CHAPTER vii.

An Act to confer further powers upon the Brixham Gas Company and to authorise the Company to raise additional capital and for other purposes. A.D. 1918.

[27th June 1918.]

WHEREAS by the Brixham Gas Act 1904 (in this Act called "the Act of 1904") the Brixham Gas Light Company (Limited) were dissolved and the shareholders of that Company were incorporated as the Brixham Gas Company (in this Act called "the Company") and the Company were authorised to manufacture and supply gas within the urban district of Brixham in the county of Devon:

And whereas by the Brixham Gas and Electricity Act 1906 (in this Act called "the Act of 1906") the limits of the Company for the supply of gas were extended so as to include the parish of Churston Ferrers and the Company were authorised to construct an electrical generating station on the lands described in the schedule to the Act of 1904 and the First Schedule to the Act of 1906 or on any part of such lands and to supply electricity within their limits for the supply of gas and to raise additional capital:

And whereas the generating station was constructed on lands acquired by the Company adjoining the lands described in the schedule to the Act of 1904 and the First Schedule to the Act of 1906 but otherwise in accordance with the provisions of such last-mentioned Act and it is expedient to authorise the Company to maintain the station so constructed:

And whereas it is expedient that new provisions should be made with reference to the quality and testing of the gas supplied by the Company:

[*Price* 1*s*.]

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And whereas the following is a statement of the share capital of the Company:—

Act of Parliament authorising Capital.	Description of Share.	Standard Dividend per cent.	Total paid up.	Premium received.	Remaining to be issued.	Total authorised.
			£	£ s. d.	£ s. d.	£
Act of 1904 -	Original ordinary	10	6,000	—	—	6,000
	New ordinary	7	3,940	60 0 0	—	14,000
	New preference	6	9,770	230 0 0		
Act of 1906 -	New preference	6	9,060	152 12 0	8,248 13 0	20,000
	New ordinary	7	2,000	538 15 0		

And whereas the Company were empowered by the Acts of 1904 and 1906 to raise by borrowing on mortgage one-third part of their authorised capital at the time actually issued and the Company have raised by mortgage on their undertaking the sum of two thousand nine hundred pounds and have borrowed from their bankers the sum of eight thousand pounds:

And whereas it is expedient to increase the borrowing powers of the Company and to authorise the Company to raise additional capital and to issue as redeemable preference capital any capital which they are authorised to issue as preference capital:

And whereas nearly the whole of the preference capital was erroneously sold by auction on the basis of such capital being entitled to a cumulative preference dividend but no dividend was in fact paid on such capital in respect of the second half of the year one thousand nine hundred and thirteen or in respect of the year one thousand nine hundred and fourteen or in respect of the second half of the year one thousand nine hundred and fifteen and the sum of one thousand four hundred and twelve pounds five shillings part of the profits of the Company has been debited in the profit and loss account and carried to "Suspense account for unpaid preference dividends" and it is expedient that such sum and the profits of the Company available for dividend on the ordinary shares in any year should so far as may be necessary be applied by the Company in payment of a dividend on the preference capital in respect of any year or portion of a year for which no dividend or a dividend at less than the rate fixed by the conditions of issue may have been paid on such capital:

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And whereas by section 55 of the Act of 1904 the standard price to be charged by the Company for gas supplied by them was fixed at four shillings per one thousand cubic feet subject to increase or decrease according to decrease or increase in the standard dividend payable by the Company on their ordinary capital as therein provided:

And whereas the objects aforesaid cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted and be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Short and collective titles.

1. This Act may be cited as the Brixham Gas and Electricity Act 1918 and the Brixham Gas Act 1904 the Brixham Gas and Electricity Act 1906 and this Act may be cited together as the Brixham Gas Acts 1904 to 1918.

Incorporation of general Acts.

2. The following Acts and parts of Acts are (subject to the provisions of and so far as applicable to the purposes of this Act) hereby incorporated with and form part of this Act (namely):—

The Gasworks Clauses Acts 1847 and 1871 Provided that section 13 of the former Act shall be read as if the words "or any premises" were inserted after the words "private building" and as if the words "Provided also "that every such contract entered into by the Company "shall be alike in terms and amount under like circum-"stances to all consumers" were added at the end of that section:

The provisions of the Companies Clauses Consolidation Act 1845 with respect to the following matters (that is to say):—

The transfer or transmission of shares;

The borrowing of money by the Company on mortgage or bond;

The making of dividends;

The giving of notices; and

The provision to be made for affording access to the special Act by all parties interested;

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and the said provisions shall so far as the same are respectively applicable apply to any ordinary and preference shares to be issued under the powers of this Act:

And Part II. (relating to additional capital) of the Companies Clauses Act 1863 as amended by subsequent Acts.

