

MAINE STATE LEGISLATURE

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N I N E T Y - F O U R T H L E G I S L A T U R E

Legislative Document

No. 1023

H. P. 1703

House of Representatives, February 24, 1949.

Referred to Committee on Public Utilities. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Hall of Calais.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-NINE

AN ACT Creating the Calais Utilities District.

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

Sec. 1. Territorial limits and corporate name and purposes. The inhabitants and territory within the city of Calais in the county of Washington shall be and hereby are constituted a body politic and corporate under the name of the "Calais Utilities District" for the purpose of supplying the city of Calais and the inhabitants of said city with pure water for domestic, commercial, sanitary and municipal purposes, including the extinguishment of fires, and of supplying electric light and power to the city of Calais and the inhabitants thereof as hereinafter provided.

Sec. 2. Powers of Calais Utilities District. Said Calais Utilities District is hereby authorized for the purposes aforesaid to take, collect, store, flow, use, detain, distribute and convey to the city of Calais or any part thereof, water from any lake, pond, stream, or river or from any surface or underground brook, spring or vein of water in said city or near said city in the United States or Canada, and is also authorized to locate, construct and maintain aqueducts, pipes, conduits, standpipes, hydrants, pumping stations and other necessary structures and equipment therefor, and erect poles and lines and do all things necessary to furnish water, light and

power for public purposes and for public health, comfort and convenience of the inhabitants of said district, and to supply electric light and power to the inhabitants of towns now supplied by the St. Croix Electric Company and other parts of said towns; provided, however, that nothing herein contained shall be construed as authorizing said district to supply electric light and power as aforesaid unless and until it shall acquire the property of the said St. Croix Electric Company as hereinafter provided.

Sec. 3. Right of eminent domain conferred. The said district, for the purposes of its incorporation, is hereby authorized to take and hold, as for public uses, by purchase, eminent domain, or otherwise, any land or interest therein, or water rights necessary for pumping its water supply through its mains, for reservoirs, for preserving the purity of the water and watershed, for laying and maintaining aqueducts and other structures, for taking, distributing, discharging and disposing of water and for rights of way and roadways to its sources of supply, power stations, reservoirs, mains, aqueducts, structures and lands, also all things necessary for supplying water as aforesaid, and subject to the provisions hereinafter stated, for supplying electric lighting and power; provided, however, nothing herein contained shall be construed as authorizing said district to take by right of eminent domain any of the property or facilities of the St. Croix Electric Company or any other public service corporation or district used or acquired for future use by the owner thereof in the performance of a public duty unless expressly authorized thereto herein or by subsequent act of the legislature.

Sec. 4. Authorized to lay mains, pipes, conduits, etc., through public ways and across private lands. The said district is hereby authorized to lay in and through the streets, roads, ways and highways of the city of Calais and other towns served by it and across private lands therein, and to maintain, repair and replace, all such pipes, mains, conduits, aqueducts, poles and wires, and fixtures as may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipes, aqueducts, conduits or pole lines in any street, roadway or highway, it shall cause the same to be done with as little obstruction as practicable to the public travel, and shall at its own expense, without unnecessary delay, cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 5. Procedure in exercising right of eminent domain. After the original acquisition for which provision is made in sections 9 and 11 of this act, the said district in exercising, from time to time, any right of eminent domain conferred upon it by law or through or under the franchise of any company by it acquired shall file written application with the public utili-

