

CHAPTER xxi.

An Act to confer further powers on the Cornwall Electric Power Company and for other purposes. [13th June 1940.]

WHEREAS by the Cornwall Electric Power Act 1902 the Cornwall Electric Power Company (hereinafter referred to as "the Company") were incorporated and authorised to supply electricity to authorised undertakers and other persons within the area defined in that Act (i.e. the whole of the county of Cornwall exclusive of the Scilly Islands and the rural districts of Stratton and Holsworthy as respectively existing at the passing of that Act) for the purposes to the extent and subject to the limitations stated in that Act and to exercise other powers: 2 Edw. 7. c. xxxiv.

And whereas by the Cornwall Electric Power Act 1936 further powers were conferred on the Company: 26 Geo. 5. & 1 Edw. 8. c. liv.

And whereas the capital of the Company authorised by the said Acts is £1,500,000 and the Company have created and issued 1,500,000 ordinary shares of £1 each which are fully paid:

And whereas the Company are authorised by the said Acts to borrow in respect of the share capital so issued the aggregate sum of £750,000 and with the consent of the Electricity Commissioners the further sum of £750,000 and in pursuance of that power the Company have created £60,000 five per centum

debenture stock of which £18,150 (nominal amount) has been issued:

And whereas by section 20 of the said Act of 1936 the Company were authorised to issue so as to be redeemable any preference shares preference stock or debenture stock issued after the passing of that Act including any part of the said five per centum debenture stock previously created but not then issued but it is provided by that section that the Company shall not redeem out of revenue any such redeemable shares stock or debenture stock and it is expedient to repeal that restriction and to empower the Company to provide out of revenue a fund for the redemption of any redeemable capital from time to time issued by them:

And whereas it is expedient to enlarge the powers of the Company with respect to the purchase and cancellation of their loan capital and the application to that purpose of any of their money and funds whether capital or revenue:

And whereas it is expedient that further powers be conferred on the Company and further provisions be enacted with reference to their undertaking as in this Act contained and that the other provisions of this Act be enacted:

And whereas the objects of this Act cannot be attained 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:—

Short and collective titles.

1.—(1) This Act may be cited as the Cornwall Electric Power Act 1940.

(2) The Cornwall Electric Power Acts 1902 and 1936 and this Act may together be cited as the Cornwall Electric Power Acts 1902 to 1940.

Application of Electricity Acts.

2.—(1) This Act shall be deemed to be a special Act within the meaning of the principal Acts and the Electric Lighting (Clauses) Act 1899,

(2) The provisions of the schedule to the Electric Lighting (Clauses) Act 1899 except the sections and provisions thereof which are excepted from incorporation with the Act of 1902 are hereby incorporated with this Act subject as follows:— 62 & 63 Vict. c. 19.

(i) Section 20 of the schedule shall in its application to the powers conferred on the Company by this Act and to the Company when exercising those powers have effect as if after the words "electric signalling communication" wherever they occur there were inserted the words "or electrical control of railways"; and

(ii) The provisions of the schedule which are hereby incorporated with this Act shall be incorporated subject to any modifications of those provisions contained in the Act of 1902 the Act of 1936 or this Act or in the principal Acts.

(3) Notwithstanding anything in this section—

(*a*) sections 2 and 3 of the Electric Lighting Act 1888 shall not apply to the undertaking authorised by the Act of 1902 the Act of 1936 and this Act or to the Company in relation thereto; and 51 & 52 Vict. c. 12.

(*b*) the provisions of section 13 of the Electric Lighting Act 1882 and of section 12 of the schedule to the Electric Lighting (Clauses) Act 1899 in so far as they restrict the breaking up of tramways or railways where laid across or along any highway on the level or of the roadway of or approaches to any bridge over any railway within the area of supply shall not apply to the Company with reference to the undertaking authorised by the Act of 1902 the Act of 1936 and this Act. 45 & 46 Vict. c. 56.

(4) Nothing in this section shall affect the application of the Electric Lighting Act 1888 and the schedule to the Electric Lighting (Clauses) Act 1899 to the undertaking authorised by any Electricity Order of which the Company are for the time being the undertakers or to the Company in relation to any such undertaking.

Definitions.