Interpretation.

3. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith shall have the same respective meanings unless there be something in the subject or context repugnant to such construction And the expressions—

"The Act of 1904" means the Brixham Gas Act 1904;

"The Act of 1906" means the Brixham Gas and Electricity Act 1906;

"The limits of supply" means the limits for the time being for the supply of gas and electricity by the Company;

"The directors" means the directors of the Company;

"British thermal units" means British thermal units gross per cubic foot of gas;

"The council" means the Brixham Urban District Council.

GENERATING STATION.

Maintenance of existing generating station.

4. The Company may maintain alter improve enlarge extend renew work and use the generating station and other works belonging to them together with all necessary buildings works and conveniences connected therewith upon the lands hereinafter described (namely):—

All that piece of land situate in the parish and urban district of Brixham in the county of Devon on which the electrical generating station is now erected bounded on the south-west by the existing lands of the Company on which their retort house coal store and stables are erected on the north-west in part by the existing lands of the Company and in other part by Paradise Alley on the north-east in part by Paradise Place and in other parts by an old cottage now unoccupied belonging to the Company and by a private occupation lane leading from Gas Lane

to a store in the occupation of S. E. Edwards and on the south-east by the said private occupation lane and the said Gas Lane and which piece of land contains by measurement seven hundred square yards or thereabouts.

Calorific Power and Testing.

Testing place.

5. For the purposes of the Gasworks Clauses Act 1871 the prescribed testing place shall be a testing place which shall be provided by the Company on some part of the lands described in the schedule to the Act of 1904 or the First Schedule to the Act of 1906 within three months after the passing of this Act.

Testing for calorific power.

6.—(1) Within six months after the passing of this Act the Company shall provide and thereafter maintain at the prescribed testing place apparatus for testing the calorific power of the gas supplied by them The apparatus shall be such as may from time to time be agreed upon between the Company and the council and shall be used in the mode and under the conditions set forth in the agreement Failing such agreement the apparatus shall be similar to the apparatus from time to time prescribed by the Metropolitan Gas Referees for testing the calorific power of the gas supplied by the companies referred to in the London Gas Act 1905 and shall be used in the mode and under the conditions for the time being prescribed by the Metropolitan Gas Referees.

(2) The gas supplied by the Company shall when tested in accordance with the provisions of this Act be of a calorific power of not less than five hundred British thermal units and that power is in this Act referred to as "the standard calorific power."

(3) The provisions of section 12 of the Gasworks Clauses Act 1871 with reference to the testing for the illuminating power shall cease to apply to the Company and sections 28 to 33 of that Act shall in their application to the Company be construed as if calorific power were therein mentioned in lieu of illuminating power.

Provisions as to testing for calorific power.

7. Not more than one testing for calorific power shall be made on any one day Provided that if on any occasion of testing the calorific power is found to be below the standard calorific power a second testing shall be made on the same day

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after an interval of not less than one hour and the average of the two testings shall be deemed to be the calorific power of the gas on that day.

The gas examiner shall forthwith deliver a report of the result of his testing to the Company and that report shall be receivable in evidence.

Penalties for deficient calorific power.

8. If the calorific power on any day of the gas supplied by the Company is less than five hundred British thermal units the Company shall be liable to the following penalties in respect of such deficiency (that is to say) :—

If the deficiency does not exceed fourteen British thermal units two pounds:

If the deficiency exceeds fourteen British thermal units but does not amount to twenty-eight British thermal units a sum not exceeding five pounds:

For each complete twenty-eight British thermal units of defective power a sum not exceeding ten pounds:

Provided that the Company shall not be liable to more than one penalty in respect of a deficiency of the calorific power of the gas supplied on any one day.

Pressure.

9.—(1) All gas supplied by the Company to any consumer of gas shall be supplied at such pressure as to balance a column of water not less than fifteen-tenths of one inch in height at the main or as near as may be to the junction therewith of the service pipe supplying the consumer:

Provided that all gas supplied by the Company to the Great Western Railway Company shall be supplied at such pressure as to balance a column of water not less than twenty-tenths of an inch in height at the inlet of the primary meter or meters registering the supply to such company.

(2) Any gas examiner appointed under the Gasworks Clauses Act 1871 may for the purposes of this Act subject to the terms of his appointment at the testing place or at any public lamp as and when he thinks fit test the pressure at which the gas is supplied The Company shall afford to the examiner all reasonable facilities for making the test.

(3) Sections 56 to 59 (inclusive) of the Act of 1904 are hereby repealed.