ties commission requesting its approval of the proposed taking. Such application shall describe the property or rights to be taken, the purpose of the taking, and shall name all parties who may be interested therein; the commission thereupon shall appoint a time for a hearing near the premises, and shall require such notice as the commission may direct to be given to the persons interested at least 14 days before the date of the hearing; the commission then shall view the premises, hear the parties, and shall determine how much, if any, of the property described in the petition should be taken for the reasonable purposes of the district; and in authorizing any taking the commission may attach such reasonable terms, limitations and restrictions as justice may require. If the commission shall find that any of the property described in the application is necessary for the aforesaid purposes of the district, it shall make a certificate containing a definite description of the property to be taken, and of any terms, restrictions and limitations in connection therewith, and shall furnish to the district a true copy thereof, attested by the clerk of the commission; and when such copy of the certificate is filed with the clerk of courts in the county where the property lies, the property shall be deemed and treated as taken; provided, however, that when the property is held by a tenant for life and the reversion is contingent as to the persons in whom it may vest at the termination of the life estate, such fact shall be stated in the application and the commission, in addition to the notice to the tenant for life, shall require notice by publication, in such manner as it may deem proper, to all others interested. Entry may be made on any private land prior to the filing of any such application for the purpose of making surveys, the district being responsible for any damage resulting from such entry, and possession may be had of the property described in the certificate of the commission forthwith upon the filing and recording of such certificate as hereinbefore provided, but title to such property shall not vest in the district until payment therefor has been made.

Sec. 6. Adjustment of damages. If any person sustaining damages by any taking as aforesaid shall not agree with the trustees of said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Washington county may have said damages assessed by them; the procedure and all subsequent proceedings and the rights of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be prescribed in the case of damages by laying out of highways. Payment of the award shall be reported to and proven before the county commissioners who shall thereupon record the fact of such payment in the proceedings before the county commissioners. If upon final

adjudication of the award and tender of the amount thereof, any person entitled thereto shall refuse acceptance thereof, said amount shall be deposited with the county commissioners for the benefit of the person entitled thereto; and such deposits shall be recorded by the county commissioners in the proceedings pursuant to said petition, and shall constitute a final acquittance of liability of the district in the premises.

Sec. 7. Procedure if public utility must be crossed. In case of any crossing of any public utility, unless consent is given by the company owning or operating such public utility as to place, manner, and conditions of the crossing within 30 days after such consent is requested by such district, the public utilities commission shall determine the place, manner and conditions of such crossing; and all work on the property of such public utility shall be done under the supervision and to the satisfaction of such public utility, but at the expense of the district.

Sec. 8. Board of trustees. All the affairs of said district shall be managed by a board of trustees composed of 3 members who shall be bona fide residents of the city of Calais and who shall be appointed by the Calais city council within 30 days after the acceptance of this act by the inhabitants of said district as hereinafter provided, but none of the members of the Calais city council shall be eligible for such office of trustee, and whenever any of said trustees becomes a member of said Calais city council he shall automatically cease to be such trustee. As soon as convenient after the members of said board have been appointed, said trustees shall hold a meeting in the city of Calais, and organize by the election of a president and a clerk, adopt a corporate seal, and choose a treasurer and, when necessary, all other needful officers and agents who, with the treasurer, shall serve at their pleasure and whose compensation shall be fixed by such trustees. The compensation of such trustees shall be fixed by the said Calais city council. Whenever a vacancy occurs in the office of president, clerk or treasurer it shall be filled promptly by said board of trustees. At the said first meeting they may determine by agreement, or failing to agree they shall determine by lot the term of office of each trustee so that one shall retire each year and the term of office of the first trustee to expire shall end at the end of the municipal year of the city of Calais following the acceptance of this act, and thereafter the term of office of a trustee shall expire with the end of each municipal year, and whenever the term of office of a trustee expires, the body which appointed such trustee shall appoint a successor to serve the full term of 3 years, and in case any other vacancy arises from any cause it shall be filled in like manner for the unexpired term. When any trustee ceases to be a resident of the city of

Calais he vacates the office of trustee. They may also ordain and establish such by-laws as are necessary for their own convenience and the proper management of the affairs of the district. Said trustees may procure an office and incur such expense as may be necessary. The treasurer shall furnish bond in such sum and with such sureties as they may approve. Members of the board shall be eligible to any office under the board, and shall be sworn into office by a justice of the peace, notary public or the clerk of the city of Calais.

