

MAINE STATE LEGISLATURE

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AUGUSTA, MAINE

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND
NINE HUNDRED AND TWENTY-NINE

AN ACT to Provide for the Exportation of Surplus Power.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. The phrase "surplus power," wherever used in this act, means hydro-electric power which in the case of a public utility company is in excess of the amount of power required to supply all the reasonable demands for electric power within the territory in Maine in which said company is authorized to do a public utility business and in the case of any other person, firm or corporation is in excess of the amount required to supply all reasonable demands for electric power in the market in Maine available to it, taking into account in all cases the demands which may be made under the provisions of section six of chapter sixty of the revised statutes.

Sec. 2. Corporations for the purpose of purchasing electric current or energy however generated, upon the terms and conditions hereinafter prescribed in this act, and not otherwise, from such persons, firms or corporations only as obtain and observe the terms of the permit hereinafter provided for and the provisions of this act, and for the purpose of transporting, transmitting, and selling the same only in accordance with the provisions of this act may be organized under the general law in the manner prescribed in chapter fifty-one of the revised statutes and acts amendatory thereof or additional thereto, provided, however, that no corporation organized under this act shall, nor shall it have the power or authority to own, operate or control any hydro-electrical generating plant or electrical company within the meaning of the definition of "electrical company" as contained in section fifteen of chapter fifty-five of the revised statutes of Maine for nineteen hundred and sixteen.

Sec. 3. Such persons, firms and corporations only as obtain the permit hereinafter provided for in this act, are hereby authorized to sell such surplus power as may be prescribed in said permit to corporations organized under this act for so long a time only as they and the corporations organized under this act observe the terms and conditions of this act and of said permit.

Sec. 4. So long as the terms and conditions of this act and of said permit be observed by both the corporation organized under authority of this act and the person, firm or corporation from whom it purchases electricity under the terms and conditions of this act and such permit, the corporation organized under this act shall have authority to transport and transmit the same within the state of Maine and to transport, transmit, sell and deliver the same outside the state of Maine in accordance with the provisions of this act and not otherwise. No corporation organized under authority of this act shall, nor shall it have authority to, sell electric current or energy within the territorial limits of the state of Maine.

Sec. 5. Any person, firm or corporation owning or operating a hydro-electric power plant in Maine or owning an undeveloped water power in Maine which is producing or is capable of producing surplus power may file a petition with the public utilities commission of the state of Maine setting forth such facts as are necessary to prove such capacity or potential capacity to produce surplus power as herein defined, asking the public utilities commission of the state of Maine for permission to sell the whole or such part of said surplus power as the public utilities commission may determine to a corporation organized under the provisions of this act. Whereupon the public utilities commission shall appoint a hearing thereon and order public notice thereof in the state newspaper and at least two other daily papers published in the state of Maine, to be published daily, except Sunday, three weeks successively before the date of hearing, and shall further cause a copy of said petition and order of notice to be served on the secretary of state in behalf of said state, which service may be made on the secretary of state, by leaving a copy of said petition and order of notice thereon at the office of the secretary of state in the state house at Augusta at least fourteen days before the date of hearing; the state shall be represented at said hearing by the attorney general, if requested by the governor. If at the hearing the facts stated in said petition are found to be true, the public utilities commission shall issue a permit to said petitioner authorizing it to sell and deliver to said corporation, organized under this act, such surplus power, and at such rates as the public utilities commission may determine. Said permit shall be expressly limited to continue for so long a time only as said petitioner is able to meet and supply, and does meet and supply, all demands for electric current for use in the available market therefor in the state of Maine in the territory in which it is authorized to sell the same, including that required to supply other public utilities in accordance with the provisions of section six of chapter sixty of the revised statutes of nineteen hundred and sixteen, in accordance with such conditions as may be prescribed and at such rates as may be approved by said public

