

CHAPTER 56:03

HYDRO-ELECTRIC POWER ACT

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CHAPTER 56:03

HYDRO-ELECTRIC POWER ACT

48 of 1956 **An Act to make provision for the grant of licences authorising the utilisation of the waters of Guyana for the purpose of generating electrical energy, and for matters connected therewith.**

[1ST DECEMBER, 1956]

Short title. **1.** This Act may be cited as the Hydro-Electric Power Act.

Interpretation.
[1 of 1972] **2.** In this Act—

“divert” or “diversion” means any taking or removing of water from any river, and shall include any retardation or acceleration of the flow thereof;

“Engineer” means the Engineer appointed by the President under section 22;

“licence” means a licence granted under this Act for any of the purposes specified in section 6(1);

“licensee” means a person to whom a licence is granted under this Act and includes his heirs, executors, administrators, successors and permitted assigns;

“point of diversion” means the actual point or place on the natural course of a river at which a licensee is authorised to divert water from that river, and shall include any substituted point at which he is authorised to divert as aforesaid;

“public lands” means any lands or any interest in any lands which are the property of the State and any other lands or any interest therein which have been or may be placed under the control and management of the Chief Works and Hydraulics Officer;

“public undertaking” means an undertaking established and operated wholly or mainly for the supply of energy to meet a public demand;

“Regulations” means regulations made in pursuance of the powers conferred by this Act;

“river” includes all natural water-courses or sources of water-supply, and all streams, lakes, creeks, springs and ravines;

“State water-power” means any water-power in lakes, falls, rivers or streams which can be used for the purpose of generating electricity;

“undertaking” means the undertaking required or proposed to be established or carried on in pursuance of this Act by the State, or by an applicant, licensee or other person for the development of any State water-power or for the transmission, distribution or utilization of the force or energy produced from such water-power; and shall include, in so far as authorised or required in any case—

(i) the storage, pondage, penning back, regulation, augmentation, carriage, diversion and use of water or of the flow thereof;

(ii) the generation of energy at any plant which is used as an auxiliary to the water-power plant;

(iii) the surveying, laying out, construction, maintaining and operating of works, including dams, flumes, penstocks, power stations, transmission lines, terminal stations, and substations;

(iv) the surveying of any lands, carrying on of investigations and collection of data;

(v) the acquisition and use of lands and properties or any interest therein;

(vi) the administration and management of the required lands, works and properties; and the business connected therewith;

(vii) matters incidental to any of the foregoing;

“water-power” includes any force or energy of whatever form or nature contained in or capable of being produced or generated from any flowing, or falling water in such quantity as to make it of commercial value;

“works” includes anything done, made or constructed in connection with or in relation, or incidental, to the diversion, storage and the use of water for generating, and the generation of, electrical energy.

Application of Act.

3. This Act shall apply—

(a) to all State water-powers;

(b) to all public lands required in connection with the development or working of such water-powers or for purposes incidental thereto;

(c) to all lands and properties which may be acquired or authorised to be acquired under the terms and for the purposes of this Act, in connection with State water-powers;

(d) to the power or energy produced or producible from the waters on or within the said lands, whether the power or energy derived therefrom or any portion thereof is distributed upon or utilised on public lands or not;

(e) to all undertakings established or carried on in respect of any State water-powers; and

(f) to all matters incidental thereto.

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4. Subject to any rights, lawfully held, the property in and the sole right to the use of all State water-powers are hereby declared to be vested in and shall remain in the State.

Title to water-powers in State.

5. (1) Lands—

- (a) upon or within which there is water-power; or
- (b) required for the protection of water-power; or
- (c) required for the purposes of any undertaking;

Essential lands also remain State property. [1 of 1972]

and the water-powers and waters thereon, shall not be open to entry, and except as hereinafter otherwise provided, no interest therein shall be leased or otherwise granted or conveyed by the State; and any grant or conveyance hereafter made of any such lands or any interest therein, except in pursuance of this Act, shall not vest in the grantee any exclusive or other property or interest with respect to such lands.

