



Enabling Statute: [Dominion Water Power Act](#)

Dominion Water Power Regulations (C.R.C., c. 1603)

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Regulation current to June 5th, 2007

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

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Dominion Water Power Regulations

C.R.C., c. 1603

DOMINION WATER POWER ACT

Dominion Water Power Regulations

REGULATIONS RESPECTING DOMINION WATER-POWERS

SHORT TITLE

1. These Regulations may be cited as the *Dominion Water Power Regulations*.

INTERPRETATION

2. In these Regulations,

"actual construction" includes

- (a) any necessary and authorized work carried on in pursuance of these Regulations,
- (b) engineering investigations and reports,
- (c) the clearing of lands,
- (d) the construction of roads or railways,
- (e) stream improvements, and
- (f) other essential work undertaken solely in the construction of works authorized and not used independently as a source of profit,

but does not include

- (g) promotion work,
- (h) the underwriting, sale or disposal of stocks and bonds, or
- (i) general administrative or directive functions exercised at some distance from the scene of operations;
(*construction réelle*)

"actual cost" of any development of works includes

- (a) the actual legitimate cost of such development or works in use and useful for the purposes of the

undertaking at the time that any particular inquiry is being made,

(b) the cost of engineering services appertaining to the construction of such development and works,

(c) interest during construction,

(d) taxes and insurance during construction,

(e) contractor's profit,

(f) the purchase of equipment,

(g) the cost of roads, railways, clearings or other essential works undertaken and carried on solely in the construction of such development or works and not independently profitable, and

(h) such other expenditures as are necessary and inherent items of construction,

but does not in any case include

(i) promotion expenses,

(j) the cost of underwriting, selling or disposing of stocks and bonds, or

(k) head office and other expenditures relating to general administration exercised at some distance from the development or works which are not necessary and inherent parts of the construction expenditures; (*coût réel*)

"Department" means the Department of Indian Affairs and Northern Development; (*ministère*)

"Director" means the Director of Water-Power, who shall be the Chief of the Water Resources Division of the Department or such other person designated by the Minister; (*directeur*)

"final construction plans" means the plans of the power development or power system as actually constructed, and in every case includes plans of the lands as finally occupied to conform with sections 10 and 17; (*plans définitifs de construction*)

"final licence" means a licence authorizing the diversion, use or storage of water for power purposes, or the transmission and distribution of water-power; (*concession définitive*)

"general construction plans" means the plans of the works that are required to be approved by the Director before the interim licensee is permitted to commence the construction of the power development; (*plans généraux de construction*)

"general layout plans" means the plans that are required to be filed by the applicant before an interim licence may be issued; (*plans d'ensemble*)

"independent works" means all works and plants outside of the power system that may be classed as tributary to independent undertakings of the licensee and not to the undertaking authorized; (*ouvrages indépendants*)

"initial development" means such portion of the power or storage development as is specified in the interim licence as being required to be constructed before a final licence may be issued; (*premier aménagement*)

"interconnected systems" means the power system and all plants and works connected therewith, related thereto, interdependent upon it and similarly used in the generation, transmission and distribution of electrical energy; (*réseaux conjugués*)

"interim licence" means a licence authorizing the preparation of general construction plans and the construction of works in pursuance of such plans; (*concession intérimaire*)

"Minister" means the Minister of Indian Affairs and Northern Development; (*ministre*)

"power development" includes

- (a) the physical structures within the severance line required for the storage or use of the stream-waters, for the production of power therefrom, and for the transmission thereof,
- (b) the dams or other diversion works, the powerhouse, the conduits conducting water thereto and the transmission lines within the severance line,
- (c) all hydraulic or electrical machinery, appliances, fixtures, equipment and appurtenances,
- (d) lands and rights-of-way required in connection therewith, and
- (e) the clearings, roads, trails and railways required to be constructed that are still used and useful in connection therewith and not independently profitable; (*aménagement de force hydraulique*)

"preliminary sketch plan" means the preliminary plan or sketch filed by the applicant with his initial application; (*croquis préliminaire*)

"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; (*terres publiques*)

"severance line" means the dividing or boundary line that separates those lands, works and properties used or useful in connection with the undertaking and that are considered to be essential to the power or storage development from other lands, works and properties used or useful in connection with the undertaking but not considered to be essential to the development; (*ligne séparative*)

"storage development" includes

- (a) the physical structures within the severance line required for the storage of the stream-waters for the production of power,
- (b) the dams or other storage works, the intakes and water conduits within the severance line,
- (c) all hydraulic or electrical machinery, appliances, fixtures, equipment and appurtenances,
- (d) lands and rights-of-way required in connection therewith, and
- (e) the clearings, roads, trails and railways required to be constructed that are still used and useful in connection therewith and not independently profitable; (*aménagement d'emmagasinage*)

"system" or "power system" means all lands, structures and appurtenances required to complete the undertaking authorized, including the power development, works, reservoirs, transmission lines, distribution works, auxiliary steam or other fuel plants, the lands required to be occupied, clearings, roads and railways in so far as required in connection with the power development, and all mills, buildings, machines, appliances, fixtures, equipment and appurtenances required in connection therewith; (*réseau ou réseau de distribution d'énergie*)

"works" , with reference to any power development, power system or undertaking, means all the physical structures, devices, equipment, appliances, appurtenances and things authorized or required to be constructed, maintained or operated by the applicant or licensee in respect of such power development, power system or undertaking. (*ouvrages*)

APPLICATION

3. (1) An application for a licence to divert, use or store water for power purposes may be made to the Director and shall contain the following information:

- (a) the name, address and occupation of the applicant;
- (b) the name or a clear description of the river, lake or other watercourse from which the water is to be diverted or used;
- (c) the place where the water is to be diverted from or in the said watercourse, referred if possible to an established monument of the existing system of land surveys, and the place where the water is to be returned or released;
- (d) the maximum quantity of water, expressed in cubic feet per second, which it is estimated will be ultimately diverted or used under the licence applied for;
- (e) the estimated average head in feet which will be available for the production of power according to the plan of development proposed;
- (f) the estimated minimum amount of energy expressed in horsepower that will be developed on the turbine shaft within five years from the date of the application or within such other period as the applicant may state to be required for the completion of his initial development;
- (g) the maximum amount of energy expressed in horsepower which it is estimated will ultimately be developed on the turbine shaft from the waters for which application is made;
- (h) a brief statement with respect to the character and extent of all principal works the applicant proposes to construct;
- (i) in respect of each dam involved, its approximate maximum length and height, its proposed type and the material to be used in its construction;
- (j) where storage is involved, the location of each lake, basin or other place in which the applicant wishes to store water;
- (k) for each storage reservoir, the approximate number of acres of land the applicant proposes to flood, the approximate area in acres of the surface of the reservoir when filled, the estimated vertical storage range in feet, and the total capacity of storage contemplated in acre-feet; and
- (l) a reasonably accurate description and the acreage of the lands required for occupation or use in the construction, maintenance or operation of the proposed works, noting separately lands required for rights-of-way and lands that are to be flooded
 - (i) within public lands,
 - (ii) within provincial Crown lands, and
 - (iii) within privately owned lands.

(2) An application for a licence shall be accompanied by

- (a) a preliminary plan or sketch, with scale so selected as to show upon a single sheet the entire project applied for, with the approximate location of all the principal works and lands referred to in paragraph (1)(l);
- (b) a description of and a sketch showing the nearest neighbouring works or structures completed or in course of construction, both above and below the place of the proposed diversion, for diverting or using water for any purpose from the same source of supply and the approximate distance and direction of each such works from the proposed works;
- (c) the names and locations of any other works or structures, including bridges, railways and canals, that might affect or be affected by the construction, maintenance or operation of the proposed works;
- (d) the approximate discharge in cubic feet per second at or near the place of diversion of the river, lake or other source from which the water is to be diverted at high, medium and low water stages, respectively,

together with copies of any existing measurements of the flow of the stream in the applicant's possession and a reference to all other such measurements of which the applicant has knowledge; and

(e) a brief outline of the undertaking in respect of which the licence is desired, including the use to which the power is to be applied, any sale, delivery or transfer thereof to other than the applicant that is contemplated, the territory, if any, within which such sale, delivery or transfer is to be exercised, the probable demand for power within such territory and an estimate of the capital cost of the entire undertaking.

(3) Where the applicant is an incorporated company, the application, in addition to the information required by subsections (1) and (2), shall contain

(a) the names of the directors and officers of the company and their places of residence;

(b) the address of the head office of the company in Canada;

(c) the amount of capital authorized, subscribed, and paid-up, specifying in regard to paid-up capital, the amount paid in cash and the manner of payment for the balance;

(d) the proposed method of raising further funds, if required, for the construction and operation of the proposed works; and

(e) a copy of the special act of incorporation or the memorandum of association.

(4) Where the applicant is a municipality or municipal district, the application, in addition to the information required by subsections (1) and (2), shall contain

(a) the location, area and boundaries of the municipality or district;

(b) the approximate number of inhabitants in the municipality or district;

(c) the present indebtedness and the borrowing limit of the municipality or district;

(d) a certified copy of any by-law or resolution passed by the municipality or district respecting the application or the undertaking to which the application relates; and

(e) a certified copy of any enabling Act or other statutory provision authorizing the municipality or district to engage in the proposed undertaking.