utilities commission. Said permit shall further expressly provide that it shall continue in force only so long as both the petitioner therefor and the corporation formed under this act to whom permission is granted said petitioner to sell surplus power shall observe and abide by the terms and conditions of said permit, of this act, and the terms and conditions of the contract with the state of Maine hereinafter referred to. Said permit, however, shall not issue unless and until the said petitioner shall, in consideration of its issue, sign a contract to and in favor of the state of Maine, agreeing to abide by the terms of said permit and that, during the continuance of said permit, it will not either sell or transport or sell to be transported beyond the state of Maine any electric current or energy, generated by water power, other than under that or a similar permit, or as permitted under section one of chapter sixty of the revised statutes of nineteen hundred and sixteen, without express authority therefor granted to it by special act of the legislature of the state of Maine, and that it will not, while said permit is in force, violate the terms of section one of chapter sixty of the revised statutes of nineteen hundred and sixteen. For said permission to sell the whole or such part of surplus power as the public utilities commission may determine, said person, firm, or corporation shall pay an excise tax to the state of Maine and to the treasurer of state thereof of four per cent of the gross operating revenue receipts of said person, firm, or corporation received for selling the whole or such part of its surplus power as is in this act defined and permitted during each calendar year or part thereof. Said tax for said license and permission as aforesaid shall be payable to the treasurer of state for the use of the state on the first day of June in each year. The said person, firm, or corporation receiving said permission from said public utilities commission to have permission to sell the whole or such part of its surplus power as said public utilities commission may determine, shall return to the board of state assessors on or before the first day of April in each year the amount of its gross operating revenue receipts for said whole or such part of said surplus power as is by said firm or corporation sold under the permission for which provision is here made, for the calendar year or part thereof next preceding said first day of April. The board of state assessors shall forthwith determine the amount of such excise tax and report the same to the treasurer of state who shall forthwith on or before the first day of May in each year give notice thereof to the person, firm, or corporation receiving such permission from said public utilities commission. Any person, firm, or corporation neglecting to make said returns or pay said tax shall forfeit the permission herein referred to, and for which provision is herein made.

Sec. 6. Any public utility which makes application for a permit to sell and deliver surplus power to a corporation organized under this act shall expressly declare and agree, in con-

sideration of the issuance of said permit, that it will, with the consent of the public utilities commission, buy from each and every person, firm or corporation owning a hydro-electric power plant generating, or which may hereafter generate, electric power within the territory which said public utility is authorized by its charter to serve, upon reasonable terms, and under reasonable conditions, any and all surplus power for which it has an available market, and that in such transactions and arrangements it will not discriminate nor favor one party more than another; provided that the person, firm or corporation selling such aforesaid surplus power shall extend its lines to connect with the lines of such public utility, for which extension charter authority is hereby granted. Every permit issued to a public utility shall be on condition that the foregoing shall be observed and performed under the supervision of the public utilities commission. Said public utilities commission is hereby charged with the duty of investigating all complaints hereunder, and is vested with authority to decide all questions arising under this section and to enforce the provisions hereof by proper orders and decrees. If any public utility violates any order or decree of the commission hereunder, said public utilities commission is hereby authorized to revoke its permit.

Sec. 7. No person, firm or corporation, to whom such a permit is issued shall sell, nor shall any corporation organized under this act have any authority under its corporate powers to purchase any electricity or electric energy under this act unless the contract of sale shall contain a clause making such contract dependent upon the observance by both parties thereto of the terms and conditions of this act respectively applicable to them, the terms and conditions of said permit, and said contract with the state of Maine.

Sec. 8. When such permit is issued, and only so long as the terms of the same are observed by the corporation organized under this act and by said party to whom said permit is issued, and the contract with the state of Maine above referred to is kept by said petitioner, petitioner may continue to sell and deliver said surplus power to the corporation organized under this act, notwithstanding the provision of section one of chapter sixty of the revised statutes of nineteen hundred and sixteen, and shall not be subject to the penalties of section two of said chapter, and the corporation organized under this act may, during said time, transport and transmit within the state of Maine and transport, transmit, sell and deliver said surplus power purchased under said permit beyond the limits of the state of Maine.