Saving as to penalties.

10. No penalty shall be incurred by the Company for insufficiency of pressure defect of calorific power or excess of impurity in the gas supplied by them in any case in respect of which it is proved that such insufficiency defect or excess was produced by any circumstance beyond the control of the Company Provided that the want of sufficient funds shall not be held to be a circumstance beyond the control of the Company.

Power to Board of Trade to vary standard calorific power &c.

11. If within one month after the expiration of five years from the passing of this Act or after the expiration of any subsequent period of five years the Company or the council apply to the Board of Trade to reduce or increase the standard calorific power the Board of Trade after hearing the parties and any other persons who appear to them to be interested may make such reduction or increase of the standard calorific power as they think fit.

Additional Capital and Borrowing Powers &c.

Power to Company to raise additional capital.

12. The Company may raise additional capital not exceeding in the whole eight thousand pounds by the creation and issue of new ordinary shares or stock or new preference shares or stock or wholly or partially by one or other of those modes respectively but the Company shall not issue any share of less nominal value than one pound Provided that it shall not be lawful for the Company to create and issue under the powers of this Act any greater nominal amount of capital than shall be sufficient to produce including any premium which may be obtained on the sale thereof the sum of eight thousand pounds.

Additional capital to be part of general capital.

13. The additional capital created by the Company under this Act shall form part of the general capital of the Company and save as is otherwise by this Act provided the holders thereof respectively in proportion to the amount of their shares or stock shall be entitled and subject to the like rights of voting and any other rights qualifications privileges provisions and liabilities as other holders of shares or stock of the Company of the same class or description.

Profits of Company limited.

14. Except as by this Act provided the Company shall not in any year pay out of their profits any larger dividend on the additional capital to be raised under the powers of this Act than seven pounds in respect of every one hundred pounds actually

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paid up of such capital as shall be issued as ordinary capital and six pounds in respect of every one hundred pounds actually paid up of such capital as shall be issued as preference capital.

New shares or stock to be sold by auction or tender.

15.—(1) All shares or stock created under the powers of this Act or under the powers of the Act of 1906 and remaining unissued shall be issued in accordance with the provisions of this section.

(2) All shares or stock so to be issued shall be offered for sale by public auction or tender in such manner at such times and subject to such conditions of sale as the Company shall from time to time determine Provided as follows:—

(A) Notice of the intended sale shall be given in writing to the clerk to the district council of every district wholly or partly within the limits of supply and to the secretary of the London Stock Exchange at least twenty-eight days before the day of auction or the last day for the reception of tenders as the case may be and shall also be duly advertised once in each of two consecutive weeks in one or more local newspapers circulating within the limits of supply:

(B) A reserved price shall be fixed and notice thereof shall be sent by the Company in a sealed letter to be received by the Board of Trade not less than twenty-four hours before but not to be opened till after the day of auction or last day for the receipt of tenders as the case may be:

(C) No lot offered for sale shall comprise shares or stock of greater nominal value than one hundred pounds:

(D) In the case of a sale by tender no preference shall be given to one of two or more persons tendering the same sum In the case of a sale by auction a bid shall not be recognised unless it is in advance of the last preceding bid:

(E) It shall be one of the conditions of sale that the total sum payable by the purchaser shall be paid to the Company within three months after the date of the auction or of the acceptance of the tender as the case may be.

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(3) Any shares or stock which have been so offered for sale and are not sold may be offered at the reserve price to the holders of ordinary and preference shares or stock of the Company in accordance with the provisions of sections 18 19 and 20 of the Companies Clauses Act 1863 and to the employees of the Company and to the consumers of gas supplied by the Company in such proportions as the Company may think fit or to one or more of these classes of persons only Provided in the case of an offer to holders of shares or stock that if the aggregate amount of shares or stock applied for shall exceed the aggregate amount so offered as aforesaid the same shall be allotted to and distributed amongst the applicants as nearly as may be in proportion to the amounts applied for by them respectively.

(4) Any shares or stock which have been offered for sale in accordance with subsection (2) or with subsections (2) and (3) and are not sold shall be again offered for sale by public auction or by tender in accordance with the provisions of this section and any such shares or stock then remaining unsold may be otherwise disposed of at such price and in such manner as the directors may determine for the purpose of realising the best price obtainable.

(5) As soon as possible after the conclusion of the sale or sales the Company shall send a report thereof to the Board of Trade stating the total amount of the respective shares or stock sold the total amount obtained as premium (if any) and the highest and lowest prices obtained for the respective shares or stock.

(6) Sections 22 to 25 inclusive of the Act of 1904 and section 22 of the Act of 1906 are hereby repealed.

