



Dominion Water Power Act (R.S., 1985, c. W-4)

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Act current to June 2nd, 2007

Attention: See coming into force provision and notes, where applicable.

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Dominion Water Power Act

W-4

An Act respecting Dominion water-powers

SHORT TITLE

Short title

1. This Act may be cited as the *Dominion Water Power Act*.

R.S., c. W-6, s. 1.

INTERPRETATION

Definitions

2. In this Act,

"Dominion water-powers"

«*forces hydrauliques du Canada*»

"Dominion water-powers" means any water-powers on public lands, or any other water-powers that are the property of Canada and have been or may be placed under the administration of the Minister, but does not include water-powers on lands under the administration and control of the Commissioner of Yukon;

"Minister"

«*ministre*»

"Minister" means the Minister of Indian Affairs and Northern Development;

"public lands"

«*terres domaniales*»

"public lands" means lands belonging to Her Majesty in right of Canada and includes lands of which the Government of Canada has **power** to dispose but does not include lands under the administration and control of the Commissioner of Yukon;

"stream" or "water"

«*cours d'eau*» ou

«*eau*»

"stream" or "water" means any river, brook, lake, pond, creek or other flowing or standing **water**;

"undertaking"

«*entreprise*»

"undertaking" means the undertaking required or proposed to be established or carried on in pursuance of this Act or the regulations by Her Majesty or by any applicant, licensee or person in the development of any

Dominion water-power or in the transmission, distribution or utilization of the force or energy produced from the water-power, and includes, in so far as authorized or required,

- (a) the storage, pondage, penning back, regulation, augmentation, carriage, diversion and use of **water** or of the flow thereof,
- (b) the generation of energy at any plant that is used as an auxiliary to the water-power plant,
- (c) the surveying, laying out, constructing, maintaining and operating of works, including dams, flumes, penstocks, **power** stations, transmission lines, terminal stations and substations,
- (d) the surveying of any public lands or other lands, the carrying on of investigations, and the collection of data,
- (e) the acquisition and use of lands and properties or any interest therein,
- (f) the administration and management of the required lands, works and properties, and the business connected therewith, and
- (g) matters incidental to any matters referred to in paragraphs (a) to (f);

"water-power"
«*force hydraulique* »

"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.

R.S., 1985, c. W-4, s. 2; 2002, c. 7, s. 161.

APPLICATION

Application of Act

3. This Act applies

- (a) to all Dominion water-powers;
- (b) to all public lands required in connection with the development or working of Dominion water-powers or for purposes incidental thereto;
- (c) to all lands and properties that may be acquired or authorized to be acquired under the terms and for the purposes of this Act, or may have been acquired and are still used or may be required in connection with Dominion water-powers;
- (d) to the power and energy produced or producible from the waters on or within the lands referred to in paragraph (c), whether the power or energy derived therefrom or any portion thereof is distributed or utilized on public lands or not;
- (e) to all undertakings established or carried on in respect of any Dominion water-powers; and
- (f) to all matters incidental to any matters referred to in paragraphs (a) to (e).

R.S., c. W-6, s. 3.

GENERAL

Title to water-powers in Crown

4. (1) The property in, and the right to the use of, all Dominion water-powers are hereby declared to be vested in and shall remain in the Crown, except any rights of property in or relating to the use of Dominion water-powers that before June 6, 1919 were granted by the Crown.

For the general advantage of Canada

(2) Every undertaking under this Act is hereby declared to be a work for the general advantage of Canada.

R.S., c. W-6, s. 4.

Essential lands also remain Crown property

5. (1) Public lands

(a) on or within which there is water-power,

(b) required for the protection of any water-power, or

(c) required for the purposes of any undertaking,

and the water-powers and waters thereon shall not be open to entry, and except as otherwise provided in this Act, no interest therein shall be leased or otherwise granted or conveyed by the Crown.

Idem

(2) Any grant or conveyance made, on or after June 6, 1919, of any public lands referred to in subsection (1) or any interest therein, except in pursuance of this Act and the regulations, shall not vest in the grantee any exclusive or other property or interest with respect to those lands.

