

New Zealand.



ANALYSIS.

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1904, No. 5.—*Private.*

Title.

AN ACT to enable the Waipori Falls Electric Power Company (Limited) to supply and use Electrical Energy for Lighting, Power, Heat, and other Purposes within the City of Dunedin and the Boroughs, Counties, and Districts adjacent thereto.

[31st October, 1904.]

Preamble.

WHEREAS a company has been incorporated under the provisions of "The Companies Act, 1882," and the amendments thereof, under the name of "The Waipori Falls Electric Power Company (Limited)," having amongst its objects the utilising the water of the Waipori River for the purpose of generating electricity, and supplying the same as motive power and for lighting and other purposes: And whereas it is expedient that provision should be made for authorising the said company to cross or pass over or along and open up streets, roads, railways, rivers, and bridges, and to enter upon lands within the Counties of Taieri, Bruce, Tuapeka, and Waikouaiti, the City of Dunedin, the Boroughs of Milton, Mosgiel, Green Island, South Dunedin, St. Kilda, Mornington, Roslyn, Maori Hill, North-east Valley, West Harbour, and Port Chalmers, and the Road Districts of Peninsula, Tomahawk, and Portobello, all in the Provincial District of Otago, and to place mains, distributing-lines, service lines, and telpherage lines either above or below ground, and to lay down and place pipes, conduits, and service pipes, and to erect

pillars, towers, arches, and poles, and to make, construct, and do other works and things for producing, supplying, and using electrical energy for public and private purposes and for providing telpherage ways within the said counties, city, boroughs, and road districts, and to do all such other acts, deeds, matters, and things from time to time as are incidental or conducive to carrying out fully and effectually the objects of the said company :

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is “The Waipori Falls Electrical Power Act, 1904.” Short Title.

2. In this Act, if not inconsistent with the context hereof, and unless there are words to exclude or restrict such meaning, the words and expressions following shall severally have the meanings hereinafter assigned to them, that is to say:— Interpretation.

“Electricity” means electricity or its translated form, electric current, or any like agency :

“Energy” means electrical energy ; and for the purposes of this Act electrical energy shall be deemed to be an agency within the meaning of “electricity” as defined by this Act :

“The company” means the Waipori Falls Electric Power Company (Limited) and its successors, or the assigns or licensees of all or any of the company’s rights and powers under this Act :

“Public purposes” refers to the supply of electricity or its translated form to or in any street, road, or square, building or place, belonging to or subject to the control of a local or public authority, or any hall, public theatre, or building belonging to or subject to the control of any local or public authority, but shall not include any other purpose to which electricity or its translated form may be applied :

“Private purposes” refers to any purpose whatever to which electricity or its translated form may for the time being be applied, not being public purposes, but shall not include the transmission of any telegrams :

“Local authority” means local authority as defined in “The Interpretation Act, 1888” :

“Streets and roads” shall include any public or private street, and any public road, square, open space, highway, thoroughfare, bridge, culvert, or passage within the limits to be affected by the Act.

3. Subject and without prejudice to “The Electric Lines Act, 1884,” “The Counties Act, 1886,” and “The Municipal Corporations Act, 1900,” and any amendments thereof respectively, the company may supply and use energy for public and private purposes, for motive power, lighting, heat, and other purposes, within the whole or any part or parts of the area of supply as defined by this Act. Power to supply and use electrical energy within area of supply and to execute necessary works.

4. (1.) There shall be a Board of Control for the purposes of this Act, which shall consist of the Governor in Council. Board of Control.

(2.) The Board of Control may appoint such officers and make such by-laws for its own guidance as it shall think proper. It may also make such rules and regulations for the control of the company in the interests of the public safety as it may think expedient for securing the safety of the public from personal injury, or from fire or otherwise, and may from time to time amend or repeal such regulations; and any such regulations so made or amended by the Board of Control shall, from the date and issue thereof, have the same effect in every respect as though they had been originally inserted in this Act; and every regulation so repealed shall, from and after the date thereof, be repealed accordingly, but such repeal shall not affect any liability or penalty incurred in respect thereof prior to the date of such repeal, or any proceeding or remedy which might have been had in relation thereto.