(5) All elevations given in connection with the plans or other information filed by any applicant shall be referred, if feasible, to mean sea-level datum.

(6) An applicant, when requested so to do by the Minister, shall file an affidavit setting forth such facts as may be required in respect of his financial standing and his ability to carry out the proposed undertaking.

(7) The Director may, at any time while an application is pending, notwithstanding any other requirement of these Regulations, require such additional plans, descriptions, measurements, specifications or other data, whether related directly or indirectly to the proposed works and undertaking, as he considers necessary, and those plans, descriptions, measurements, specifications or data shall be furnished by and at the expense of the applicant.

PUBLICATION AND HEARINGS

4. (1) Upon request in writing from the Director, an applicant shall, at his own expense, publish a notice of the application in at least one issue of the *Canada Gazette* and in one or more issues of such other publications as the Director may specify.

(2) The notice shall be marked at the top in plain letters "Dominion Water-Power Application", shall be in a form approved by the Director, and shall give substantially the following information:

(a) the name and address of the applicant;

- (b) the date of application;
- (c) the name or a clear description of the source of water supply;
- (d) a clear description of the place of diversion;
- (e) the maximum horsepower capacity of the proposed plant;
- (f) the nature of the undertaking and utilization of the power;
- (g) a statement that the application has been filed with the Director, and that protests or objections may be filed by any interested party with the Director or at certain designated local points;
- (h) when storage or pondage of water is contemplated, the place of storage, the capacity of the intended reservoir, and a general description of the lands that are to be flooded; and
- (i) such other information as the Director may require.

(3) An applicant shall file proof of publication of the notice in the form of an affidavit, made by a person having knowledge of the publication, to which shall be attached a copy of the notice as published.

(4) Following the completion of publication of the notice, a period of 30 days shall be allowed in which protests or objections may be filed with the Director.

(5) Where a protest or objection is filed within the period specified in subsection (4), or when for other reasons, the Minister considers that a hearing should take place before action is taken, he shall designate a time and place for the hearing and shall name a person to preside over and conduct the hearing.

(6) The hearing may be adjourned from time to time, and the applicant may be permitted for the time being to continue the preparation of his plans and the carrying on of investigations.

(7) The person conducting the hearing shall report his findings and recommendations in writing to the Minister, and the Minister may in his discretion reject the application if he deems it necessary in the public interest.

SURVEY PERMIT

5. (1) Subject to subsection (3), the Director may issue to an applicant a survey permit empowering the applicant during the period stated therein, which shall not exceed three years, to enter upon any public lands without other licence therefor, and upon the lands of any person for the purpose of making such surveys and investigations as may be necessary for the preparation of his general layout plans, but for no other purpose, and the applicant shall, in making such surveys and investigations, do as little damage as possible, and shall make full compensation to all persons sustaining damage.

(2) The issuance of a survey permit does not give the applicant any priority over other applicants for the development of any water-power, or any special claim or right in respect of the water-power.

(3) The applicant shall furnish such security as the Director may require for the payment of any sums that may be subsequently awarded for any damage caused by the applicant in making any surveys and investigations authorized under these Regulations.

GENERAL LAYOUT PLANS

6. (1) An applicant shall file his general layout plans with the Director by such date as is specified by the Director.

(2) The general layout plans and data shall be such as will enable the Director to determine whether

- (a) the proposed works are of suitable design to accomplish the purpose intended,

(b) the proposed development is in general accord with the most beneficial utilization of the resources of the stream in Canada, and

(c) the proposed undertaking is feasible and practicable and in the public interest,

and such plans shall further conform to any requirements of the Director not inconsistent with these Regulations.

(3) The general layout plans and specifications shall

(a) be based on actual and thorough surveys and investigations on the ground;

(b) be in sufficient detail to enable the Director to determine exactly what is proposed to be done by the applicant;

(c) show the position of the proposed works with reference to surrounding objects so that the exact scope of the project may be readily ascertained and located; and

(d) show what provisions are being made for navigation, logging and other interests.

(4) When the Director is of the opinion that further information and plans are necessary before an interim licence is issued, he may request the applicant to furnish additional information and plans.

(5) Plans or maps shall in every case show the location and area of the lands that are required to be occupied, used or flooded in connection with the proposed works.

(6) Elevations wherever feasible shall be related to mean sea-level datum.

PRIORITY PERMIT

7. (1) Where the applicant has completed satisfactorily the submission of such of the information required by section 3 and has supplied such of the plans and specifications as will satisfy the Minister that

(a) the proposed development is in general accord with the most beneficial utilization of the stream waters,

(b) the proposed undertaking is feasible and practicable and in the public interest, and

(c) the applicant has the requisite financial ability to carry the project to a successful consummation,

the Minister may issue to the applicant a priority permit which shall give the applicant priority over other applicants in the consideration of his general layout plans if filed within the time specified in the permit.

(2) In granting a priority permit the Minister may give preference to an application by a province, municipality or municipal district where he considers such preference to be in the public interest.

(3) No priority permit shall be construed as binding the Minister to issue an interim licence, giving the applicant any exclusive claim or right, or relieving the Minister from considering other possible schemes for the development of the site, if there is reason to believe that they may result in a more beneficial utilization of the natural resources or be otherwise in the public interest.

(4) A priority permit shall be effective for a period not to exceed one year but may be renewed.

(5) No extensions of time to a priority permit shall be granted unless it is shown to the satisfaction of the Minister by statutory declaration by the applicant, and otherwise, that the applicant has promptly and diligently continued the surveys and preparation of the plans in good faith, and has been prevented by causes beyond his control, other than the want of funds, from completing the plans within the time fixed, but the applicant shall not be given an extension of more than one year from the expiry of the time originally fixed.

(6) If the plans and information required are not completed and filed before the expiration of the initial period of the priority permit or of any extension thereof, the applicant's priority shall lapse.

INTERIM LICENCES

8. (1) The Minister, where he considers it advisable, may issue to the applicant an interim licence for the carrying out of the proposed development when he is satisfied that

- (a) the proposed works are of suitable design to accomplish the purpose intended;
- (b) the proposed development is feasible and practicable and is in accord with the most beneficial utilization of the resources of the stream; and
- (c) it is the best possible development in the public interest for which the site may be used, consideration being given to both present conditions and future requirements.

(2) An interim licence shall contain

(a) the times and manner of payment and the rates or amounts to be paid during the life of the interim licence as rentals or royalties for

(i) lands occupied, and

(ii) waters used for which the rental is based on the horsepower capacity of the installation in place or placed during the year but shall not be at a rate less than \$0.75 per year per installed horsepower; and

(b) such other terms and conditions, subject always to these Regulations, as may be imposed by the Minister.

(3) Every interim or final licence shall

(a) be deemed to incorporate and shall be subject to the provisions of the regulations in force at the time of the issue of and in so far as applicable to that interim or final licence;

(b) be subject to such other stipulations, provisos and conditions, not inconsistent with these Regulations, as the Minister may impose; and

(c) be subject to amendments to, changes in or additions to these Regulations made during the term of such licence that are not inconsistent with the rights and privileges granted under the licence.

GENERAL CONSTRUCTION PLANS

9. (1) An interim licensee shall file his general construction plans and specifications with the Director within the time specified in the interim licence.

(2) The plans and specifications filed by an interim licensee shall be such as would be required for submission to construction contractors for the purpose of receiving tenders and shall be in sufficiently advanced form to satisfy the Director.

PLAN OF LANDS

10. (1) An interim licensee shall, at a time fixed by the Director, supplement the general construction plans of the works by a plan of lands from an actual survey by a Canada Lands Surveyor acting under instructions from the Surveyor General of Canada.

(2) A plan of lands shall be certified by a Canada Lands Surveyor and shall show and describe by section, township and range or lot number if in surveyed territory, or by other accurate description if in unsurveyed territory, the lands that are required to be occupied or used in the construction, maintenance and operation of the proposed works, noting separately,

(a) public lands not covered by water required for main diverting works, powerhouses and other similar

works;

(b) public lands covered by water required for the purposes referred to in paragraph (a);

(c) public lands required only to be flooded in connection with the storage or pondage of water;

(d) public lands required only for rights-of-way for water conduits, transmission lines and other similar works;

(e) public lands, if any, required for substations, distributing stations, terminal stations and other similar buildings;

(f) provincial Crown lands; and

(g) privately owned lands.

(3) The plan of lands shall be accompanied by a statement giving, with respect to each parcel of privately owned lands, the name of

(a) the registered owner in fee thereof;

(b) any registered mortgagee or lessee; and

(c) any claimant in actual possession other than a registered owner, mortgagee or lessee.

(4) When required by the Director, the surveys and investigations required by this section shall be made by the Legal Surveys Division of the Department of Energy, Mines and Resources and in such case an interim licensee shall reimburse Her Majesty for all salaries and expenses paid for such surveys upon the presentation to the interim licensee of accounts properly certified.