Lands adjacent to submerged areas

(3) Where small areas only of any parcel or subdivision of any public lands are required to be submerged along the bank of any stream in connection with an undertaking and 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 Minister may dispose of the parcel or subdivision in accordance with any other Act or regulation applicable to the disposal of those lands, but reserving the right at any time to raise the water surface to such elevation as may be required in connection with the undertaking.

R.S., c. W-6, s. 5.

Expropriation by Crown

6. Where any land or any interest therein is required by Her Majesty for any undertaking or is necessary for creating, protecting or developing any water-power, the Governor in Council may direct the Minister on behalf of Her Majesty to acquire by expropriation the title to that land or interest therein as may be required, and thereupon the provisions of the *Expropriation Act* in so far as applicable apply as if included in this Act.

R.S., c. W-6, s. 6.

Power to expropriate

7. (1) Any person who, pursuant to this Act or the regulations, is authorized to carry out any undertaking may, after receiving written permission from the Minister, expropriate in accordance with the *Expropriation Act* any land or interest in land, other than public lands or any interest in public lands, that may, in the opinion of the Minister, be required for the undertaking.

Notice to appropriate minister

(1.1) Where the Minister grants permission under subsection (1), the person to whom permission is granted shall so advise the appropriate minister in relation to Part I of the *Expropriation Act*.

Expropriation Act

(1.2) For the purposes of the *Expropriation Act*, land or an interest in land in respect of which the Minister has granted permission under subsection (1) is deemed to be an interest in land that, in the opinion of the appropriate minister in relation to Part I of the *Expropriation Act*, is required for a public work or other public purpose, and a reference to the Crown in that Act shall be construed as a reference to the person to whom the Minister granted permission.

Charges for services

(1.3) The appropriate minister in relation to Part I of the *Expropriation Act* may make regulations prescribing fees or charges to be paid, in respect of an expropriation referred to in subsection (1), by a person to whom the Minister has granted permission, and rates of interest payable in respect of those fees and charges.

Debt due to Her Majesty

(1.4) The fees or charges are a debt due to Her Majesty in right of Canada by the person to whom the Minister has granted permission, and shall bear interest at the prescribed rate from the date they are payable.

Security

(1.5) The Minister may require the person to whom the Minister has granted permission to provide security, in an amount determined by the Minister and subject to any terms and conditions that the Minister may specify, for the payment of any fees or charges that are or may become payable under this section.

Exception

(2) This section does not apply to lands belonging to any railway company that are used or required by the company for the purposes of its railway.

R.S., 1985, c. W-4, s. 7; R.S., 1985, c. 28 (3rd Supp.), s. 359; 1996, c. 10, s. 273.

Cancellation of entries, leases, etc.

8. (1) Where an entry, permit, lease or licence has been granted or issued, or the Crown has entered into any agreement or other form of conveyance under which public lands that are required, or any interest therein that is required, for an undertaking are occupied or held in a manner inconsistent with the carrying out of the undertaking, the Governor in Council may order and direct the cancellation of the entry, permit, lease, licence or agreement, in whole or in part, or may direct that the terms thereof be so modified as to reserve to the Crown the lands or rights in the lands that are required for the undertaking.

Compensation

(2) In every case compensation shall be paid to the permittee, entrant, lessee, licensee or party to an agreement or other form of conveyance referred to in subsection (1).

Complete cancellation

(3) In the case of a complete cancellation under subsection (1), compensation under subsection (2) shall include such sums as have been actually paid to the Crown on account of lands and expended for improvements thereon, with interest at the rate of six per cent per annum, as well as an amount to cover the estimated actual loss or damage, if any, sustained by reason of the cancellation.

Partial cancellation

(4) In the case of a partial cancellation under subsection (1), compensation under subsection (2) shall include the actual reasonable value, if any, of the lands or interest therein taken.

Minister to fix amount

(5) The Minister shall in each case fix the amount of the compensation to be paid, subject to appeal to the Federal Court.