(2) No right of entry, permit, licence, lease or other concession shall be made for or of any lands within a game sanctuary or fish sanctuary or State forest until the Chief Works and Hydraulics Officer or the Conservator of Forests, as the case may be, has reported upon the effect of such right of entry, permit, licence, lease or other concession upon the game sanctuary, fish sanctuary or State forest concerned, and the President has decided whether it is necessary to insert any provision or provisions in such right of entry permit, licence, lease or other concession to protect the use and enjoyment of such game sanctuary, fish sanctuary or State forest.

(3) Where small areas only of any parcel or sub-division of any public lands are required to be submerged along the bank of any stream in connection with an undertaking, and where it has not been found practicable or expedient to make surveys for the purpose of setting out the exact limits of the area to be flooded, the President may dispose of such parcel or sub-division in accordance with the provisions of any other Act or Regulations applicable to the disposal of such lands, reserving, however, the right at any time to raise the water surface to such elevation as may be required in connection with such undertaking.

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Power of President to grant licence authorising the use of water-power for the generation of electrical energy.

6. (1) Subject to this Act the President may grant a licence to any person, on such terms and conditions as he may think fit, and in the manner prescribed, authorising him—

(a) to divert, store and use for the purpose of generating electrical energy such quantity of the waters of any river as may be specified in the licence;

(b) to construct, erect, lay down and maintain works and plant for the generation, and distribution of electrical energy;

(c) to generate and distribute electrical energy and to utilise such energy for purposes specified in the licence.

(2) Any licence granted under this Act shall be applicable to specified areas (hereinafter referred to as licensed areas) and any such area shall be defined or described in the licence.

(3) Subject to the Regulations, any licence for a public undertaking granted under this Act shall specify the price at which electrical energy may be sold to consumers or the various rates at which such energy may be sold to different classes of consumers or the various rates at which such energy may be sold for different uses:

Provided that such price or rates as the case may be shall be subject to review during the currency of the licence every five years from the date of its commencement, or at any time thereafter on the representation of the licensee.

Terms of licence.
[1 of 1972]

7. (1) A licence may, at the discretion of the President, be granted for any term not exceeding fifty years and shall provide for the payment of such rent and royalty as may be specified in the licence.

(2) Not less than twenty-four months prior to the termination of any licence, the licensee may apply in writing to the Chief Works and Hydraulics Officer for a renewal of his licence, and if he shall have paid all the rents and royalties and observed and performed all the terms and conditions on the part of the licensee to be observed and performed up to the expiration of the licence the President may grant a renewal of the licence for a term not exceeding fifty years.

(3) Upon the filing of such application for the renewal of his licence the licensee shall be given preference over other applicants for a licence to use and occupy the waters and lands included in his licence during a further term:

Provided always that the licensee has complied with all the requirements of his licence and of the Regulations from time to time in force to the satisfaction of the Chief Works and Hydraulics Officer and that his proposed use and development of the site is in the opinion of the President at least as desirable in the public interest as that of any other pending applicant.

8. If any land or any interest therein is required by the State for any undertaking or is necessary for creating, protecting or developing any water-power, the Minister may direct the Chief Works and Hydraulics Officer on behalf of the State to acquire by expropriation the title to such land or interest therein as may be required, and thereupon the provisions of the State Lands Resumption Act, in so far as applicable, shall apply as if included in this Act.

Expropriation of private lands where required by the State.
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c. 62:02

9. (1) If any State lands specified in a grant, lease or licence, which are required or any interest in which is required for an undertaking, are occupied or held in a manner inconsistent with the carrying out of such undertaking, the President may order and direct the cancellation of such grant, lease or licence or agreement in whole or in part, or may direct that the terms thereof be so modified as to reserve to the State such lands or such rights in the said lands as may be required for such undertaking.

Cancellation of entries, leases, etc., in certain cases, and payment of compensation.
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(2) In every case of cancellation or modification under the preceding subsection compensation shall be paid out of moneys provided by Parliament to the permittee, entrant, lessee, licensee or party to such agreement or other form of conveyance:

Compensation to grantee.