1998, c. 14, s. 101(F).

APPROVAL OF PLANS

11. (1) The Director shall examine the general construction plans and specifications of the works and the plan of lands, and shall report thereon to the Minister.

(2) The Director shall notify the interim licensee in writing whether the plans have been approved subject to conditions, or have been rejected and the interim licence cancelled.

(3) Approval or non-approval of any plans shall neither incur the responsibility of the Crown nor relieve the interim licensee from the consequences that may result from the construction of the works, from imperfections in departmental requirements, or from the operation of the works.

COMMENCEMENT OF CONSTRUCTION

12. (1) An interim licensee shall not commence the actual construction of the proposed works until he is notified by the Director that the general construction plans and specifications of such works have been approved either with or without conditions.

(2) The Minister, prior to the approval of the general construction plans, may in his discretion grant permission to an interim licensee to carry on preliminary construction operations such as the clearing of sites for structures, the clearing of land that will be flooded, or any other work other than the actual construction of the permanent works.

(3) Permission granted to an interim licensee under subsection (2) shall be without prejudice with respect to action by the Minister on the general construction plans or otherwise.

(4) Within six months after receiving notification that the plans have been approved, an interim licensee shall commence the construction of the works and shall thereafter without interruption, other than want of funds, carry on and complete the construction according to the plans and specifications as approved, and subject to

the terms of the interim licence and of these Regulations.

GUARANTEE DEPOSIT

13. (1) Within 60 days after being notified in writing by the Director of the approval of the general construction plans and specifications, an interim licensee shall, for the purpose of guaranteeing the performance and fulfilment by the interim licensee of the terms and conditions of the licence, forward to the Director for deposit with the Department of Finance,

(a) a guarantee deposit computed, in the case of a power undertaking, upon the horsepower capacity of the site as determined by the Director according to the following scale:

- (i) up to 1,000 h.p. \$2.00 per h.p.
- (ii) the next 9,000 h.p. 1.00 per h.p.
- (iii) all over 10,000 h.p. 0.50 per h.p.

(b) a guarantee deposit computed, in the case of a storage undertaking, upon the estimated cost of the storage development as determined by the Director according to the following scale:

- (i) five per cent on the first \$100,000 of estimated cost,
- (ii) 2 1/2 per cent on the next \$900,000 of estimated cost,
- (iii) one per cent on the amount above \$1,000,000 of estimated cost.

(2) A guarantee deposit required under this section shall not exceed \$50,000 and shall be in one or more of the following forms:

(a) a certified cheque drawn on a bank incorporated under the *Bank Act* or the *Quebec Savings Banks Act*,

(b) bonds of the Government of Canada or of a company included in the "National Railways" as defined in the *Canadian National Railways Capital Revision Act, 1952*, unconditionally guaranteed as to principal and interest by the Government of Canada where such bonds are

- (i) payable to bearer,
- (ii) hypothecated to the Minister of Finance and Receiver General in accordance with the provision of the *Domestic Bonds of Canada Regulations*, or
- (iii) registered in the name of the Minister of Finance and Receiver General.

(3) A guarantee deposit may be refunded by the Minister to an interim licensee as the actual construction work progresses, the first, second and third quarters thereof to be refunded when one-quarter, one-half and three-quarters, respectively, of the initial development have been satisfactorily completed, the fourth quarter to be refunded when the final licence is issued.

(4) An interim licensee shall furnish to the Director, in the form of a statutory declaration or otherwise as may be required, evidence of satisfactory progress in the works to the stage that is required by the terms of his interim licence.

(5) The Minister is the final arbiter of the satisfactory completion of the first quarter of the initial development.

(6) Where an interim licensee has complied with all requirements in filing general construction plans, but the plans are rejected and the interim licence cancelled, the guarantee deposit shall be refunded upon application therefor, and the Minister may make such provision as he deems just for compensating the interim licensee for the plans where they prove to be valuable in connection with the disposition that is eventually made of the power site.

(7) Where an interim licensee fails to comply satisfactorily with the terms of his interim licence, the guarantee deposit, or such part thereof as the Minister may determine, shall be forfeited to the Crown.

RIGHTS IN LANDS UNDER INTERIM LICENCE

14. (1) Only such interim rights of entry upon or of the use or occupation of any public lands shall be acquired in virtue of any interim licence as may, in the opinion of the Minister, be necessary for the purpose of making surveys, preparing plans, constructing works and otherwise carrying out the terms of the licence, and in no case shall the rights granted by any interim licence be construed to interfere in any way with any interest in public lands previously disposed of by the Crown.

(2) From time to time, as plans and information are filed showing the extent and scope of the works and the undertaking of an interim licensee with greater precision than was possible at the time the interim licence was executed, and pending the execution of the final licence, the Minister may designate, allot, amend or limit the areas of the lands which the interim licensee is permitted to enter upon, use or occupy, and the Minister's decision is final.

(3) When the general construction plans are approved, or as nearly thereafter as is feasible, the Minister shall designate in writing the lands in respect of which the powers of expropriation conferred by the *Dominion Water Power Act* may be exercised, but an interim licensee shall not exercise such powers of expropriation until the lands are so designated.

CHANGE IN PLANS

15. Before making any material change in the general construction plans as approved, or in the works constructed or under construction under the licence, or in the location thereof authorized, an interim licensee shall submit to the Director a complete and satisfactory statement and plans of such proposed change and shall not proceed therewith until authorized to do so.

INSPECTION AND REPORTS

16. (1) The Minister, the Director, or any person authorized by either of them, may at any time enter and inspect the lands occupied or the works being constructed by an interim licensee,

(a) for the purpose of ascertaining whether the terms and conditions of the interim licence are being satisfactorily carried out by the interim licensee, and in particular whether the construction of the works is in accordance with the plans and specifications approved pursuant to section 11, and

(b) for the purpose of checking and taking note of construction-cost data,

and shall be given access to all records in the possession of the interim licensee or of any contractor or subcontractor engaged on construction of the works.

(2) When he considers an undertaking of sufficient importance, the Director may place a qualified inspecting engineer on the works during construction and, where the Minister considers it necessary, he may retain a consulting engineer for advice in connection with the plans or works of an interim licensee.

(3) An interim licensee shall reimburse Her Majesty in right of Canada for all sums paid for salaries and expenses in respect of an undertaking on behalf of the inspecting engineer referred to in subsection (2), within 30 days after receipt of a statement of the sums so paid to a specified date being submitted to the licensee by the Director.

(4) In like manner, a licensee may also be required, at the discretion of the Minister, to reimburse Her Majesty in right of Canada for all or part of sums paid for fees and expenses of the consulting engineer referred to in subsection (2).

(5) An interim licensee shall comply with all reasonable written instructions of the inspecting engineer regarding the construction of all works in accordance with the plans and specifications approved pursuant to section 11, and in case of dispute regarding the reasonableness of such written instructions, or regarding the requirements of the plans and specifications, the Minister's decision is final.

(6) Where an interim licensee does not comply with the written instructions of an inspecting engineer, the Minister may order the interim licensee to suspend all operations in respect of the works until the Minister gives

instructions to resume operations, and in the case of continued refusal by the interim licensee to comply with the written instructions, the Minister may cancel the interim licence.

(7) An interim licensee shall submit such reports of progress during construction of the works as the Director may from time to time require.

FINAL CONSTRUCTION PLANS

17. (1) Within 90 days after the completion of the initial development in accordance with the general construction plans or with any authorized changes therein, and within 90 days after the completion of any additional unit of the power development or of the power system, an interim licensee shall file with the Director copies of the final construction plans.

(2) The final construction plans, together with drawings and specifications accompanying them, shall show

(a) the works as actually constructed in such detail as would be required to be given to construction contractors for the purpose of constructing the works; and

(b) the precise areas of lands occupied as required by section 10.

PLANS AND SPECIFICATIONS

18. (1) All plans required to be filed shall be on tracing linen and cut to a uniform size of 20 by 17 or 30 by 26 inches and shall satisfy the requirements of the Director.

(2) All specifications shall be either printed or typed.

(3) All plans except the plans referred to in section 3 and all specifications shall be signed by a professional engineer of recognized standing in Canada satisfactory to the Director.

FIXATION OF CONSTRUCTION COSTS

19. (1) Upon completion of the initial development including any substantial addition thereto or any additional lands or rights-of-way acquired within the severance line, a sum shall be fixed by the Minister that, in conformity with these Regulations, shall represent the actual cost of the development.

(2) A final licence shall not be issued to an interim licensee until he has fully complied with the requirements of this section and sections 17 and 18 in so far as they relate to the completion of the initial development.

(3) For the purpose of determining whether an interim licensee's progress in constructing works has been sufficient to comply with the terms of his interim licence and of these Regulations, or for determining whether any part of the interim licensee's guarantee deposit is repayable or for any other purpose, but not oftener than once in a calendar year, the Minister may require that the actual cost shall be established of such part of the initial development as has been constructed to a certain date.