(3.) The Board of Control may from time to time delegate all or any of the powers vested in the Board by this Act to the Electric Telegraph Commissioner, or to such other person as the Board of Control shall think fit.

Power to company
to execute
necessary works.

5. For the purposes aforesaid the company may cross or pass over or along and open up streets and roads, and cross over or under railways, rivers, and bridges, and place mains, telpherage lines, service lines, and distributing-mains either above or below ground as the Board of Control may determine, and lay down and place pipes, conduits, and service pipes, service boxes, man-holes, or transformer-chambers, and erect pillars, towers, arches, and poles, and make, construct, and do all other necessary or proper works and things for supplying energy and providing telpherage ways within such area of supply or any part or parts thereof, upon such terms, including time and conditions, and subject to such regulations and provisions for securing the safety, convenience, and welfare of the public, as may be agreed upon between the company and the local authority or authorities having jurisdiction over the said streets, roads, railways, rivers, and bridges: Provided always that if any such local authority shall impose any such terms and conditions, or require the company to become subject to any such regulations and provisions, or to do any act, matter, or thing, as shall be deemed unreasonable by the company, or shall neglect for an unreasonable time to notify the company of such regulations, provisions, act, matter, or thing, the company may appeal to the Board of Control; and the Board of Control shall inquire into the matter from the company and the local authority or authorities interested, and allow or disallow such appeal and approve any such terms, conditions, regulations, and provisions, act, matter, or thing, either altogether or subject to such amendments and conditions as may seem fit, or may disapprove the same, or, in case the local authority or authorities has or have neglected for an unreasonable time to notify the company of the said regulations, provisions, act, matter, or thing, then the Board of Control shall prescribe such regulations, provisions, act, matter, or thing as it shall think fit.

6. The company may, for the purpose of the supply and use of electrical energy as authorised by section three hereof, from time to time whenever it may deem it advisable so to do, place

The company may
enter upon lands
for the purpose of
executing works.

transmission-lines, poles, towers, mains, distributing-lines, service lines, telpherage lines, and distributing-mains either above or below ground or upon or under any lands situate within the area of supply, and upon such lands lay down and place pipes, conduits, and service pipes, and erect pillars, arches, poles, and towers, and undertake, make, construct, and do all other necessary or proper works and things for supplying and using electrical energy within such area of supply or any part or parts thereof; and for the purpose of executing the works by this section authorised the company and its workmen and others by its direction may enter upon and cross and recross any of the lands within the said area of supply either with or without horses and carts or vehicles:

Saving and excepting that, with respect to all or any of the powers by this clause conferred upon the company, the same may be exercised on Crown property only upon the consent to such exercise being obtained from the Minister for Public Works, and on ecclesiastical property only upon consent to such exercise being obtained from the trustees or body in whom such ecclesiastical property is vested, and on corporation property only upon the consent to such exercise being obtained from the corporation owning such property, and on property held on trust for public or charitable purposes only upon the consent to such exercise being obtained from the trustees or body in whom such property is vested; and it is hereby declared that any such corporation, trustees, or body shall have power to give such consent:

Provided, however, that the company shall pay compensation to every person entitled thereto, as in section seven of this Act provided, in respect of the exercise by the company of the powers conferred upon it by this section.

7. Every person having any estate or interest in any lands situate within the area of supply upon or under which the company may have exercised any of the powers conferred upon it by section five of this Act shall be entitled to such compensation as may be either agreed upon between the company and such person, or awarded by the Compensation Court as hereinafter provided, in respect of any such lands injuriously affected by reason of the exercise of the said powers conferred by section five hereof.