3. In this Act unless the subject or context otherwise requires words and expressions to which meanings are assigned by the Electric Lighting Act 1882 have the same respective meanings And

"the Company" means the Cornwall Electric Power Company;

"the directors" means the directors of the Company;

"the Act of 1902" and "the Act of 1936" respectively mean the Cornwall Electric Power Acts of those respective years;

"redeemable stock" means any preference stock preference shares or debenture stock issued under the powers of section 20 (Redeemable preference capital and debenture stock) of the Act of 1936 so as to be redeemable;

"the undertaking" means (except where the undertaking authorised by the Act of 1902 the Act of 1936 and this Act or the undertaking authorised by an Electricity Order is alone mentioned) the whole undertaking of the Company as for the time being authorised by Act of Parliament and any Electricity Order for which the Company are for the time being the undertakers;

"the principal Acts" "Electricity Order" and "the area of supply" have the same respective meanings as in the Act of 1936;

"consumer" means any person supplied or entitled to be supplied with electricity by the Company.

Redemption of redeemable capital out of revenue.

4. Section 20 (Redeemable preference capital and debenture stock) of the Act of 1936 shall be read and have effect as if subsection (6) were omitted therefrom and the following subsection added thereto:—

"(6) Any discount allowed on the issue or any premium payable on the redemption of redeemable stock may be written off out of revenue."

Redemption fund.

5.—(1) The Company may from time to time set apart out of revenue such sums as they may consider proper for the purpose of forming a fund for the redemption of any redeemable stock which under the conditions of the issue thereof is redeemable wholly or

partly in cash Provided that the total amount set apart in any year to any fund so formed shall not exceed such amount as would if set apart annually to the fund and accumulated with compound interest calculated at the rate of three per centum per annum with annual rests amount at the end of a period of ten years to the sum required for the redemption of that stock at maturity Provided also that if any of the moneys and investments from time to time constituting the fund are applied by the Company to the purchase by agreement or to the redemption before the date of maturity of any part of the redeemable stock for the redemption of which the fund has been formed the Company may also in each year after such purchase or redemption until the date of maturity of such redeemable stock transfer into the fund out of revenue such amount as would have been the sum payable in that year as interest or dividend on that part of the redeemable stock if it had not been redeemed.

(2) The directors may invest any sums set apart or transferred to any fund formed under the last preceding subsection and the income therefrom in any securities in which trustees are for the time being by law authorised to invest trust funds or in any other securities in which they may be authorised to invest those sums by a resolution passed at a general meeting of the Company or may employ any such sums temporarily for any purposes of the undertaking to which capital is properly applicable.

(3) The moneys and investments from time to time constituting any fund formed under this section shall be applied by the Company to the redemption of the redeemable stock for the redemption of which the fund has been formed in accordance with the conditions of the issue of such redeemable stock Provided that subject to the conditions of the issue of such redeemable stock any part of the moneys and investments from time to time constituting the fund may be applied by the Company to the purchase by agreement of any part of that redeemable stock at a price not exceeding the price at which such stock or any part thereof could be redeemed at the next redemption date under the conditions of the issue of such stock together with such allowance on account of any interest or dividend which

may become payable in respect of such stock at the next date for payment of interest or dividend thereon as may be certified by the Company's auditors to be proper.

(4) Any redeemable stock purchased under the last preceding subsection shall be cancelled and extinguished and shall be deemed for the purposes of section 20 (Redeemable preference capital and debenture stock) of the Act of 1936 to be redeemed stock available for issue under that section.

(5) If at the date of maturity of any redeemable stock the value of the moneys and investments in any fund formed under this section for the redemption of that redeemable stock exceeds the sum required for the redemption of so much of that redeemable stock as is then outstanding the excess shall be applied by the Company to such purposes of the undertaking (whether capital or revenue) as the directors may determine.

Purchase and cancellation of debenture stock.

6.—(1) The Company may at any time and from time to time purchase by agreement any debenture stock (redeemable or irredeemable) issued by them under any Act or Order relating to them and for that purpose may apply any money for the time being in their hands which they are entitled to apply to capital purposes and any other money or funds for the time being in their hands.

(2) Any debenture stock purchased under the provisions of this section may at the option of the directors be retained by the Company and registered in the name of the Company or be at any time cancelled and extinguished.

(3) If any debenture stock is purchased under the provisions of this section and thereafter is cancelled and extinguished the Company may subject to the provisions of Part III of the Companies Clauses Act 1863 and of section 23 (Debenture stock) of the Act of 1902 re-issue that debenture stock or issue in lieu thereof other debenture stock (redeemable or irredeemable) not exceeding the nominal amount of the debenture stock so cancelled and extinguished.

26 & 27 Vict. c. 118.