(4) For the purpose of establishing the actual cost of a part of an initial development under subsection (3), an interim licensee shall promptly submit all figures and data in his possession, and a sum shall be fixed to represent the cost of that part of the initial development in the manner referred to in subsection (1) for fixing the cost of the entire initial development.

(5) No part of an interim licensee's guarantee deposit claimed to be repayable under subsection 13(3) shall be refunded until the licensee fulfils all the requirements of this section.

OPERATION UNDER INTERIM LICENCE

20. (1) Where the works are put into operation before the issuance of the final licence, an interim licensee shall, pending the issuance of such final licence and until otherwise agreed upon, maintain and operate the works to the satisfaction of the Director and shall at no time raise or permit to be raised the level of the waters of any river, lake or other body of water higher than the elevation to be fixed from time to time by the Director, and shall abide by all regulations which may from time to time be promulgated by the Minister for the control of the

flowage of any waters for general conservation purposes.

(2) From the date of the initial production of power from the development until the date set in the interim licence for the completion of the initial development, an interim licensee shall pay rental for water used in the production of power at the rates set out in the interim licence.

(3) From the date set in the interim licence for the completion of the initial development, an interim licensee shall pay rental for water used in the production of power at the rates set out in subsection 30(7).

(4) In addition to any obligations specifically imposed upon interim licensees, every interim licensee shall, in so far as his position for the time being is similar to that of a final licensee, observe and comply with all the provisions of these Regulations applicable to final licensees with respect to the use and occupancy of public lands and waters, the maintenance and operation of his works and the carrying on of his undertaking.

AMENDING INTERIM LICENCE

21. Subject to these Regulations,

(a) the terms of any interim licence may be amended by a supplementary licence, and

(b) the plans and specifications previously approved may be amended with the consent in writing of the Minister,

but any such amendment shall affect only the portion specifically covered in that supplementary licence or writing, and shall not operate to alter or amend or in any way whatever be a waiver of any other part, condition or provision of the original interim licence.

EXTENSION OF TIME

22. (1) Where, by reason of engineering difficulties that could not reasonably have been foreseen or by other peculiar or special causes beyond his control other than the want of funds, an interim licensee has been prevented from

(a) filing general construction plans,

(b) commencing construction,

(c) expending sums required to be expended within any stated period, or

(d) completing the initial development,

the Minister may grant an extension of time for completing those requirements.

(2) The maximum extension that may be granted for the filing of general construction plans, for the commencement of construction work or for the expenditure of the sums required in an interim licence within the first and second years of the construction period, or within such other stated times as are specified in the interim licence, is 12 months.

PENALTIES FOR DEFAULT BY INTERIM LICENSEE

23. (1) The Minister shall cancel an interim licence when the interim licensee fails

(a) to file satisfactory general construction plans within the time required;

(b) to commence the actual construction of the initial development in good faith within the time specified; or

(c) to make substantial and satisfactory progress in the first year of the period allowed for the construction of the initial development.

(2) Where an interim licensee has in large part satisfactorily performed the requirements of his licence but fails

(a) to expend on the initial development, within any of the stated periods set out in his interim licence, the amount required by that licence to be so expended,

(b) to complete the initial development within the time specified, or

(c) to comply with any other term or condition of his interim licence or of these Regulations,

after 60 days notice has been given to the licensee and he has been given an opportunity to be heard, the Minister may cancel the interim licence or take such other action or make such order as in his opinion and subject to these Regulations is suitable.

(3) Where an interim licence is cancelled under subsection (2), the interim licensee may be granted a new interim licence in priority over all other applicants for the development of the site, but the new licence shall date from the date of the original interim licence, and shall in all other respects be made subject to and shall be deemed to incorporate, in so far as applicable, the provisions of these Regulations.

(4) Where an interim licence is cancelled by the Minister under this section but, in the opinion of the Minister, the interim licensee is entitled to compensation for any works constructed on public lands or for any plans filed by him in pursuance of his interim licence, the Minister, with the approval of the Governor in Council, may make such order for payment of compensation as he considers just.

(5) In computing the amount of compensation to be paid under subsection (4), the Minister shall consider the damage to the public interest by reason of the default or failure of the interim licensee, and the compensation, if any, shall not exceed the actual cost of the works or plans determined in accordance with section 19 or the compensation that would be determined by applying the principles set out in subsection 28(2).

(6) Where an interim licence is cancelled under this section and the interim licensee is not granted a new interim licence, the Minister may make any disposition of the public lands and the works thereon formerly occupied or constructed by the interim licensee pursuant to the terms of his interim licence, as the Minister may deem suitable.

(7) Where an interim licence is cancelled under this section, the rights of Her Majesty in respect of the possession, occupation and use of any lands, works, structures, equipment or properties, other than public lands and works located thereon, owned or held by the interim licensee and used or occupied in connection with the undertaking to which the interim licence relates, and the compensation to be paid for any such lands, works, structures, equipment and properties, shall be determined in accordance with section 28.

COMPLETION OF INITIAL DEVELOPMENT

24. (1) As soon as an interim licensee has completed his initial development and has otherwise fulfilled the terms of the interim licence, he shall file in the office of the Director written notice of such completion and fulfilment.

(2) Subject to subsection (3), the Director shall have an inspection and if necessary a survey made of the works constructed or used and of the lands and waters used or occupied in connection with the undertaking.

(3) Where the Director deems inspection unnecessary, he may require the interim licensee to file, not later than 60 days after the expiry of the time fixed for completion of the initial development, proof of the completion and fulfilment of the terms of the interim licence, in the form of a statutory declaration satisfactory to the Director.

(4) Upon compliance on the part of the licensee with the requirements of this section, the Director shall determine a date that, for the purposes of these Regulations, shall be the date of completion of the initial development.

ISSUANCE OF FINAL LICENCE

25. (1) Upon completion of the initial development according to the plans previously approved and upon

fulfilment of and compliance with all the terms and conditions of his interim licence and of such of the provisions of these Regulations as are applicable, an interim licensee shall be entitled to the issue of a final licence authorizing the diversion, use or storage of water for the development of energy therefrom, for the utilization of such energy, and for the occupation or use of public lands that, in the Minister's opinion, are required for the proper maintenance and operation of the works.

(2) The Minister may issue a final licence in the form of two or more separate indentures, covering the rights granted in respect of the diversion and use of the waters and the occupation and use of the lands that are to be granted but, where such separate indentures are issued, they shall be executed concurrently and the terms and conditions of each indenture shall be deemed to be incorporated in all indentures, and non-compliance with any term or condition in any such indenture shall be taken to be non-compliance with the terms and conditions of all indentures.

(3) Upon the issue of a final licence, all rights held and obligations assumed under the interim licence shall cease and determine.

(4) A final licence shall contain

(a) the rates or the amounts of the annual rentals payable during the first term of the licence for

(i) water used or stored, which shall be at the rates set out in subsection 30(7),

(ii) land occupied, and

(iii) any other privilege granted; and

(b) such other terms and conditions as the Minister may impose.

TERM OF LICENCE

26. (1) The Minister may issue a final licence for a term not exceeding 50 years from the date fixed in the original interim licence for the completion of the initial development.

(2) Where a final licence has been in effect for 30 years and upon 12 months' notice having been given to the licensee by the Minister, Her Majesty may take possession of the works, lands and properties of the licensee, paying compensation therefor in accordance with the principles set out in sections 28 and 29.

(3) In determining the value of the power development, the Minister may add to the amount determined in accordance with subsection 28(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 but in no case shall such bonus be less than five per cent of such amount.

(4) In valuing works and lands outside the severance line, the Minister may, as provided in section 29, increase the bonus referred to in subsection (3) to an amount not exceeding 20 per cent of the physical value of the works or of the actual cost of the lands.

27. (1) Not less than four nor more than six years prior to the termination of any licence, the licensee may apply in writing for an extension of rights held under such licence, and applications may also be filed with the Director by other persons looking to the future utilization of the site to which the licence applies.

(2) Any application under subsection (1) shall be in such form and contain such statements and information as will satisfy the laws and regulations then in force, and an application for renewal by a licensee shall be accompanied by a suitable undertaking on the part of the licensee that he will comply with all those laws and regulations.

(3) Upon filing an application for the renewal and undertaking referred to in subsection (2), a licensee will be given preference over other applicants for a licence to use and occupy the waters and lands set out in his licence during a further term, if 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 Minister and his proposed use and development of the site is at least as desirable in the public interest as that of any other applicant.

(4) Within the four-year period immediately preceding the termination of any licence and after such public hearing as the Minister may deem necessary, but subject always to the laws and regulations then in force, the Minister shall determine, in view of all applications then pending for the future occupation and use of the waters and lands connected with the power development, including the applications for renewal, if any, of the licensee,

what future disposition shall be made of those waters and lands.

(5) Where a disposition of the waters and lands referred to in subsection (4), other than a licence to the licensee for a further term, is decided upon, the Minister shall give the licensee not less than three years notice in writing (hereinafter called "notice of termination") that from and after the expiry of his licence or from and after such subsequent date as is fixed by the Minister, all further rights of the licensee in respect of the occupancy and use of the waters and lands shall terminate; and thereupon from and after such expiry, or from and after such subsequent date, as the case may be, all further rights of the licensee shall absolutely cease and terminate without further proceeding.