Provided that sections 18 and 20 of the Acquisition of Lands for Public Purposes Act shall apply for the purpose of assessing compensation to be paid under this Act as though those sections were set out in full in, and formed part of this Act.

c. 62:05

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Chief Works and Hydraulics Officer to fix amount.

(3) The Chief Works and Hydraulics Officer shall in each case fix the amount of the compensation to be paid, subject to appeal by the permittee, entrant, lessee, licensee or party, to the High Court.

Licensee to pay amount of compensation.

10. Where compensation has been paid out of public moneys under section 8 or section 9 in respect of any undertaking the President may require as a term of any licence issued for such undertaking that the licensee shall pay to the Accountant General a sum equal to the entire amount of such compensation or such portion thereof as may be specified in the licence.

Joint development of two or more water-powers.
[1 of 1972]

11. Where two or more State water-powers are so situated that they can be more economically and satisfactorily utilised by being developed jointly and operated under one control, and

(a) if such water-powers have not been granted by the State, the President may order that they be disposed of in such manner and subject to such conditions as will, in his opinion, secure such joint development and single control; or

(b) if the right to develop one or more of such water-powers has been granted to or is held by any person, and if the President is of the opinion that the public interest will best be served by reserving the remaining water-power or water-powers so as to bring about the joint development and single control of all such water-powers, the President may order the said remaining water-power or water-powers to be reserved for such period or periods as he may deem necessary in order to secure such joint development and single control, and may authorise the Chief Works and Hydraulics Officer to enter into an agreement with the person holding the water-power or water-powers first mentioned for the purposes aforesaid, and may prescribe the terms, conditions and covenants to be included in such agreement.

Cancellation of licence.
[1 of 1972]

12. (1) The President may, upon application by the Chief Works and Hydraulics Officer, by order, cancel in whole or in part any licence granted under this Act on any of the following grounds:

- (a) failure by the licensee for three consecutive years to make beneficial use of the water authorised to be used;
- (b) failure by the licensee for three consecutive years or more to pay the rent or royalty due in respect of the licence;
- (c) wilful and persistent waste of water;
- (d) wilful diversion or use of more water than the licensee is at the time entitled to divert or use;
- (e) wilful contravention of this Act;
- (f) non-compliance with or non-observance of any term or condition contained in the licence;
- (g) wilful refusal by the licensee to obey any reasonable order of the Engineer given under the authority of this Act;
- (h) the construction, maintenance, operation or use by the licensee of any works which are not authorised under his licence or any works, the plans of which are not approved by the President.

(2) A notice signed by the Chief Works and Hydraulics Officer stating that it is proposed to cancel the licence and giving grounds upon which it is alleged that the licence is liable to cancellation shall be sent to the licensee at his registered address at least sixty days before the date when it is proposed to make the order cancelling the licence. If the licensee before the date for the making of the proposed order as aforesaid files with the Chief Works and Hydraulics Officer notice of objections to the cancellation, the President shall upon such hearing as he may deem expedient, determine whether the objections are substantiated, and shall make such order as to him seems just.

13. At any time after the expiration of one-half of the original term of the licence, granted for a public undertaking, upon twenty-four months' notice to that effect having been given by the Chief Works and Hydraulics Officer to the licensee, or upon the cancellation of the licence, the Minister may take over the undertaking of the licensee paying therefor compensation in accordance with the principles set out in section 14; except that where the undertaking is being taken over otherwise than upon cancellation of the licence the Minister or the arbitrators, as the case may be, may, in valuing the undertaking, add to

Power to take over undertaking before expiry of term or upon cancellation of licence.

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the amount determined in accordance with section 14(2) a bonus equal to three-quarters of one per cent of such amount for each and every full year of the unexpired term of the licence:

Provided that in no case shall such bonus be less than five per cent of such amount.

Vesting of property at expiration of licence.