Restrictions as to votes in respect of preference shares or stock.

16. Except as otherwise expressly provided by the resolution creating the same no person shall be entitled to vote in respect of any new shares or stock to which a preferential dividend shall be assigned.

Power to borrow.

17. The Company may subject to the provisions of this Act borrow on mortgage of the undertaking such sum or sums as the directors of the Company may think fit Provided that the total amount so borrowed shall not together with the sums borrowed or which may be borrowed under the provisions of the recited Acts exceed in the aggregate an amount equal to one half of the paid-up capital of the Company for the time being

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Provided also that no sum shall be borrowed in respect of any capital raised by the Company until the Company have proved to a justice of the peace before he gives his certificate under the fortieth section of the Companies Clauses Consolidation Act 1845 that the whole of the stock or shares in such capital together with the premium (if any) realised on the sale thereof has been fully paid up.

Priority of mortgages over other debts.

18. All money raised or to be raised by the Company on mortgage under the provisions of any former Act relating to the Company or under this Act shall have priority against the Company and the property from time to time of the Company over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act Provided always that this priority shall not affect any claim against the Company or their property in respect of any rentcharge granted or to be granted by them in pursuance of the Lands Clauses Acts or in respect of any rent or sum reserved by or payable under any lease granted or made to the Company which is entitled to rank in priority to or pari passu with the interest on their mortgages.

Existing mortgages to have priority.

19. The principal moneys secured by all mortgages granted by the Company in pursuance of the powers of any Act of Parliament before the passing of this Act and subsisting at the passing of this Act shall during the continuance of such mortgages and subject to the provisions of the Acts under which such mortgages were granted have priority over the principal moneys secured by any mortgages granted by virtue of this Act.

Arrears may be enforced by appointment of a receiver.

20. Section 28 of the Act of 1906 is hereby repealed but without prejudice to any appointment heretofore made or to any proceedings pending at the passing of this Act The mortgagees of the undertaking may enforce payment of arrears of interest or principal or principal and interest due on their mortgages by the appointment of a receiver In order to authorise the appointment of a receiver in respect of arrears of principal the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than one thousand five hundred pounds in the whole.

Receipt in case of persons not sui juris.

21. If any money is payable to a shareholder stockholder or mortgagee being a minor idiot or lunatic the receipt of the guardian or committee of his estate shall be a sufficient discharge to the Company.

Application of money.

22. All moneys raised under this Act including premiums shall be applied only to purposes to which capital is properly applicable and any sum of money which may arise by way of premium from the issue of shares or stock under the provisions of this Act shall not be considered as part of the capital of the Company entitled to dividend.

Making up dividends on preference capital.

23. The Company shall apply the sum of one thousand four hundred and twelve pounds five shillings debited in their profit and loss account and carried to "Suspense account for unpaid preference dividends" and so much as may be necessary of any profits which may be available for dividends on the ordinary capital in any year in payment of dividends on the preference capital issued before the passing of this Act so as to make up such dividends on the said preference capital to the rate payable thereon in accordance with the conditions of issue in respect of any year or portion of a year for which no dividend or a dividend at a less rate may have been paid and the dividends on the ordinary capital shall abate by the amount so applied out of the sum available for dividends on the ordinary capital.

Issue of redeemable preference shares or stock.

24.—(1) The Company may create and issue all or any of the preference shares or stock authorised to be created and issued under the powers of this Act or the Act of 1906 and remaining unissued so as to be redeemable on such terms and conditions as may be specified in a resolution of the Company passed at a special meeting convened for the purpose.

(2) If it is so provided in the resolution the Company may—

(A) Call in and pay off the shares or stock or any part thereof at any time before the fixed date of redemption; and

(B) Redeem the shares or stock or any part thereof either by paying off the shares or stock or by issuing to any shareholder or stockholder subject to his consent other shares or stock in substitution therefor and may for the purpose of providing money for paying off the shares or stock or of providing substituted shares or stock create and issue new shares or stock (either redeemable or irredeemable) or re-issue shares or stock

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originally created and issued under this section Provided that the creation and re-issue for the purpose of any particular class of shares or stock does not make the total nominal amount of such shares or stock exceed the amount of that class of shares or stock which the Company are for the time being authorised to create.

(3) The Company shall not redeem out of revenue any preference shares or stock created under this section.

Amount of shares unissued under Act of 1906.

25. The Company may issue the additional capital remaining to be issued under the Act of 1906 in shares of less nominal value than ten pounds but the Company shall not issue any share of less nominal value than one pound.

PROVISIONS AS TO SUPPLY OF GAS.

Amending obligations as to supply of gas.