COMPENSATION FOR WORKS AND LANDS

28. (1) Upon the expiry of the final licence or upon the expiry of the time fixed in the notice of termination, as the case may be, a power development shall become the property of the Crown 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 power development.

(2) The Minister shall compute the compensation for a power development on the basis of the figure previously fixed in accordance with section 19 as the actual cost of the development, adjust this figure so as to make allowance for any variation in the purchasing power of the dollar as shown by the official trade index or other official statistics most applicable to the case, and deduct an amount equivalent to the actual loss in value of the works due to their physical or functional depreciation or to other causes.

29. Where it is desired to take over works and lands that are outside the severance line but within the power system, the Minister,

(a) in determining the compensation to be paid for those works,

(i) shall fix a sum that represents their physical value by

(A) considering either first cost, replacement cost or any other similar criteria that will enable him to arrive at the physical value of the works, and

(B) excluding good will, going concern, franchise value, severance damages and any intangible elements of a like nature, and

(ii) may add to the sum representing their physical value an amount not exceeding 10 per cent thereof for the purpose of covering such severance damages as is deemed just;

(b) in determining the compensation to be paid for those lands,

(i) shall take as the basis of such compensation the amount previously established as their actual cost in accordance with section 19,

(ii) shall make an allowance for the variation in the purchasing power of the dollar, and

(iii) may, in his discretion, add to the result so determined a bonus not exceeding 10 per cent thereof to cover such severance and other intangible values as is deemed proper to allow under the circumstances.

RENTALS FOR THE USE OF WATER

30. (1) Rental for water used in the production of power, (hereinafter referred to as "rental"), is payable annually in arrears, commencing with the date of initial production of power from the development, or from the date fixed in the original interim licence for the completion of the initial development if power has not been produced prior to such date, whether the initial development has been completed or not and notwithstanding any extensions of time granted.

(2) On or before March 1st in each year, every licensee shall submit a report to the Director in respect of his use during the previous calendar year of water for the production of power, and the Director shall determine the rental payable for such use and shall demand payment of such rental from the licensee.

(3) If a rental is not paid within 60 days from the date of demand, 10 per cent of the amount of the rental shall be added thereto and the total amount shall bear interest compounded annually at eight per cent from the day of expiry of the 60-day period.

(4) The rental, together with the 10 per cent added by way of penalty and interest, shall be the first lien or charge upon the water-power development, property assets, rents and revenues of a licensee, and the production of a written statement by the Minister of the sums so payable shall be *prima facie* evidence of such debt.

(5) Where any rental remains unpaid for more than one year after demand by the Director, the rental shall again be demanded and, if not paid within 60 days after such demand, the Minister may take such action as he deems necessary.

(6) The acceptance of rental in any case shall not be, or be deemed to be, a waiver of any of the terms or conditions accepted by the licensee.

(7) Subject to subsection (12), the annual rental in the 20-year period immediately following the date fixed for the completion of the initial development shall be

(a) an amount based upon the horsepower capacity of the initial development as fixed in the interim licence and computed at the rate fixed in the interim licence for the use of water during the life of the interim licence; or

(b) an amount based upon the horsepower-year of electrical output and the annual load factor and at a rate not less than the following:

(i) where the annual load factor is less than 40 per cent, \$1.35 per h.p.-year, and

(ii) where the annual load factor lies between

40 per cent and 50 per cent — \$1.25 per h.p.-year

50 per cent and 60 per cent — \$1.20 per h.p.-year

60 per cent and 70 per cent — \$1.15 per h.p.-year

70 per cent and 80 per cent — \$1.10 per h.p.-year

80 per cent and 90 per cent — \$1.05 per h.p.-year

90 per cent and 100 per cent — \$1.00 per h.p.-year.

(8) For the purposes of this section,

(a) the output shall be taken as the total horsepower-years developed during the year on the turbine shaft;

(b) the annual load factor shall be taken as the ratio of the average load to the maximum load;

(c) the maximum load shall be taken as the highest rate of output carried by the plant during the year under normal operating conditions for a period of 20 minutes;

(d) the annual load factor in the case of electrical plants shall be calculated as follows:

$$\frac{(\text{Total kilowatt-hours generated per annum} \times 100)}{(\text{Maximum load of the year in kilowatts} \times 8760)} = \text{per cent load factor};$$

(e) in the case of plants other than electrical, the annual load factor shall be calculated by substituting horsepower-years and horsepower for kilowatt-hours and kilowatts in the above formula.

(9) For the purposes of these Regulations, one horsepower-year shall be taken as the equivalent of 6 535 kilowatt-hours; and the output at the turbine shaft shall be assumed to be the equivalent of 107 1/2 per cent of the output as recorded at the generator switchboard.

(10) The output and the annual load factor shall be as determined by the Director, who for this purpose may use any available data, such as switchboard records in the case of electrical plants.

(11) Every licensee generating electrical energy, unless exempted by the Director in writing, shall install an approved recording wattmeter and shall preserve and produce for inspection all records made by the wattmeter.

(12) The annual rental for water used in the production of power in the Northwest Territories or Yukon Territory is 75 per cent of the annual rental as computed in subsections (1) to (11), inclusive.

REVISION OF RENTALS AFTER 20 YEARS

31. (1) Upon the expiry of the first 20-year period and every 10 years thereafter, the annual rental shall be subject to revision.

(2) Six months prior to the termination of any 10-year period mentioned in subsection (1), where either the Minister or a licensee deems a revision of the rate of the annual rental per horsepower-year advisable, he may notify the other party to that effect, whereupon both parties shall endeavour to reach an agreement upon the rate for the succeeding 10-year period.

(3) When agreement is not reached within 90 days after the receipt of the notification mentioned in subsection (2), the Minister may refer the matter to such board, commission or authority as may be created or designated by the Governor in Council for the purpose of considering such matter and reviewing the rentals.

(4) The board, commission or authority referred to in subsection (3), when recommending the rentals to be charged, shall take into consideration the earning capacity of the plant, the supply of power available therefrom and from any other sources in the district, the average selling price of the power and any special conditions or circumstances affecting the plant.

(5) The rental for each year of a 10-year period mentioned in subsection (1) shall be based on the actual station output for the year in horsepower-years at the turbine shaft as estimated by the Director and in the case of electrical plants the Director may use switchboard records or any other available data.

(6) Where a licensee is engaged in the sale of power, an upward revision of the rate of the rental per horsepower-year may be made only if the upward revision does not make it impossible for the licensee to earn a fair rate of return on the actual cost of the physical properties used and useful in connection with the undertaking, and provides for the amortization of such costs, including interest, as may be necessary and legitimate for promoting and organizing the enterprise and providing capital otherwise than as included in the actual cost.

(7) The costs that are to be amortized shall be fixed in the same manner and at the same time as the actual cost as set out in section 19.

(8) The fair rate of return referred to in subsection (6) shall be considered as being cumulative from the date upon which the licensee first began the sale of power from the initial development.

REGULATION OF PUBLIC UTILITIES

32. (1) Where a board or commission is designated, under the authority of the *Dominion Water Power Act*, to regulate in a particular area the rates charged for electrical energy by licensees engaged in the sale, barter or exchange of hydro-electric energy, every such licensee shall immediately submit the schedule of rates under which he is then operating to the board or commission for adjustment and approval, and before putting into effect any new schedule of rates and prices to be charged to consumers for power, shall submit that schedule of rates for adjustment and approval, and no rates or prices for power shall be legal or enforceable until so submitted.

(2) The board or commission referred to in subsection (1) may, on the complaint of any affected party or on its own initiative, require the submission or the resubmission at any time of existing schedules of rates and prices for adjustment and approval, but the rates and prices, when once adjusted or approved in accordance with this section, shall thereafter not be again revised within a period of five years, except by mutual consent of the

revising authority and a licensee, and the rates charged by any licensee shall not be reduced under this section so as to make it impossible for the licensee to earn a cumulative fair rate of return in accordance with the provisions of subsections 31(6), (7) and (8).

(3) Every licensee shall abide by and comply with such reasonable regulation and control of the service rendered and to be rendered by him to consumers of power furnished or transmitted in virtue of his licence as may be prescribed from time to time by the board or commission referred to in subsection (1), and shall also abide by and comply with any orders of the board or commission in respect of stock and bond issues.

(4) The board or commission referred to in subsection (1) may

(a) ascertain and determine from time to time and by order fix the proper and adequate rates of depreciation on the several classes of property used or useful in connection with the undertaking of any licensee, and the licensee shall set aside out of earnings and place in separately invested depreciation reserves such amounts as will conform to the rates so ascertained, determined and fixed; and

(b) specify the purpose for which and the manner in which depreciation reserves and the income arising from the investment thereof are to be expended.

(5) Until the commission or board referred to in subsection (1) is designated to act in any particular area, the powers of regulation and control set out in this section may be exercised by the Minister.