(4) Section 27 (Power to purchase irredeemable debenture stock) of the Act of 1936 is hereby repealed.

Saving for emergency powers of Treasury. 2 & 3 Geo. 6. c. 62.

7. So long as the making of an issue of capital in the United Kingdom without the consent of the Treasury is prohibited by regulations made under the Emergency Powers (Defence) Act 1939 it shall not be lawful to exercise the powers of borrowing conferred by this Act without such consent.

Revision of maximum prices and sliding scale. 12 & 13 Geo. 5. c. 46. 16 & 17 Geo. 5. c. 51.

8. If—

(A) a representation be made to the Minister under subsection (2) of section 32 of the schedule to the Electric Lighting (Clauses) Act 1899 (which subsection is set out in the schedule to the Electricity (Supply) Act 1922) that the maximum prices stated in the Second Schedule to the Act of 1902 or in any of the Electricity Orders mentioned in the schedule to the Act of 1936 or in any other Electricity Order for which the Company are for the time being the undertakers ought to be altered; or

(B) an application be made to the Minister under section 52 (Revision of prices) of the Act of 1902 to revise the relation between price and dividend as fixed by section 51 (Relation of price to dividend) of the Act of 1902; or

(C) an application be made to the Minister under subsection (1) of section 31 of the Electricity (Supply) Act 1926 to revise the maximum prices stated in the Second Schedule to the Act of 1902 or the standard prices prescribed by the said section 51 of that Act;

the Minister may take into account in respect of any year of which the accounts are put before him in connection with such representation or application as an expense on revenue account—

(*a*) the sums actually applied by the Company in respect of that year out of revenue to the purposes hereinafter mentioned; and

(*b*) an amount for depreciation in respect of that year:

Provided that the aggregate amount which may be taken into account under (*a*) and (*b*) above shall not exceed such amount as would be the amount of depreciation in respect of that year if depreciation were calculated according to the scale prescribed by the Scale of Depreciation (Purchase of Electricity Undertakings) Special Order 1937.

The purposes hereinbefore referred to are—

(i) the redemption of any redeemable stock;

(ii) the forming of a redemption fund under section 5 (Redemption fund) of this Act; and

(iii) the purchase of debenture stock pursuant to section 6 (Purchase and cancellation of debenture stock) of this Act.

Determination of divisible profits for purposes of certain Orders.

9. In arriving at the "divisible profits" of the undertaking in any year—

(*a*) for the purposes of section 17 of the West Cornwall Electricity Special Order 1928 as modified by subsection (1) of section 75 (Relation of prices to dividends) of the Act of 1936; and

(*b*) for the purposes of section 11 of the East Cornwall Electricity Special Order 1933 as modified by subsection (2) of that section 75; and

(*c*) for the purposes of section 11 of the said Order of 1933 as modified by subsection (3) of that section 75 and applied by that subsection (3) to all of the Electricity Orders mentioned in the schedule to the Act of 1936 other than the said Orders of 1928 and 1933;

no deduction or charge shall be made in respect of any sums applied by the Company out of revenue to any of the purposes numbered (i) (ii) and (iii) at the end of the last preceding section of this Act.

Additional lands.

10.—(1) The Company may for the general purposes of the undertaking authorised by the Act of 1902 the Act of 1936 and this Act acquire by agreement by way of purchase lease or exchange and hold any lands and hereditaments not exceeding (except with the consent of the Electricity Commissioners which consent

those Commissioners are hereby authorised to give) two hundred acres (inclusive of any land acquired before the passing of this Act under the powers of section 32 (Purchase of additional lands by Company) of the Act of 1902 but exclusive of any land acquired by the Company under the powers of section 30 (Lands for generating stations) of that Act) which the Company may from time to time require for any of the purposes of the Act of 1902 the Act of 1936 and this Act or of the said undertaking but the Company shall not create or permit a nuisance on any such lands Provided that the Company shall not (save so far as they may be authorised so to do by competent authority) erect any station for generating electricity on any land acquired under the powers of this section.

(2) The said section 32 of the Act of 1902 is hereby repealed.

Power of entry for substitution of electric lines &c.