26. Notwithstanding anything contained in any enactment to the contrary the Company shall not be obliged to give from any main a supply of gas for any purpose other than lighting in any case where the capacity of such main is insufficient for such purpose or if and so long as any such supply would in the opinion of the Company interfere with the sufficiency of the gas required to be supplied by means of such main for lighting purposes.

As to mode of cutting off supplies.

27.- (1) In any case in which the Company are by virtue of any enactment relating to their undertaking authorised to cut off and discontinue the supply of gas to any premises in consequence of any default on the part of the occupier of the premises it shall be lawful for the Company without prejudice to any other remedy which may be lawfully available to them to disconnect at the meter the service pipe (whether belonging to the consumer or to the Company) and any person who shall re-connect such service pipe with the meter without the consent of the Company shall be deemed to commit an offence within the meaning of section 18 of the Gasworks Clauses Act 1847:

Provided that if and so soon as the matter complained of shall have been remedied nothing in this section shall prejudice or interfere with any rights vested in any person by virtue of section 11 of the Gasworks Clauses Act 1871.

(2) For the purposes of this section the Company shall (subject to the conditions specified in section 22 of the Gasworks

Clauses Act 1871) have and may exercise the like powers of entry as are exerciseable under the said section 22 for the purposes of that section.

Expenses of reconnecting discontinued supply.

28. In any case in which in consequence of any default on the part of the occupier of any premises the Company have cut off the supply of gas to such premises and the occupier so in default shall desire to resume such supply he shall pay to the Company the expenses of reconnecting the supply and the Company shall not be under any obligation to supply gas to such occupier until he shall have paid such expenses.

Charge for gas to premises having a supply of electricity or gas.

29. Where any person has for the purposes of a stand-by only a supply of gas laid on by the Company to any premises for which he has at the same time a separate supply of electricity or gas for power or other purposes the Company shall be entitled to charge and receive from him in respect of the supply of gas so laid on such minimum sum as shall be fixed by them not exceeding twenty-five shillings for any one quarter of a year notwithstanding that the ordinary charge for the gas actually consumed in such quarter would amount to a lower sum Provided that in fixing the amount of such minimum charge the Company shall have regard to the probable maximum supply of gas which might at any time be required for such premises.

Engines &c. fixed to premises to remain property of Company.

30. Subject as hereinafter provided all engines fittings apparatus and appliances (in this section referred to as "fittings") let by the Company on hire or under hire-purchase agreements under any statutory powers shall notwithstanding that they be fixed or fastened to any part of any premises in which they may be situate or to the soil under any such premises at all times continue to be the property of and removable by the Company Provided that such fittings are marked or impressed with a sufficient mark or brand indicating the Company as the actual owners thereof Provided also that nothing in this section shall affect the amount of the assessment for rating of any premises upon which any such fittings are or shall be fixed.

Removal of fittings where gas supply discontinued.

31. The power to enter premises and to remove pipes meters and fittings or apparatus conferred upon the Company by section 22 of the Gasworks Clauses Act 1871 shall extend to all cases in which any person entering into occupation of any premises previously supplied with gas by the Company shall not require to take a supply of gas from the Company or to hire from the Company all or any of the pipes meters fittings

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or apparatus belonging to the Company and let by them on hire to any former occupier of such premises.

Power to vary price according to purpose for which gas is supplied.

32. Notwithstanding anything contained in this or any other Act relating to the Company the price to be charged by the Company for a supply of gas may vary according to the purposes for which the gas is supplied as may be agreed upon between the Company and the person taking such supply Provided that the Company shall not under the powers of this section give any preferential price as between any consumers who shall take a supply of gas for the same purpose under like circumstances.

Power to apply funds.

33. The Company may from time to time apply for or towards all or any of the purposes of this Act and for or towards the general purposes of their undertaking to which capital is properly applicable any sums of money which they have already raised or are authorised to raise under and by virtue of the Acts of 1904 and 1906 or which may be in their possession or under their control and which are not required for the purposes to which they are by those Acts made specially applicable.

Consent of Treasury to raising of money.

34. The Company shall not under the powers of this or any former Act raise or borrow any money (except for the payment of the costs charges and expenses referred to in the section of this Act whereof the marginal note is "Costs of Act") during the continuance of the present war and twelve months thereafter unless the consent of the Treasury has been previously obtained.

Saving for general Acts.

35. Nothing in this Act shall exempt the Company or their undertaking from the provisions of any general Act relating to the supply of gas which may be passed in this or any future session of Parliament.

Costs of Act.

36. All costs charges and expenses of and incident to the preparing for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Company and may in whole or in part be charged against revenue.

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