LIMITED RIGHTS IN LANDS

33. (1) Every licence shall be valid or effective to authorize the entry upon or use or occupation of any public lands only in such manner and to such extent and for such length of time as may be necessary for the purpose of constructing, maintaining and operating the works authorized to be constructed, maintained and operated under such licence.

(2) Where, in the opinion of the Minister, continued or further entry upon or the use or occupation of public lands in whole or in part for the purposes referred to in subsection (1) becomes unnecessary, because of their non-use or abandonment or for any other reason, the Minister shall give the licensee written notice of the contemplated withdrawal of those lands and his reasons therefor, and the lands may thereupon be withdrawn in whole or in part from the operation of the licence.

34. (1) Public lands required only for the purpose of flooding those lands, whether in connection with a storage reservoir or for regulating the flow of a stream or otherwise, shall be set out in the interim or final licence separately from the lands required for other purposes, and no licence shall be valid to convey any further use of the lands than the right of flooding in such manner and to such extent and at such times as may be required for the purposes of the undertaking.

(2) Where, in the opinion of the Minister, the rights of the licensee are not thereby prejudicially interfered with, every grant of a right to flood public lands in connection with any undertaking is subject to the right of Her Majesty to grant additional liberty or privilege to any person for any purpose or in any manner to enter upon, use or occupy those lands.

(3) Every licensee shall, to the satisfaction of the Minister, clear and keep clear from timber, brush and other material, all lands which are to be flooded.

(4) No licensee shall fence or otherwise enclose any flooded public lands except with the consent of the Minister in writing.

35. (1) Lands forming part of the bed of any stream, the use or occupation of which is required for the site of authorized works, or for the construction or the operation thereof, shall be set out in a licence separately from lands required for other purposes, and no licence conveys any exclusive right in or to the use or occupancy of such land, or any further right than may be required from time to time for the actual construction and operation of the works.

(2) Every grant of a right to use or occupy any public lands forming part of the bed of any stream is subject to the right of Her Majesty to grant additional liberty or privilege to any person for any purpose or in any manner to enter upon, use or occupy those lands, but

(a) the rights of the licensee shall not be prejudicially interfered with by any such grant; and

(b) the Minister shall give the licensee notice of his intention to grant such additional liberty or privilege, and an opportunity of being heard.

36. (1) When a narrow strip only of public lands is required solely for the rights-of-way for transmission lines, for water conduits or for similar purposes, and the lands are located within the agreed upon severance line, they shall be set out in the licence separately from lands required for other purposes, and the licensee shall not acquire under any licence any rights to the use or occupation of any such lands further than, in the opinion of the Minister, are required from time to time for the purpose of constructing, maintaining and operating such transmission lines or water conduits or for otherwise carrying out the purposes specified in the licence, and every such right is subject to the right of Her Majesty to grant additional liberty or privilege to any person for any purpose or in any manner to enter upon, use or occupy the lands; but the rights of the licensee shall not be prejudicially interfered with by any such subsequent grant, and the Minister shall give the licensee notice of his intention to make such grant and an opportunity of being heard.

(2) When the narrow strip of land referred to in subsection (1) is located outside the severance line agreed upon, the lands may be granted to the licensee by licence of occupation or in such fee as the Minister may determine but, where the undertaking or works of the licensee are taken over in pursuance of these Regulations or of the *Dominion Water Power Act*, the licensee is not entitled to receive an amount of compensation for the rights-of-way greater than the amount that would be established in accordance with paragraph 29(b).

CARE OF LANDS

37. (1) A licensee shall at all times maintain the lands, works and property held or used by him in respect of his licence in a manner satisfactory to the Director, including the maintaining of all flooded or other areas in a sanitary condition and including the improvement of the lands occupied from the point of view of landscape architecture, and shall do all in his power to protect the lands and the interests of the Crown therein against injury by any one engaged on or about his works, or by any person whomsoever.

(2) Every interim or final licensee shall do everything reasonable within his power, both independently and on request by the Director, to prevent and suppress fires on or near the lands to be occupied under his licence.

(3) For the purpose of limiting the spread of fires or for other reasonable purposes, every licensee shall clear and keep clear the public lands along his transmission lines for such width and in such manner as the Director may require.

(4) Every licensee shall, to the satisfaction of the Director, dispose of all brush, refuse or unused timber on public lands resulting from the construction and maintenance of the works, and shall keep the lands covered by his licence at all times clear of unnecessary combustible material.

38. The Minister, the Director, or any person authorized by either may, at all reasonable times during the continuance of any licence, enter upon the public lands covered by such licence to examine the condition thereof.

39. Every licensee shall protect all telephone, telegraph and power transmission lines in existence prior to the construction of his own lines, where crossed by or in close proximity thereto, to the satisfaction of the Director or competent provincial authority, if any, and shall operate, maintain and render safe to the public his own transmission, telephone, and other lines to the satisfaction of the Director or the provincial authority, if any.

APPROVAL OF BUILDINGS

40. (1) Subject to subsection (2), an interim or final licensee shall not erect any buildings or structures upon any public lands without first submitting plans thereof to the Director and securing his approval for such building or structure and the site thereof.

(2) Any temporary buildings or structures required in cases of emergency to facilitate the work of construction and erected without permission shall be entirely removed to the satisfaction of the Director as soon as the necessity ceases or within one month of receiving written notice from the Director.

41. No roads, trails, telephone lines, buildings or other improvements, the property of the Crown in right of Canada, shall be removed, altered or in any way affected by a licensee in the construction or operation of his works without the Minister's consent in writing having been first obtained, and upon such conditions as the Minister by such writing may impose, and the Minister, if he deems it necessary, may require the licensee to furnish a bond for the satisfactory carrying out of the provisions of this section.

42. Any lands desired by a licensee for subdivision for townsite or other purposes shall be set out in the application and licence separately from lands required for other purposes connected with the undertaking, and the promotion of any such townsite is subject to the approval of the Minister and to such conditions in respect of town-planning, landscape architecture and sanitation as the Minister may impose.

43. Every interim or final licensee shall pay such sums by way of stumpage and royalty for any merchantable timber cut or removed from any public lands as may be fixed by the regulations governing the granting of yearly licences and permits to cut timber on those lands.

WORKS, PLANT AND EQUIPMENT

44. (1) A licensee shall

(a) install and use first-class, modern, standard works, plant and equipment, giving consideration to requisite suitability of design, safety, strength, durability, efficiency and all other relevant factors;

(b) maintain the works, plant and equipment in good repair and condition; and

(c) exercise all due skill and diligence to secure the satisfactory operation of the works, plant and equipment.

(2) The Minister may give the licensee written instruction concerning the carrying out of subsection (1).

45. (1) The Minister, the Director, or any person appointed by either for the purpose, shall have free access to all parts of the works, lands and properties of the licensee and to all books, plans, records or accounts used in connection with or affecting any licence or undertaking, and may from time to time make measurements and observations and take such other steps for carrying out any inquiry that may be considered necessary or expedient in the administration of these Regulations.

(2) The decision of the Director in respect of the quantity of water diverted, used or stored, or capable of being diverted, used or stored, or the amount of power developed or capable of being developed under the authority of any licence, is conclusive and binding upon the licensee.

46. A licensee, before making any material change in any existing works or in their location, shall submit a complete and satisfactory statement and plans of such proposed change to the Director, and shall not proceed to make the proposed change until it has been authorized.

47. The Director may require any licensee to install and maintain in good operating condition at such places and in such manner as the Director approves, accurate meters, measuring weirs, gauges or other approved devices which shall be adequate for determining the amount of water used or power developed in the operation of the works, for determining the flow of the stream or streams from which water is or will be diverted, and for determining the amount of water held in or drawn from storage, and the licensee shall keep accurate and satisfactory records of the foregoing determinations and shall from time to time make such returns, supported if necessary by statutory declaration, as the Director may require.

48. Where, in the opinion of the Minister, a licensee has not developed the amount of power for which there is a public demand and which could be reasonably developed from the flow of water granted under his licence or controlled by him, the Minister may order the licensee to develop and render available for public use the additional amount of power for which there is, in his opinion, a public demand, up to the full extent possible from the amount of water granted under the licence or controlled by the licensee and within a period to be fixed by the Minister, which period shall be not less than two years after the licensee or the person in charge of the existing works is notified of the order.

SECURING ENLARGED DEVELOPMENT

49. (1) Where, in the opinion of the Minister, it appears feasible to establish an enlarged or more comprehensive development of the water-power in any stream at or near the side occupied by a licensee that will supersede the existing development of the licensee, the Minister may hold a hearing thereon.

(2) The licensee and all other interested parties shall be given not less than 60 days notice of the hearing referred to in subsection (1), and an opportunity of being heard.

(3) Where the Minister considers an enlarged or more comprehensive development of water-power referred to in subsection (1) to be in the public interest, he may offer the licensee a new interim licence for the carrying out of the enlarged or more comprehensive development.

(4) The interim licence offered under subsection (3) shall in every case be subject to the regulations then in force, but in granting the interim licence due consideration shall be given to the existing net earnings of the licensee and to the net earnings likely to be derived from the enlarged or more comprehensive development.