11. In any case in which the proper and efficient supply of electricity necessitates the substitution of a new electric line or other work situate in or upon the private property of a consumer the Company after giving forty-eight hours' notice in writing under the hand of the secretary or other duly authorised officer of the Company to the occupier or if there be no occupier then to the owner or lessee of any house building or land in or upon which such electric line or work is laid or fixed may enter such house building or land between the hours of nine in the morning and four in the afternoon or with the authority in writing of a justice at any other time for the purpose of effecting such substitution repairing all damage caused by such entry or substitution:

Provided that the Company shall not exercise the powers of this section in respect of—

(*a*) any premises which form part of the railway of any railway company or railway committee except with the consent of such company or committee; or

(*b*) any factory within the meaning of the Factories Act 1937 except with the consent of the owner of the factory (as defined in that Act) and of the occupier thereof. 1 Edw. 8. & 1 Geo. 6. c. 67.

For determining stand-by supplies.

12. If any question shall arise under section 23 of the Electricity (Supply) Act 1922 in relation to the Company as to whether a supply of electricity is demanded or received for the purpose of a stand-by supply only or as to whether a supply of electricity or of gas steam or other form of energy is in use or ready for use for the purposes for which a stand-by supply of electricity is required the question shall in default of agreement be determined by arbitration in the manner provided by section 28 of the Electric Lighting Act 1882.

As to maximum power which may be demanded.

13. Except in the case of electricity supplied in pursuance of any agreement the maximum electrical power with which any consumer shall be entitled to be supplied by the Company shall not include any supply of electricity taken on extraordinary occasions unless the consumer shall pay to the Company such minimum annual sum as will give them a reasonable return on the capital expenditure and will cover other standing charges incurred by the Company in order to meet the possible maximum demand for the premises of the consumer Any question as to whether the provisions of this section apply and if so the sum to be paid shall in default of agreement be determined by arbitration in the manner provided by section 28 of the Electric Lighting Act 1882.

Protection of seals &c. of Company. 34 & 35 Vict. c. 41.

14. The provisions of section 38 of the Gasworks Clauses Act 1871 incorporated with the Electric Lighting Act 1882 shall apply to any person who wilfully fraudulently or by culpable negligence injures or detaches or suffers to be injured or detached any of the sealing or locking devices attached to any sealed or locked receptacle meter or apparatus affixed by the Company to any electric line within a consumer's premises or opens or suffers to be opened any such sealed or locked receptacle meter or apparatus.

Transfer of undertakings by agreement.

15. Section 50 (Transfer of undertakings to Company by agreement) of the Act of 1936 shall be read and have effect as if the words "which shall have been confirmed or approved by Parliament prior to the passing of this Act" were omitted therefrom.

Application of section 55 of Act of 1936.

16. Section 55 (Compensation for deprivation of employment) of the Act of 1936 shall extend to and apply in the case of the acquisition by the Company of an undertaking or part of an undertaking under the powers conferred by section 50 of that Act as amended by the last preceding section of this Act and also in the case of the cessation of operation or change in the method of operation of any generating station or works in consequence of any such acquisition.

Proxies of corporate bodies. 8 & 9 Vict. c. 16. 51 & 52 Vict. c. 48. 52 & 53 Vict. c. 37.

17. Section 76 of the Companies Clauses Consolidation Act 1845 relating to the appointment of proxies shall in its application to the Company have effect as though the following proviso were added thereto in lieu of the proviso contained in section 2 of the Companies Clauses Consolidation Act 1888 as amended by the Companies Clauses Consolidation Act 1889 (viz.):—

> "Provided that where the shareholder is a body corporate the proxy may be any member or officer of such body though not personally a shareholder in the Company."

Qualification of directors.

18. Every director who is not qualified at the time of his election as a director shall obtain his qualification within two months after his election and if any director does not within such two months obtain his qualification he shall vacate his office as director and shall be incapable of being re-elected a director until he has obtained his qualification.

Signing of minutes &c.

19. Section 98 (Proceedings to be entered in books to be signed by chairman and to be evidence) of the Companies Clauses Consolidation Act 1845 shall in its application to the Company have effect as if the words "or of the next succeeding meeting" were inserted therein after the words "shall be signed by the chairman of such meeting."

Recovery of penalties.

20. Save as otherwise by this Act expressly provided all offences against this Act and all penalties forfeitures costs and expenses imposed or recoverable under this Act may be prosecuted and recovered in a summary manner Provided that costs or expenses except such as are recoverable along with a penalty

shall not be recovered as penalties but may be recovered summarily as civil debts.

Saving rights of duchy of Cornwall.

21. Section 78 (Saving rights of duchy of Cornwall) of the Act of 1936 shall extend to and apply for the purposes of this Act as if that section were re-enacted in this Act.

Costs of Act.

22. All costs charges and expenses of and incidental to the preparing for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Company.

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