R.S., c. W-6, s. 8; R.S., c. 10(2nd Supp.), s. 64.

Joint development of water-powers

9. Where two or more water-powers are so situated that they can be more economically and satisfactorily

utilized by being developed jointly and operated under one control, and

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

(b) if the right to develop one or more of those water-powers has been granted to or is held by any person, and the Governor in Council 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 of those water-powers, the Governor in Council may order the remaining water-power or water-powers to be reserved for such period as he deems necessary in order to secure the joint development and single control, and may authorize the Minister to enter into an agreement with the person holding the water-power or water-powers for the purposes described in this paragraph, and may prescribe the terms, conditions and covenants to be included in the agreement.

R.S., c. W-6, s. 9.

Surveys, measurements, etc.

10. (1) The Minister may direct or order

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

(b) that a survey of all streams and all necessary investigations with respect to water-powers be taken to determine the total utilized and available water-power and the maximum that 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 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; and

(e) that gauges, weirs, meters or other devices for water or water-power measurements or for measuring the output of electrical or other forms of energy be established.

Records and plans

(2) The records and plans of surveys and investigations taken under subsection (1) shall be kept on file in the Department of Indian Affairs and Northern Development, and may be published in such form and to such extent as the Minister may determine.

R.S., c. W-6, s. 10.

Free access to works, books, plans or records

11. The Minister or any person appointed by him for the purpose shall have free access, in connection with any of the matters set out in this section, 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, on, within or with respect to the 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,

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

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

and the findings of the Minister, with respect to the quantity of water stored, diverted or used, or capable of being stored, diverted or used, or the amount of power developed or capable of being developed, shall be conclusive.

R.S., c. W-6, s. 10.

Agreements with provincial authorities

12. The Minister may enter into cooperative agreements with the authorities of any of the provinces for making stream measurements, carrying on investigations, collecting and publishing data respecting water and power resources and the best methods of utilizing water and power resources.

R.S., c. W-6, s. 10.

Director of Water-Power

13. For the purposes of this Act, all investigations and surveys and all undertakings shall, subject to the control of the Minister, be under the direction of a duly qualified officer to be designated the Director of Water-Power.

R.S., c. W-6, s. 11.

ORDERS AND REGULATIONS

Powers of Governor in Council

14. The Governor in Council may make such orders as are deemed necessary to carry out the provisions of this Act and the regulations according to their true intent or to meet any cases that arise for which no provision is made in this Act.

R.S., c. W-6, s. 12.

Regulations

15. The Governor in Council may make regulations

(a) for the storage, pondage, regulation, diversion, carriage or utilization of any water for power purposes and for the protection of any sources of the water supply;

(b) for the development, transmission, distribution, sale, exchange, disposal or use of water-power on, through or over public lands or any other lands;

(c) for the construction, maintenance, operation, purchase and taking over of all works that may be deemed necessary or desirable for any of the purposes set out in this Act, whether on, through or over public lands or any other lands, and for the regulation and control, in the interests of all water users, of the flow of water that may, from time to time, pass through, by or over those works;

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

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

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

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

(h) for the construction by or at the instance of Her Majesty 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) for 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) for fixing the rentals, royalties, fees, dues or charges to be paid for the diversion, use or storage of water, for the use or occupancy of lands, or for any other privileges granted in pursuance of this Act, including charges for any additional flowage created by storage or regulation works constructed by or at the instance of Her Majesty;

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

(m) for regulating and controlling the stock and bond issues of persons establishing or conducting undertakings;

(n) for regulating and controlling the service given to the public by persons engaged in supplying water-power and for regulating and controlling the rates or charges for that service;

(o) for the appointment or the designation of the board or commission that, in any particular territory, may regulate and control stock and bond issues, service, rates and charges;

(p) for the appointment of a person to act with any existing authority constituted for the purposes of regulating and controlling the matters referred to in paragraphs (m) to (o);

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

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

(s) for the construction, maintenance and operation by the Minister of any undertaking on public lands; and

(t) generally, for carrying into effect the purposes and provisions of this Act.

R.S., c. W-6, s. 12.