(5) Where, within 12 months after the offer of a licence is made under subsection (3), the licensee fails to accept the offer and in good faith to begin and carry on to completion the enlarged or more comprehensive development, the Minister may, subject to approval by the Governor in Council, order the existing licence terminated.

(6) Where, pursuant to subsection (5), the Minister orders an existing licence terminated, the respective rights of Her Majesty and the licensee in the lands, works and properties connected with the undertaking are the same as those set out in section 28; except that the Minister, in determining the compensation to be paid to the licensee may add such bonus or additional bonus to the amount payable according to section 28, as will in the opinion of the Minister, be proper under the particular circumstances of the case, not to exceed, however, three-quarters of one per cent of the amount payable under section 28 for each full year of the unexpired term of the licence, and not to be less than five per cent of that amount.

(7) Where more than one existing plant or site is affected by the enlarged or more comprehensive development, the Minister may receive proposals from all the licensees or occupants of those sites for carrying out the proposed new development and to offer to each in turn, selecting first that one whose proposal appears to be most in the public interest, or to all conjointly, an interim licence, subject to the regulations then in force, for the carrying out of the proposed new development.

(8) Where a licence is granted pursuant to subsection (7), the existing licences shall be terminated in the same manner and having the same effect, and providing for compensation to the same extent as in the case where the rights of only one existing licensee are affected as set out in subsection (6).

(9) Where, within the time specified, each of the licensees mentioned in subsection (7) in turn fails to accept the offer of a new licence and to begin and to carry on to completion the proposed new works, the Minister, subject to approval by the Governor in Council, may order all the licences terminated in the same manner and having the same effect, and providing for compensation to the same extent as set out in subsection (6).

CHANGE IN UNDERTAKING

50. Where a licensee desires to develop, sell, use or dispose of any greater quantity of power than is authorized by his licence, whether such increased disposal of power does or does not necessitate any addition to or alteration in the works, or desires to use or dispose of any power in connection with his undertaking in a manner or for a purpose other than as provided in the licence, he shall first apply to the Minister for an interim licence authorizing the construction of the works or for a final licence authorizing the additional development, sale, use or disposal of power or authorizing the use or disposal of the power in such other manner or for such other purpose, as the case may be, and the granting of the licence and the use or disposal of the additional water-power shall in every case be subject to all the provisions of the regulations from time to time in force.

SALE OF POWER

51. In districts where there is no existing authority or competent jurisdiction to regulate and control transmission or distribution companies, no sale or delivery of power shall be made by any licensee to any such company except in case of emergency and then for not more than 60 days without the written consent of the Minister, unless the company has undertaken to the satisfaction of the Minister, to comply with the terms of these Regulations and of the licence to the same extent as the licensee would have been obliged to comply therewith, in so far as the use or disposal of such power is concerned.

52. Every licensee whose undertaking involves the sale, barter or exchange of the power authorized to be developed under his licence, when so requested by the Minister, shall sell power to the Crown at as low a price as is given to any other consumer for a like use at the same time and under similar conditions, if the request is within the capacity of the site and the rights of any other consumer then holding a binding contract for the delivery of power are not thereby prejudiced.

53. The Minister, with the approval of the Governor in Council, may authorize a licensee whose undertaking

embraces the sale of energy or power to enter into contracts for the sale and delivery of that energy or power for periods extending beyond the term of the licence, but for not more than 10 years thereafter, and in such case, the licence will not be terminated at the end of the term unless a new licensee or some competent authority acting for or at the request of the Government of Canada has assumed to fulfil all the contracts so approved.

STREAM REGULATION AND CONTROL

54. Every licence is deemed to have been executed on the express condition that the licensee shall, in respect of the river or stream upon which his works are located,

(a) divert, use or store the water authorized to be diverted, used or stored by him in such a manner as not to interfere, in the opinion of the Minister, with the maximum advantageous development of the power and other resources of the river or stream;

(b) conform to and comply with any orders in respect of the control or regulation of the flow of the waters of the river or stream made from time to time by the Minister or by any person authorized by the Minister in that behalf; and

(c) at no time cause or permit the surface level of the waters of the river or stream or of any storage reservoir operated by him to be raised or lowered beyond the limits that are fixed from time to time by the Minister or by a person authorized by the Minister in that behalf.

PRO-RATING OF CAPITAL COST OF WORKS

55. (1) In this section and in sections 57 and 58,

"annual outlay" means all yearly maintenance, operation and depreciation costs, and necessary amortization costs other than instalments of the capital cost, incurred in respect of regulating or storage works together with interest on the capital cost; (*frais annuels*)

"capital cost" of any regulating or storage works undertaken under this section means "actual cost" . (*frais de premier établissement*)

(2) Where regulating or storage works are undertaken upon any stream by the Government of Canada or by any commission, board, company or person upon the authority of the Government for the control or augmentation of the flow of that stream for water-power or other purposes, the capital cost of the works or any part thereof may be assessed by the Minister upon the owners or licensees of all the water-power sites in the stream, whether those sites are fully developed, partially developed or entirely undeveloped.

(3) Where the capital cost of regulating or storage works upon a stream is assessed pursuant to subsection (2), the assessments shall be determined according to the relative benefits that, in the opinion of the Minister, are or will be derived by the respective owners or licensees of the works from the regulated or increased flow, and may also be charged against owners of water privileges under provincial jurisdiction in accordance with section 56.

(4) The capital cost, assessed pursuant to subsection (2), may be made payable in annual instalments, extending over such period of years, and in such respective amounts for any stated years, as the Minister may determine; and the Minister may provide, if any water-power sites mentioned in subsection (2) are undeveloped or have not commenced to be operated at the time when the regulating or storage works are undertaken, that the commencement of payment of the annual instalments may in such cases be deferred until development and operation take place, or until such time has elapsed thereafter as the Minister may deem suitable.

(5) The total annual outlay in respect of works undertaken under this section shall be a charge upon such of the water-power developments on the stream as are in a position to utilize the regulated or increased flow in whole or in part, and shall be apportioned among them in proportion to the respective benefits estimated as accruing from time to time to those developments from the regulated or increased flow.

(6) A due proportion of the annual outlay in respect of works undertaken under this section may also be charged against owners of water privileges under provincial jurisdiction in accordance with section 56.

(7) A schedule of the proportion of the annual outlay referred to in subsection (6) to be debited against the

respective water-power developments shall be prepared from time to time at the direction of the Minister, and shall remain in effect for a period of not less than three years.

(8) In fixing the respective proportions of annual outlay for any period of years, the use made by the licensee for the period immediately preceding may be taken into consideration.

(9) The schedule of proportions prepared pursuant to subsection (7) may be revised at any time with the consent of all the licensees affected.

(10) A water-power development that has come into operation or the utilization of the stream-flow of which has been substantially increased within the period during which a schedule of the proportion of annual outlay is effective may, at the discretion of the Minister, be debited with its proportionate share of the annual outlay from the time of the commencement of the operation, in which case the proportion charged upon each of the existing developments shall be correspondingly reduced.

(11) In addition to paying the assessments of capital cost and the annual charges as provided for in this section, every licensee may be required to pay for the additional flowage created by any works and used by the licensee such rental as the Minister may determine, subject to these Regulations that are applicable to rentals for the development and use of water power.

COOPERATIVE AGREEMENTS WITH PROVINCE

56. (1) The Minister may enter into cooperative agreements with the authorities of any province for the purpose of providing that owners of water privileges under provincial jurisdiction shall bear a due share in the cost of any storage and regulating works undertaken under section 55, of any annual charges arising out of the construction of such works, and of rentals for the additional flowage created.

(2) Subject to approval by the Governor in Council and, where required, with the assent and cooperation of the proper provincial authorities, the Minister may specify the conditions under which owners of irrigation, logging, navigation or other interests upon the stream that are benefited by regulating or storage works shall be required to share with the water-power interests the cost and charges arising under this section.

APPRAISALS

57. (1) Where the Minister deems it advisable and at any time during the term of a licence, he may cause a reappraisal of the value of the lands, works and properties held by a licensee in respect of his undertaking.

(2) The basis for a reappraisal made pursuant to subsection (1) is the actual cost of the properties determined as set out in section 19, consideration being given to any extensions or permanent improvements made in the properties in the period that may have elapsed subsequent to the time of the original construction or subsequent to the last previous appraisal, as the case may be, and also to the loss in value, if any, in the properties due to physical or functional depreciation or otherwise, as well as to the variation in the purchasing power of the dollar.

(3) In the case of any undertaking established under regulations made under any Act of the Parliament of Canada, the Minister, after conferring with the owner of an undertaking and with the authority, if any, having jurisdiction over the regulation and control of public utilities in the district in which the undertaking is situated, may modify the basis on which the appraisal is to be made.

(4) In any valuation of the lands, works and properties held by a licensee in connection with his licence, no value shall be given or claimed for the rights and privileges granted by his licence over and above the sums, if any, actually paid to the government for such rights and privileges, but not including in any case guarantee deposits paid during the interim licence period nor any rentals or annual charges accruing during the final licence period.

