

MAINE STATE LEGISLATURE

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NINETY-FOURTH LEGISLATURE

Legislative Document

No. 201

S. P. 144

In Senate, January 27, 1949.

Referred to Committee on Public Utilities, sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Collins of Aroostook by request.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-NINE

AN ACT Relating to the Caribou Utilities District.

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

P. & S. L., 1945, c. 83, §9, repealed and replaced. Section 9 of chapter 83 of the private and special laws of 1945 is hereby repealed and the following enacted in place thereof:

'Sec. 9. Authorized to acquire property and franchises of Caribou Water Works Corporation. Said utilities district is hereby authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, which right is hereby expressly delegated to said district for said purpose, the entire plant, property, franchises, property rights, privileges and assets now of Caribou Water Works Corporation in said district, including all land, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools, and all apparatus and appliances used or usable in supplying water of said company. If and when so acquired the said district, in addition to the powers conferred by this act, shall have and enjoy and be entitled to exercise all of the rights, privileges and franchises of said Caribou Water Works Corporation and may do and perform any and all of the acts and things authorized by the original charter of said Caribou Water Works Corporation, insofar as they are not inconsistent with the provisions of this act.'

Sec. 2. P. & S. L., 1945, c. 83, §11, repealed and replaced. Section 11 of chapter 83 of the private and special laws of 1945 is hereby repealed and the following enacted in place thereof:

‘ Sec. 11. Procedure in case trustees fail to agree on terms of purchase of the Caribou Water Works properties before January 1, 1950. In case said trustees fail to agree with the Caribou Water Works Corporation, its successors and assigns, upon the terms of purchase of said property on or before the 1st day of January, 1950, said district through its board of trustees aforesaid is hereby authorized to take the plant, property and franchises of said company as for public use by petition therefore in the manner hereinafter provided. Said district through its trustees is hereby authorized after January 1, 1950, and before July 1, 1950, to file its petition if proceedings are necessary against said company, in the clerk's office of the superior court for the county of Aroostook in term time or in vacation addressed to any justice of said court, who, after due notice to the company interested and its mortgagees, shall after hearing and within 30 days after the date at which said petition is returnable, appoint 3 disinterested appraisers, one of whom shall be learned in the law and none of whom shall be residents of Aroostook county, for the purpose of fixing a valuation of said plant, property and franchises. At the hearing aforesaid, such justice, upon motion of the petitioner, may order the production and filing in court, for the inspection of the petitioner, of all books and papers pertinent to the issue and necessary for a full understanding of the matter to be heard by said appraisers, the terms and conditions of so producing and filing such books and papers to be determined by the justice in his order therefore and to be enforced from time to time as any justice of said superior court, in term or in vacation, upon motion of said party, may deem reasonable and proper in the premises. At such hearing, such justice upon motion of the petitioner, may fix a time at which the said company shall file in the clerk's office of the superior court of the county of Aroostook for the inspection of the petitioner, the following: 1st, schedule showing the names, residences and character of service of all its customers on the 1st day of January 1950, with the rate charged thereafter; 2nd, copies of all contracts in force on said January 1, 1950; 3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to said 1st day of January, 1950, and all operating expenses and fixed charges, paid or incurred during such period and property chargeable thereto; 4th, a memorandum of all real estate, water rights or interest therein, owned or controlled on said 1st day of January, 1950, with such brief description thereof as will reasonably identify the same; 5th, brief descriptions, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants,

gates, gate-boxes, shut-off boxes, fixtures and machinery and all physical elements in such water system, giving in detail quantities, size, lengths, and specifying the streets, roads and ways where situated; 6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in maintaining said water system as of said 1st day of January, 1950. Such orders may be enforced from time to time by any justice of said superior court, in term time or in vacation, upon motion of said party, as such justice may deem reasonable and proper in the premises. At such hearing the justice then sitting may, upon motion of the petitioner, make all such decrees as he deems reasonable and proper to enable the petitioner, through its servants and employees, to ascertain the true condition of the physical properties of the said water system, in the presence of the officers or agents of said company, the entire expense thereof to be borne by said district.

The said appraisers shall have the power of compelling attendance of witnesses and the production of all books, accounts and papers pertinent to the issue and necessary for a full understanding by them of the matter in question and may administer oaths, and any witness or person in charge of such books, accounts and papers refusing to attend or to produce the same shall be subject to the same penalties and proceedings, so far as applicable as witness summoned to attend the superior court. Depositions may be taken as in civil actions.

The appraisers so appointed shall, after notice and hearing, fix the valuation of said plant, property and franchises at what they are fairly and equitably worth, so that said company shall receive just compensation for all and the same. The 1st day of January, 1950, shall be the date as of which the valuation aforesaid shall be fixed from which date interest on said award shall run, at $3\frac{1}{2}\%$ per year, and all rents and profits accruing thereafter shall belong to said district. The report of said appraisers or a majority of them shall be filed in said clerk's office, in term time or in vacation, as soon as may be after their appointment, and such single justice, or, in case of his inability to act, any justice of said court appointed by the chief justice, may, after notice and hearing, confirm or reject the same, or recommit it if justice so requires, or fix the amount, based on his own judgment, after due consideration of the appraisers' findings.

Before a commission is issued to said appraisers, either party may ask for instructions to said appraisers, and all questions of law arising upon requests for instruction, or upon any other matters in issue, may be reported to the law court for determination before appraisers proceed to fix the valuation of the property, plant and franchises of said company, upon

the confirmation of said report the court so sitting shall thereupon, after hearing, make final decree upon the entire matter, including the application of the purchase money and transfer of property, jurisdiction over which is hereby conferred, and with the power to enforce said decree as in equity cases. All findings of fact by said court shall be final, but any party aggrieved may take exceptions as to any ruling of law so made, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the questions raised thereby. Such exceptions shall be claimed on the docket within 10 days after such final decree is signed, entered and filed and notice thereof has been given to the parties or their counsel, and said exceptions so claimed shall be made up, allowed and filed within said time unless further time is granted by the court or by agreement of the parties. They shall be entered at the next term of the law court to be held after the filing and entry of said decree and there heard unless otherwise agreed; or the law court for good cause shall order further time for hearing thereon.

Before said plant, property and franchises are transferred in accordance with such final decree and before payment therefor as hereinafter provided, such justice shall, upon motion of either party, after notice and hearing, take account of all receipts and expenditures, properly had or incurred by the company, from and after said 1st day of January, 1950, and all net rents and profits accruing thereafter, and shall order the net balance to be added to or deducted from, the amount to be paid under such final decree, as the case may be. All findings of fact by such justice at such hearing shall be final. On payment or tender by said district of the amount so determined and the performances of all the other terms and conditions so imposed by said court, the entire plant, property and franchises of said company used and usable in supplying water in the town of Caribou or elsewhere shall become vested in said district. Either party may file and prosecute motions and petitions relating to the premises at any state of the proceedings, and the proceedings shall not be discontinued except upon consent of both parties.

If a vacancy occurs at any time in said board of appraisers from any cause, such sitting justice, or in case of his inability to act, any justice of said court appointed by the chief justice may, after notice and hearing, appoint a new appraiser or appraisers and make all such orders for hearing said cause by the appraisers anew or for any extension of time for making their award, or otherwise, as the circumstances of the case may require. Nothing herein contained shall preclude said district from acquiring said properties from said company at any time by mutual agreement.