Owners of lands entered upon entitled to compensation.

8. The Magistrate's Court at Dunedin shall be the Compensation Court for the purpose of this Act, and any claims for compensation may be made to the Magistrate for the time being of such Court, and filed in the office of the said Court at Dunedin; and for the purpose of the making and hearing of such claim the provisions of sections thirty-six to forty-eight inclusive and of sections sixty-one to sixty-seven inclusive of "The Public Works Act, 1894," shall (subject to such modifications as may be necessary to make the same applicable to proceedings under this Act) apply and be read as part of this Act; and for the purpose of the making of the award of compensation the provisions of sections sixty-eight, sixty-nine, seventy, subsection one of section seventy, sections seventy-one, seventy-three, seventy-four, seventy-five, and seventy-six of "The Public Works Act, 1894," shall (subject to such modifications as may be necessary to make the same appli-

Court to assess compensation in accordance with the provisions of "The Public Works Act, 1894."

cable to proceedings under this Act) apply and be read as part of this Act:

Provided that on the application of either party, if the amount claimed be more than two hundred and fifty pounds, the Supreme Court sitting at Dunedin shall be the Compensation Court for the purposes of this Act, and any such claim for compensation shall be made to the Judge of the Supreme Court sitting at Dunedin.

9. The company may from time to time, but subject to the consent thereto of the Board of Control, make, and from time to time (but subject to the like consent) vary, annul, or revoke, by-laws for the proper management and protection of the company's electrical works, property, plant, concerns, and business, and for the carrying-out to the best advantage of the electrical projects and objects of the company, and by such by-laws may impose a penalty not exceeding five pounds (to be recovered in a summary way) for any breach thereof: Provided that such by-law shall not be repugnant to this Act, "The Electric Lines Act, 1884," "The Municipal Corporations Act, 1900," or any County Act of the General Assembly, or any amendment thereof respectively, or to any by-law or regulation which may now or hereafter be made under any such Acts or amendments as aforesaid; and that the company shall, as a condition precedent to an application for the consent of the Board of Control to any such by-laws, forward the draft of any such by-laws to each local authority within whose boundaries the same are intended to operate, at least one month before the same shall be lodged for the consent thereto of the Board of Control.

10. A copy of any such by-law, sealed with the seal of the company, shall be received as evidence of the same having been duly made, unless the contrary be proved.

11. The area of supply shall be all that area of land situated within the Provincial District of Otago and comprising the Counties of Taieri, Bruce, Tuapeka, and Waikouaiti, the City of Dunedin, the Boroughs of Milton, Mosgiel, Green Island, Caversham, South Dunedin, St. Kilda, Mornington, Roslyn, Maori Hill, North-east Valley, West Harbour, and Port Chalmers, and the Road Districts of Peninsula, Tomahawk, and Portobello, as the same counties, city, boroughs, and road districts are at present constituted.

12. The company shall, within a period of six months after the coming into force of this Act, proceed to erect the necessary plant to generate electrical energy within the meaning of this Act, and commence to deliver the same within one year from the coming into force of this Act.

13. If the company make default in complying with any of the provisions of this Act, or any requirement of the Board of Control under this Act, it shall be liable to a penalty not exceeding two pounds in respect of every such default for each day during which such default continues; and if the Board of Control is of opinion that such default is wilful and unreasonably prolonged it may, after considering any representations of the local authority or authorities interested, revoke this Act as to the whole or, with the consent of the company, any part of the area of supply, or, if the company so desires, may, after having given an opportunity to the

Company to make by-laws subject to consent of Board of Control.

By-laws sealed by company to be evidence.

Area of supply defined.

Date of erection of works and commencement of supply.