Sec. 9. If any person, firm or corporation to whom a permit is issued under this act violates the terms of said permit or contract with the state of Maine provided for in the preceding sec-

tions, upon the filing of a bill in equity in behalf of the state of Maine by the attorney general and prayer therefor, an injunction may issue, restraining said permittee from further sale and delivery of electricity and electric current in violation of said permit and contract, and the supreme judicial court in equity is hereby expressly granted jurisdiction to hear and determine said bill in accordance with the usual practice in equity.

Sec. 10. Any person, firm, or corporation to whom a permit is issued under this act may surrender said permit by written notice thereof, filed with said public utilities commission; and if any person, firm or corporation, to whom a permit is issued under this act violates any of the terms or conditions of this act, or the terms of said permit or of the contract with the state of Maine, or if any corporation organized under this act, purchasing electricity under a permit provided for in this act, violates any of the terms or conditions of this act, the public utilities commission, after notice and hearing, may cancel such permit.

Sec. 11. No corporation shall be organized under the authority of this act with a capital of less than one hundred thousand dollars; and subscriptions to its capital stock to at least said amount shall be made at the time of its organization; no corporation organized under this act shall do any other business than perfect its organization before said amount of capital stock be actually paid into its treasury.

Sec. 12. No corporation organized under authority of this act shall, nor shall it have authority to, accept delivery of any electric current or energy from any person, firm or corporation to whom a permit is issued under the provisions of this act, nor shall any person, firm or corporation to whom a permit is issued under the authority of this act deliver current or energy to a corporation formed under the authority of this act, at any place within one-fourth of a mile from the boundary of the state of Maine; provided, however, nothing in this section shall prevent delivery and acceptance of delivery at the generating plant of the permittee, if such plant be less than one-fourth of a mile from said boundary.

Sec. 13. Permits to cross public highways may be granted to corporations organized under authority of this act by the same authorities, and in the same manner, as permits to cross such highways are granted to other electric companies in the state of Maine; provided, however, that upon petition therefor the public utilities commission of the state of Maine shall prepare and furnish plans and specifications for the construction of said transmission line at the point where it crosses such highway, and said transmission line where it crosses such highway shall be built and constructed only in accordance with the plans and specifications so furnished.

Sec. 14. Provided, however, that no permit shall issue to any public utility authorized to distribute and sell electric current or energy within any portion of the state of Maine, unless said permit contains an express condition that it shall become void unless said public utility shall expend annually, for a term of ten years from the date of its first sale of such electricity to said transmission company, a sum equal to one-half the gross receipts received by it for the energy so sold to said transmission company, up to a maximum expenditure for any one year of two hundred fifty thousand dollars for the construction of rural electric facilities as hereinafter defined in this section, said expenditure to be under the direction of the public utilities commission of Maine; provided further that no such utility shall be required to construct any such rural facilities in any towns other than those in which it or its subsidiaries are authorized to distribute and sell electricity. Should the public utilities commission of Maine decide after public hearing, notice of which is published in three successive issues of all newspapers printed and published in any of said towns and for three successive weeks in the state newspaper, that the expense of constructing further rural electric facilities in the towns which said public utility or its subsidiaries are authorized to distribute and sell electric current or energy would be so great in proportion to the benefits to be realized as to make construction of such further rural electric facilities distinctly against public interest, said public utilities commission may order said public utility to cease said construction and said utility shall be relieved by said order from its obligation so to do. For the purpose of this act, rural electric facilities are hereby defined as any facilities necessary to and useful in the distribution of electricity to all inhabitants of Maine except those residing or doing business within a village having a population of more than five hundred people. If, at the end of any year, any public utility company, to which a permit is issued under this act, has failed to make the whole of the expenditure for rural electrification required under said permit and this act for the year just elapsed, said public utility company shall and may make up said amount by an expenditure in the next succeeding year without forfeiting said permit. The public utilities commission of Maine is hereby expressly authorized and given such authority as is necessary to enable it to carry out the provisions of this section.

