to the degree of independence exerciseable by, or the extend of control exerciseable by the Board. The power of the Board were generally speaking clearly defined, many of them were exercised improperly, if indeed they were exercised at all."

The Government should have ultimate control over the Board in the interests of the country as a whole. The Government appointed the Chairman of the Board, and by being empowered not only to appoint but also to remove without question any of its members, enjoyed a virtual veto power over its actions. The members of the Board by then were virtually all government men.

It was the Electricity [Amendment] Act of 1973 which really changed the scenario, from a strictly legal point of view, to have rendered the Board's autonomy quite meaningless. The amended Act included a revised version of Section 15A which simply read:-

" The Board shall be responsible to the Minister and the Minister may, from time to time, issue directions to the Board on any aspect of its functions; and such direction shall be binding on, and shall be given effect to, by the Board. "

It also allows the Government to increase the number of `public officers' who could sit on the Board to the point that Government Nominees could form a majority. The General Manager's protest was recorded in a board's meeting. The Board was not consulted in the drafting of the amendment. The Secretary- General was appointed to the Board which became a permanent fixture. As a result Government circulars, which strictly speaking had no legal force as far as the Board was concerned, but which were at times treated like directives as well became frequent. The numbers directly representing the Government on the Board increased for, apart from the Chairman and the Treasury representative, spokesman from the Ministry and Malaysian Industrial Development Authority were added. The other members were recruited from the ruling political party except for mining and labour interests.

An analysis of ministerial directives actually issued shows that they have centred on matters which involved the interests and well-being of the nation at large. The balance at stake was found to be a balance of perspective rather than a balance of control. The needs for unity and economic development must not forget that it was essential for National Electricity Board to function effectively. The search for tariff structure which could bring adequate returns to the Board and yet stimulate industry, creating conditions which would make possible foreign funding of major projects without beggaring the nation or hampering its development in other fields, the establishment of conditions of service and of wage and salary schemes which would meet the staffing requisite of the Board but be in tune with national labour and wage policy in general, and assisting the Government's development plans for economically retarded areas without undermining the basic viability of the Board's operations- there were the areas where balance had to be struck, and which forced Board and Government into the existing relationship which neither could escape.