Penalties on default by company.

local authority or authorities interested to make representations and objections with reference thereto, suffer the same to remain in force as to such area or part thereof subject to such conditions as it may think fit to impose, and any conditions so imposed shall be binding on and observed by the company and shall be of the like force and effect in every respect as though they were contained in the Act: Provided always that, if the company shall satisfy the Board of Control that delay in proceeding to erect the said necessary plant to generate such electrical energy or in commencement to deliver the same is due to unforeseen cause or impediment, the Board of Control may extend the periods of six months and one year respectively referred to in section twelve of this Act by such period or periods as it shall think fit.

14. Notwithstanding anything to the contrary in this Act contained, the powers and authorities expressed by this Act and the exercise thereof shall be subject to the terms, stipulations, and conditions contained in any contract already or hereafter entered into between the company or its assigns and any local body or local authority with reference to the construction, doing, and maintenance of the works, matters, and things hereby authorised; and all such terms, stipulations, and conditions shall be faithfully observed and performed by the company or its assigns.

Agreements not affected.

15. It shall be lawful for the company at any time after the passing of this Act to assign by way of mortgage, or to assign, transfer, convey, and release absolutely, to any corporation, public body, incorporated company, or person all or any part of the rights, powers, authorities, privileges, liabilities, and obligations conferred and imposed upon it by this Act, together with its undertaking, property, apparatus, business, lands, corporeal and incorporeal rights, buildings, material, and plant of every kind; and upon and after the completion of any assignment, transfer, conveyance, or release the corporation, public body, incorporated company, or person in whom the said rights, powers, authorities, and privileges, or any part thereof, shall become vested by virtue of any assignment, transfer, conveyance, or release made in exercise of any such assignment by way of mortgage, or by virtue of any such absolute assignment, transfer, conveyance, or release, their or his officers, agents, and servants, may lawfully exercise and enjoy all the rights, powers, authorities, and privileges, and shall become and be subject to all the liabilities and obligations, to which the company or its officers, agents, or servants would have been entitled or subject had no such mortgage, assignment, transfer, conveyance, or release been completed: Provided always that the company shall not voluntarily sell its undertaking without the consent in writing of the Board of Control first had and obtained, except to the Corporation of the Mayor, Councillors, and Citizens of the City of Dunedin (hereinafter called "the said Corporation"). All such sum or sums of money as may be required by the Corporation for the purposes of this Act may be borrowed by the said Corporation under the provisions of "The Local Bodies' Loans Act, 1901," by special order, and in the manner provided by section fourteen of the last-mentioned Act.

Company may assign by way of mortgage, &c.

16. Nothing herein contained shall be deemed in any way to pledge or bind any local authority to enter into any agreement with

Right of supply not exclusive.

the company, or to prevent such local authority from entering into any other agreement with any other company, person, or corporation for supplying energy within such area of supply, or from itself supplying the same.

Company to assign to Dunedin City Corporation.

17. The company shall forthwith after the passing hereof assign, transfer, and convey to the said Corporation, in pursuance of the contract already entered into between the company and the said Corporation, all the rights, powers, authorities, privileges, liabilities, and obligations conferred and imposed upon it by this Act, together with the whole undertaking, lands, rights, tenements, hereditaments, estates, chattels, effects, and property of every kind of the company, or used in connection with the working and maintenance thereof; and upon and after the completion of such assignment, transfer, and conveyance the said Corporation, its officers, servants, and agents, may lawfully exercise and enjoy all the rights, powers, authorities, and privileges, and shall be and continue to be subject to all the liabilities, obligations, and penalties, to which the company or its officers, servants, or agents would have been entitled or subject had no such assignment, transfer, and conveyance been completed: Provided, however, that nothing herein contained shall prejudice or affect any rights accrued, action or proceedings taken against, or liabilities, obligations, or penalties incurred by the said company before the completion of the said assignment, transfer, or conveyance.

City of Dunedin and Borough of Caversham.