It is further hereby expressly provided that if securities are issued against or based upon rural electric facilities constructed in accordance with and in performance of the condition of the permit as prescribed in this section, the proceeds of such securities shall be used exclusively in the construction of rural electric facilities as defined in this section.

Sec. 15. Any corporation organized under the provisions of this act which shall either purchase or accept for transmission

any electric current or energy from any person, firm or corporation not having the permit provided for in this act or whose permit has been revoked by the public utilities commission of Maine, as provided for in this act, shall forfeit its franchise or right to do business to the state of Maine in quo warranto proceedings upon petitions or information brought in the name of the governor of the state of Maine, the attorney general or secretary of state, or either of them, returnable to the supreme judicial court sitting in equity, in term time or vacation, and said court shall have and hereby is vested with full and complete jurisdiction of the subject matter contained therein. And this section of this act is hereby made a part of the charter of each and every corporation formed under this act as though set forth in its articles of association and statement of purposes, and is further expressly made a limitation on its corporate powers and a condition of its right to exercise its franchise.

Sec. 16. It is hereby expressly declared to be the purpose and intent of this act to provide to those persons, firms and corporations who make use of its provisions a way in which they can sell their surplus power, over and above that required to supply the market therefor in Maine as defined herein, for export from the state of Maine, to the end that so long as they make use of its provisions the users of electricity in Maine shall have a constant and adequate supply of electric energy to the extent of the facilities of such persons, firms or corporations for furnishing the same.

Sec. 17. This act shall be submitted for approval or rejection to the duly qualified voters of the state of Maine at an election to be held on the second Monday in September in the year A. D. nineteen hundred and twenty-nine. The aldermen of cities, the selectmen of towns and the assessors of the several plantations in this state, are hereby empowered and directed to notify the inhabitants of their respective cities, towns and plantations to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of senators and representatives to give their votes upon this act and the question shall be: "Shall the act to provide for the exportation of surplus power, as defined and restricted in said act, permitting the sale outside of Maine of hydro-electric power not needed in Maine, be accepted?" And the inhabitants of said cities, towns and plantations shall vote by ballot on said question, those in favor of the same expressing it by making a cross within the square opposite the word "Yes" upon their ballots and those opposed to the question by making a cross within the square opposite the word "No" upon their ballots, and the ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings, and returns made to the office of the secretary of state in the same manner as votes for governor and

members of the legislature, and the governor and council shall count the same, and if it shall appear that a majority of the inhabitants voting on the question are in favor of the act, the governor shall make known the fact by his proclamation, and thereupon this act shall become law. The secretary of state shall prepare and furnish to the several cities, towns and plantations ballots and blank returns in conformity with the foregoing, accompanied by a copy thereof.

Sec. 18. If and when, with the consent of congress, any agreement or compact shall be entered into by and between the state of Maine and another state or states relative to any of the subjects covered by this act, thereupon any and all provisions of this act shall be subject to the terms of said agreement or compact, and any and all contracts and permits for the sale of surplus power, as provided for in this act, shall be governed by and subject to the terms of said agreement or compact in like manner and with the same effect as if express provision therefor were contained in said contracts and permits.

Sec. 19. If any part of this act is hereafter declared to be unconstitutional, then and in that event, this entire act shall be and thereby become null and void; anything else in this act to the contrary notwithstanding.

IN HOUSE OF REPRESENTATIVES,.....1929

Read three times and passed to be enacted.

.....*Speaker*

IN SENATE,.....1929

Read twice and passed to be enacted.

.....*President*

Approved.....1929

.....*Governor*