ACCOUNTING

58. (1) Unless exempted in writing by the Minister from compliance with this section, every licensee shall keep a true and detailed account of all expenditures made in respect of the works, lands and properties and shall file annually with the Director on or before March 1st a return for the immediately preceding year ending December 31st, based on the account and being an accurate summary thereof, the return to be attested by the oath of the licensee or in the case of a company by its president and secretary.

(2) In an annual return made by a licensee the following items shall be shown separately:

(a) respecting the works,

(i) the actual cost thereof, giving separately each class of expenditures as indicated in the definition "actual cost" in section 2,

(ii) amounts expended in that year for enlargements and permanent improvements authorized by the Minister, and

(iii) depreciation in value from any and all causes for that year;

(b) respecting lands, tenements and appurtenances not included in paragraph (a), a statement setting out, in each case, the actual cost thereof in accordance with section 19;

(c) respecting capital stock,

(i) the amount authorized and the number of shares into which it is divided,

(ii) the number of shares subscribed for and allotted, the number of shares forfeited to date, and the owners, for the time being, of all outstanding shares,

(iii) the amount of calls made on each share, and the total amount received from shareholders in cash on account of stock,

(iv) the number of shares, if any, issued as fully paid-up shares as consideration for any service rendered or otherwise, specifying in each case the consideration for which such shares were issued, and

(v) the amounts of dividends declared and paid;

(d) respecting bonds or debentures,

(i) the amount authorized, and the period of redemption,

(ii) the amount sold (face value) and the rate of interest,

(iii) the amount realized from sales, and

(iv) the annual amount set aside as a sinking fund to meet bonded indebtedness, and the date of commencement;

(e) the indebtedness other than stock and bonds, specifying the nature and amounts, and the rate of interest such indebtedness bears;

(f) a statement showing the total revenues of the undertaking, specifying the amount received from each and every source;

(g) maintenance and operation expenditures, separating those expenditures that are incurred at or near the works from head-office expenditures and expenditures relating to general administration;

(h) the names of officers and the classification of employees with salaries, expenses or other remuneration paid or allowed;

(i) the proposed extensions during ensuing years; and

(j) such other data as the Minister may require.

(3) If the licensee is a company, an annual return shall have attached thereto a copy of the by-laws of the company, showing all amendments thereto during the year covered by the return.

(4) In respect of the classification of items under paragraphs 2(a) to (j), the methods of allowing for depreciation, and the form in which the accounts shall be kept, the Minister's decision is final.

TRANSFERS

59. (1) Before any assignment or transfer of any licence or of the rights and privileges granted thereby or the undertaking connected therewith or any part thereof becomes valid or effective, the Minister's approval in writing shall be obtained, and the assignment or transfer is subject to such terms and conditions as the Minister may impose.

(2) When applying for approval of the assignment or transfer of a licence, the licensee shall file with the Minister a full and detailed statement of the proposed compensation to be paid to him for the rights, privileges and properties transferred in respect of the undertaking.

(3) The Minister shall not grant approval of the assignment or transfer of a licence unless

(a) it is shown to his satisfaction that the assignment or transfer is expedient in the public interest;

(b) no remuneration is to be allowed to the assignor or transferor for the rights and privileges conferred under the licence over and above the sums, if any, actually paid to the Crown for such rights and privileges, but not including guarantee deposits paid during the interim licence period or any rentals or annual charges accruing during the final licence period; and

(c) the assignee or transferee has undertaken in a manner satisfactory to the Minister to assume all the obligations of the assignor or transferor and the additional obligations prescribed by the Minister in the written approval.

60. (1) No lien may be created by mortgage or trust deed upon any power undertaking established in respect of any licence unless it is approved by the Minister and is for the *bona fide* purpose of financing the undertaking.

(2) Any successor or assign of the rights held in respect of a licence, whether by judicial sale, foreclosure sale or otherwise, is subject to all the conditions of the licence, and to all the provisions and conditions of these Regulations to the same extent as though the successor or assign were the original licensee.

61. Lands inside the severance line used or occupied for the purposes of the undertaking shall not be alienated, sold or disposed of by the licensee without the consent of the Minister, and the alienation, sale or disposal shall be subject to such terms as the Minister may prescribe for the protection of the undertaking.

62. Whenever notice of termination or cancellation has been given to a licensee in pursuance of these Regulations, no lands whatever, whether inside or outside the severance line, used or occupied for the purposes of the undertaking shall thereafter be alienated, sold or disposed of without the consent of the Minister and the alienation, sale or disposal shall be subject to such terms as the Minister may prescribe.

ACCEPTANCE OF TERMS OF LICENCE

63. (1) Before issuing a licence, the Minister shall submit to the prospective licensee a draft of the proposed licence, and shall secure from such licensee an acceptance thereof and an undertaking to observe and fulfil all the terms and conditions that a licensee is required to observe or fulfil under the licence and these Regulations, with particular reference to the right of Her Majesty to take over the works, lands and properties held by the licensee in connection with his licence in certain contingencies as in these Regulations provided.

(2) The acceptance and undertaking referred to in subsection (1) shall bind the executors, administrators and assigns, or in the case of a company the successors and assigns of the prospective licensee.

64. (1) Any notice that is required to be given or served, or that the Minister may desire to give or serve upon any person in respect of these Regulations, shall be considered to have been validly given or served when sent by registered mail to that person addressed to his latest known address or when delivered by hand to that address.

(2) A notice sent by post shall be deemed to be given when in due course of postal operations it would be delivered at the address to which it was sent.

65. The licensee shall indemnify Her Majesty in right of Canada against all actions, claims or demands arising against Her by reason of anything done by him in the exercise or purported exercise of the rights and

privileges granted under the licence.

66. (1) Where applications are made therefor, the Minister may grant conditional leases or licences for the temporary use and occupation for other purposes of lands that have been reserved by the Governor in Council for water-power development, where, in the Minister's opinion, those lands will not be utilized for a number of years in connection with water-power development and the granting of temporary leases or licences of occupation does not interfere with the purposes of the reservation.

(2) Every conditional lease or licence is deemed to include provisions to the effect that, when the leased lands are required in connection with a water-power development and upon giving the conditional lessee or licensee not less than six months' notice of cancellation in writing under his hand, the Minister may cancel the lease or licence, and terminate the rights thereby conferred, and repossess himself on behalf of Her Majesty of the leased lands and all improvements thereon without any compensation whatever being paid to the conditional licensee or lessee.

67. Notwithstanding any rights granted or approval given by any licence, every licensee shall

(a) comply fully with the *Navigable Waters Protection Act* and any regulations and orders made thereunder;

(b) comply fully with any provincial or federal statute or regulation governing the preservation of the purity of waters or governing logging, forestry, fishing or other interests present or future that might be affected by any operations conducted under his licence; and

(c) observe and carry out any instructions of the Minister in respect of any of the matters referred to in paragraphs (a) and (b) not inconsistent with the statutes and regulations referred to in those paragraphs.

68. Any machinery, plant, structure or works constructed, installed, or placed on any public lands for the development of any water-power or for the transmission, distribution or utilization of the energy produced from such water-power, in contravention of these Regulations or of the *Dominion Water Power Act*, shall be removed if and when required by the Minister.

SMALL WATER-POWERS

69. (1) For the purpose of this section, a "small water-power" means a water-power that, in the opinion of the Director,

(a) cannot, under average usable flow conditions, produce in excess of 500 horsepower; and

(b) is not of primary importance for commercial or public utility purposes.

(2) An application for a licence for the development of a small water-power may be made to the Director and shall contain the information as specified in section 3, but the Director may exempt the applicant from supplying such of the information as, in the opinion of the Director, is not of importance because of the small size of the proposed development.

(3) The Minister may exempt the applicant for the development of a small water-power from complying with such provisions of these Regulations as, in the opinion of the Minister, need not be enforced because of the small size of the proposed development and the Minister may issue to the applicant a special licence subject to the following conditions:

(a) the term of a licence shall not exceed 20 years and the term of each renewal shall not exceed five years;

(b) an application for renewal of a licence shall follow the procedure in force at the time the application is made, and the renewal of the licence shall be subject to the laws and regulations in force at the time the licence is issued;

(c) upon the expiry of a licence or any renewal thereof, if the licensee has not applied for or has failed to secure a renewal of the licence, the water-power development and all works and structures connected therewith and located on public lands shall become the property of the Crown without compensation to the licensee, but the licensee may remove from public lands, within such period as is approved by the Director, all works and structures erected or installed by the licensee in connection with the power development that, with the consent of the Director, may be removed without damage to the lands;

(d) the Minister, upon giving the licensee one year's notice, may at any time cancel a licence granted under this section, and resume full possession and control of the water-power development and of all works, lands and structures connected therewith or, at the option of the Minister, of such part of the works and structures as are situated upon public lands; and

(e) where the Minister cancels a licence pursuant to paragraph (d), compensation for the works, lands and structures to be taken over shall, to the amount of the actual cost thereof, determined in accordance with section 19 and subsection 28(2), together with a percentage added to that amount by way of bonus, not greater than 15 per cent nor less than three per cent of the amount, be fixed by the Minister.

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[Important Notices](#)