18. The City of Dunedin and the Borough of Caversham shall be included in the area of supply and be within the scope of this Act in the event only of the contract mentioned and referred to in section seventeen of this Act between the company and the Corporation being duly entered into and completed by the parties thereto; but, in the event of the said contract between the Corporation and the company not being entered into and completed, the company shall be entitled nevertheless, and notwithstanding anything to the contrary in this Act hereinbefore contained, to supply electricity within the City of Dunedin and the Borough of Caversham, and to exercise all the powers hereinbefore vested in it by this Act for the purpose only of the manufacture of calcium-carbide.

Consequences of assignment to Dunedin City Corporation.

19. Upon the completion of the said assignment, transfer, or conveyance as in section seventeen hereof mentioned, this Act shall, where necessary, be read so that wherever the words "the said company," "the company," or "company" occur they shall be omitted, and the words "the said Corporation," "the Corporation," or "Corporation" shall be inserted in their stead; and the following powers, privileges, and authorities shall, in addition to the powers, privileges, and authorities conferred by this or any other Act, be vested in and conferred upon the Corporation, that is to say:—

- (a.) All mining privileges assigned to or acquired by the Corporation under and in pursuance of the contract referred to in section seventeen of this Act (certain of which privileges are specified in the Schedule to this Act) shall be held by the Corporation with and subject to the same rights, powers, privileges, and conditions as in the case

of the mining privileges held by the Corporation as mentioned in "The Dunedin City and Suburban Tramways and Water-power Act, 1903."

- (b.) The transmission-line necessary for transmitting electrical energy from the Waipori River to the City of Dunedin shall be hereby deemed to have been and to be inserted in the Order in Council under "The Tramways Act, 1894," already obtained by the City of Dunedin in addition to the transmission-line from the Lee Stream to the City of Dunedin authorised by the said Order in Council; subject, however, to any contract entered into by the company with any local body or local authority under section fourteen hereof.
- (c.) The Corporation may contract for and supply electricity to any local authority within the said area of supply in such mode and upon such terms and for such purposes as it thinks fit, and may, in pursuance of such contract, do all things necessary to light the streets and public places under the control of such local authority, and may supply electricity to the inhabitants of any county, borough, town district, or road district within the said area of supply for motive power, lighting, heat, or other purposes, upon such terms and conditions as it thinks fit, and for that purpose may, within the said area of supply, do, *inter alia*, the things authorised by section three hundred and thirty-five of "The Municipal Corporations Act, 1900."

SCHEDULE.

Schedule.

1st. LICENSE No. 109/1900, for water-race situated in Block VIII., Waipori District, to divert eighty heads of water out of the Waipori River; dated the 7th day of May, 1900, No. 109/1900, Otago Mining District.

2nd. License No. 266/1902, granted the 28th day of July, 1902, for extension of water-race No. 109/1900.

3rd. License No. 303/1902, granted the 13th day of October, 1902, for extension of water-race No. 109/1900, situate in Blocks VIII. and X., Waipori Survey District.

4th. License No. 437/1903, granted the 12th day of October, 1903, for deviation of water-race held under license No. 109/1900 and extension held under license No. 266/1902.

5th. License No. 245/1900, dated the 10th day of December, 1900, for a water-race, Waipori River, with right to divert fifty Government heads of water.

6th. License No. 436/1903, granted the 12th day of October, 1903, for an extension and deviation of water-race held under license No. 245/1900.

7th. License No. 267/1902, dated the 28th day of July, 1902, for a dam situated in Block VIII., Waipori District, at a point in the Waipori River at the commencing-point of extension of water-race held under license No. 109/1900.

8th. License No. 83/1901, dated the 22nd day of July, 1901, for a water-race at Bad Creek, in Block VIII., Waipori District, with right to divert six heads of water for the purpose of driving a sawmill plant.

9th. License No. 366/1903, granted the 27th day of April, 1903, for special site area, 4 acres 3 roods 34 poles, for erection of power-house, &c., Section 47, Block VIII., Waipori District.