14. (1) Upon the expiry of the licence and on the failure of the licensee to be granted a renewal thereof in accordance with section 7(2), the undertaking shall become the property of the State and the Minister, or such person as he may designate in that behalf, may immediately and without further proceeding enter upon, possess, occupy, operate and control the same.

(2) Compensation for the said undertaking shall be arrived at by first taking as a basis the figure previously fixed in accordance with section 17 as the actual cost of the said undertaking, then adjusting this figure so as to make allowance for any variation in the purchasing power of a dollar as shown by the official trade index or other local statistics most applicable to the case in hand, and finally deducting an amount equivalent to the actual loss in value of the undertaking due to its physical or functional depreciation or to other causes.

(3) Unless the Minister and the licensee agree upon the compensation to be paid for the said undertaking at least six months prior to the expiry of the said licence, the matter shall be determined by arbitration.

Power of the Engineer to order surveys, etc.
[1 of 1972]

15. (1) Subject to confirmation by the Chief Works and Hydraulics Officer in the event of any objection by the licensee, the Engineer may direct or order—

(a) such surveys and such other proceedings as may in his opinion, be required to ascertain the public lands or any other lands or any interests in any lands which it may be necessary to reserve or acquire for any undertaking, and the decision of the Engineer as to the lands or interests therein, that may in any case be required shall be final;

(b) a survey of all streams and all necessary investigations with respect to water-powers to determine the total utilised and available water-power and the maximum which can be made available by storage, regulation or other artificial means;

(c) that the volume or discharge of any stream or body of water, or of the economic availability or usefulness thereof for power purposes be ascertained;

(d) that the flow or quantity of water used and of the output of electrical or other form of energy produced from the use of water by any licensee or other person be ascertained;

(e) the establishment of gauges, weirs, meters or other devices for water or water-power measurements or for measuring the output of electrical or other form of energy.

(2) The records and plans of such surveys and investigations shall be kept on file in the office of the Chief Works and Hydraulics Officer and in the Engineer's Office and may be published in such form and to such extent as the Engineer may determine.

(3) The Engineer or any person appointed by him for the purpose, shall have free access, in connection with any of the matters herein set out, to all works, books, plans or records in so far as they relate to any undertaking and may take such observations, make such measurements, and do such other things of, upon, within or with respect to the said undertaking, books, plans or records as may be considered necessary or expedient for—

(a) ascertaining the quantity of water stored, diverted or used, or capable of being stored, diverted or used;

(b) ascertaining the amount of power developed or capable of being developed;

(c) ascertaining the condition of the works, or any of them;

(d) determining whether the conditions to be observed or performed by any licensee, lessee, or other person, or any of them, are being satisfactorily observed and performed;

(e) any other purpose connected with the administration of this Act.

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(4) The Chief Works and Hydraulics Officer may enter into any agreements with any person for the making of river measurements, the carrying out of investigations, and the collection and publication of data respecting water and power resources and the best methods of utilising the same; but nothing in this subsection shall affect licences for the determination of river flows in force at the commencement of this Act.

Plans of proposed works to be approved by Minister.
[1 of 1972]

16. (1) Before the commencement of any works in connection with an undertaking there shall be filed with the Chief Works and Hydraulics Officer in triplicate plans and specifications of the proposed works in the prescribed forms and containing the prescribed particulars.

(2) No works shall be constructed, maintained or operated until general plans and specifications in connection therewith are approved by the Minister.

Actual first cost to be stated.

17. Upon completion of the works necessary to put the undertaking into operation and upon completion of any substantial addition thereto, a sum shall be fixed which in conformity with this Act shall represent the actual cost of the undertaking or of such addition or both. In the event that the Minister and the licensee cannot agree upon the said sum within ninety days after the completion of the said undertaking or of such addition or both, the Minister shall refer the matter to the High Court for determination.

Rights acquired under licence.

18. A licence shall entitle the licensee subject to the terms thereof and the obligations imposed by this Act and the Regulations, to divert and use beneficially the quantity of water for the purpose and during the periods of times set out therein, and to construct, maintain and operate any works necessary for the use of the water, and to the rights mentioned in the licence, and in respect thereto, to all the other rights conferred by this Act.

Rights not to be prejudiced by subsequent grants.

19. The right of a licensee to divert water shall not be prejudiced by subsequent grants at higher points on the river or any tributary thereof.

20. Every licence shall be for the beneficial use of the quantity of water permitted to be taken and used, and notwithstanding the quantity granted by his licence, no licensee shall, to the prejudice of others, divert more water from any river than can for the time being be beneficially used by him.

Beneficial use of water.

21. Whenever it may appear to the President that the performance of any term or condition of a licence would cause unnecessary hardship to the licensee the President may waive the performance of such term or condition in any particular instance:

Waiver of term of licence by President.

Provided that no such waiver shall be assumed or deemed to extend to the performance of any term or condition other than that to which such waiver specifically relates or to be a general waiver of the performance of any such term or condition.

22. A person with the necessary qualifications shall be appointed to be Engineer for the purposes of this Act, and the Minister shall from time to time assign to him duties to be performed under this Act, the Regulations or a licence.

Appointment of engineer.

23. (1) The President may make regulations for carrying out the provisions and purpose of this Act and in respect of any matter which is by this Act to be prescribed, and without restricting the generality of the foregoing as to the following matters:

Power of President to make regulations.
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(a) the storage, pondage, regulation, diversion, carriage or utilisation of any water for power purposes and for the protection of any sources of the water supply;

(b) the development of water-powers and the transmission, distribution, sale, exchange, disposal or use of electrical energy generated therefrom, on, through or over public lands or any other lands;

(c) the construction, maintenance, operation, purchase and taking over of all works which may be deemed necessary or desirable for any of the purposes set out in this Act, whether on, over or through public lands or any other lands, and for the regulation and control, in the interest of all water users,

of the flow of water which may, from time to time pass through, by or over any such works;

(d) the use and occupancy of public lands and other lands or of any interest therein for any of the purposes set out in this Act;

(e) the withdrawal from disposal under any other Act of any public lands or of any interests therein required for any purposes under this Act;

(f) the granting and administering of rights, powers and privileges in or with respect to water-powers or undertakings, and the administering of such rights, powers and privileges theretofore acquired;

(g) the prescribing of conditions upon which the works, lands and properties held in respect of any undertaking may be taken over upon the expiration of the term of any agreement, lease or licence or upon the termination thereof for non-compliance with any of the covenants, terms or conditions contained in such agreement, lease or licence or for any other reason;

(h) the construction by or at the instance of the State of regulation or storage works for regulating or augmenting the flow of water required for power and other purposes, for the purchase or taking over of works already constructed and for the dividing and collecting of the cost of constructing, maintaining, and operating from time to time such works among all persons benefiting or in a position to benefit therefrom;

(i) the securing of such power output at any site, within the limits of its capacity, as may be required to supply the public demand; and the securing of the maximum power resources of all streams;

(j) the fixing of fees or charges in respect of any proceeding under this Act or the Regulations;

(k) the regulating of the passage of logs, timber and other products of the forest through or over any dams or other works erected under the authority of this Act;

(l) the appraisal, for any of the purposes of this Act of the works, lands and properties required or used in connection with any undertaking;

(m) the regulating and controlling of the stock and bond issues of persons establishing or conducting public undertakings, the regulating and controlling of the service given to the public by persons engaged in supplying water-power, the regulating and controlling of the rates or charges for such service, the appointment of a board or commission, which may regulate and control the said stock and bond issues, service, rates and charges and the appointment of a person to act with any existing authority constituted for the purposes of the regulating and controlling of the said matters or any of them;

(n) the prescribing of the manner in which accounts shall be kept for the purposes of this Act by persons conducting or managing public undertakings, and requiring the submitting of statements and reports, annual or otherwise, by such persons;

(o) the prescribing of the forms to be used in proceedings under this Act;

(p) the procedure to be observed with respect to applications and the granting of licences; and

(q) any purpose deemed necessary for giving full effect to this Act.

(2) There may be annexed to the breach of any regulation a penalty not exceeding nineteen thousand five hundred dollars.

24. (1) A licensee shall at all times have an office in Georgetown, and shall state the full registered address of the office on every document issued by him.

Licensee to have office in Georgetown.

(2) All process notices and other documents shall be sufficiently served on or delivered to a licensee if delivered at his office during the prescribed hours.

25. (1) A licensee shall not be capable of assigning or transferring his licence or of parting with the possession of any part of the licensed area without the consent of the President.

Licence not to be assigned without the consent of the President.

(2) Anything in subsection (1) to the contrary notwithstanding the licensee shall, subject to the approval of the President, have the right to mortgage his undertaking or any part thereof and the approval of any mortgage to secured debentures in the manner aforesaid shall constitute authority for the exercise of any rights and remedies thereunder or otherwise available at law without any further approval being required.

(3) Where approval of any mortgage has been given in accordance with the preceding subsection any purchaser at a judicial or foreclosure sale thereunder shall be subject to all the conditions of the licence and to all the provisions of this Act.

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Offences.
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26. Any person who—

(a) wilfully or maliciously hinders, obstructs or causes or procures to be hindered or obstructed any licensee or his servants, agents or contractors in the lawful exercise of any of the powers and authorities by this Act or the Regulations conferred;

(b) wilfully or maliciously lets off or discharges water from the works of any licensee so that the licensee loses the use of the water;

(c) unlawfully interferes with the works of any licensee;

(d) molests, interferes with or obstructs any officer in the discharge or performance of any duty or the exercise of any authority under this Act;

(e) injures, molests or interferes with any gauges, benchmarks, weirs, other measuring devices, structures or appliances, cables, boats, instruments or tools belonging to or placed in position by any applicant, licensee or official of the Government, or who moors, makes fast or in any other way attaches any raft, vessel, boat, barge, timber or other body to any of the aforesaid devices;

(f) unlawfully obstructs the flow of any river;

(g) wilfully interferes with any headgate, ditch or controlling works which the Engineer has regulated,

shall be liable on summary conviction to a fine of twenty-six thousand dollars.

27. Any person who wilfully and without authority diverts water from any river or works, or any licensee or other person who diverts a greater quantity of water than he is entitled to shall be liable to a fine of six hundred and fifty dollars for each day or fraction of a day for each cubic foot per second or fraction of a cubic foot per second of water improperly diverted, and to imprisonment for thirty days.

Penalty for unlawful diversion of water.
[6 of 1997]

28. A person shall not throw, and an owner or occupier of a mill shall not suffer or permit to be thrown into any river above any point of diversion, slabs, bark, sawdust, waste stuff, or other refuse of any mill, or stumps, roots, shrubs, tanbark, driftwood or waste wood, or leached ashes, or fell or cause to be felled, in or across such river, timber or growing or standing trees or allow the same to remain in or across such river; and any person contravening this section shall be liable on summary conviction to a fine of twenty-six thousand dollars.

Pollution or obstruction of river an offence.
[6 of 1997]

29. All penalties under this Act shall be enforceable under the Summary Jurisdiction Acts.

Penalties enforceable under the Summary Jurisdiction Acts.

30. Where any matter has been referred to the High Court under this Act that matter shall be heard and determined by a judge of the High Court in chambers on application by summons made in that behalf, and the determination thereof by the Court shall be final and binding on all the parties.

Reference to High Court.

31. Except where otherwise expressly provided in this Act if any question or dispute shall arise regarding a licence or any matter or thing connected therewith or the powers, duties or liabilities of the licensee thereunder, or the amount of payment of any rent or royalty, then and in all such cases the matter in difference shall be referred to the

Arbitration.

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c. 7:03 arbitration of two persons (one to be appointed by the licensee and the other by the Minister) or their umpire and this shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act.