Sec. 9. Authorized to acquire property and franchises of Calais Water and Power Company and/or St. Croix Electric Company and International Power Company. Said utilities district is hereby authorized and empowered to acquire by purchase or by the exercise 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 owned, used or exercised by the Calais Water and Power Company, including all land, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus used or usable in supplying water in the territory served by the company; and is hereby authorized and empowered to acquire by purchase but not by the exercise of eminent domain the entire plant, property, franchises, property rights, privileges and assets, including land, poles, wiring, fixtures, machinery, apparatus and appliances, except cash assets and accounts receivable, owned, used or exercised by the said St. Croix Electric Company and the International Power Company used or usable in supplying light and power in the territory served by the said St. Croix Electric Company and the said International Power 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 Calais Water and Power Company and said St. Croix Electric Company and said International Power Company, and may do and perform any and all of the acts and things authorized by the original charter of said Calais Water and Power Company, and also the original charter of said St. Croix Electric Company, and the said International Power Company, insofar as they are not inconsistent with the provisions of this act.

Sec. 10. Valid contracts of present companies to be assumed by district. All valid contracts now existing between the Calais Water and Power Company or the St. Croix Electric Company or the International Power Company, and said city or other towns and any persons or corporations for supplying water, light and power in the city of Calais or elsewhere

shall in the event of such acquisition be assumed and carried out by said Calais Utilities District.

Sec. 11. Procedure in case trustees fail to agree on terms of purchase.

In case said trustees fail to agree with the said Calais Water and Power Company upon the terms of purchase of said properties on or before January 1, 1950, said district through its trustees aforesaid, is hereby authorized to take the plant, property and franchises of said company as for public use by separate petition therefor 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 Washington in term time or in vacation addressed to any justice of said court, who after due notice to the company interested and its mortgagee 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 Washington 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 therefor and to be enforced from time to time as any justice of the said Superior Court, in term or in vacation, upon motion of either 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 for the county of Washington 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 therefor; 2nd, copies of all contracts in force on said 1st day of January, 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 properly 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 ma-

chinery, meters and all physical elements in such water system, giving in detail quantities, size, lengths and age and specifying the streets, roads or ways where situated; 6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in maintaining said water system on 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 either 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 company, 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 witnesses 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 franchise 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, 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.

Before a commission is issued to said appraisers either party may ask for instructions, 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 franchise 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 franchise are transferred in accordance with such final decree and before payment therefor, as hereinbefore 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 imposed by said court, the entire plant, property and franchise of said company used and usable in supplying water facilities as the case may be in the city of Calais 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.

Sec. 12. Authorized to negotiate temporary loans; and to issue notes and bonds; declared a quasi-municipal corporation; notes and bonds legal investments for savings banks. For accomplishing the purposes of this act, said district, through its trustees, is authorized to borrow money temporarily in an amount not to exceed \$500,000, and to issue therefor the in-

terest-bearing negotiable notes of the district, and for the purpose of refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under the provisions of this act, including the expenses incurred in the creation of the district, in reimbursing said city, in acquiring the aforesaid properties, privileges and franchises of the Calais Water and Power Company and the St. Croix Electric Company and the International Power Company, by purchase or otherwise, of securing sources of supply, taking water and land, paying damages, laying pipes, erecting poles and wires, constructing and maintaining and operating a water and light and power distribution system, and making extensions, additions and improvements to the same, the said district, through its trustees, may from time to time issue bonds of the district to an amount necessary in the judgment of the trustees therefor, maturing at one time or in uniform or varying installments with or without call provisions and at or without any premium. Said notes and bonds shall be legal obligations of said district, which is hereby declared to be a quasi-municipal corporation within the provisions of sections 132 and 133 of chapter 49 of the Revised Statutes of 1944 and all the provisions of said sections shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks and exempt from taxation.

Sec. 13. Property, tax exempt. The property of said Calais Utilities District shall be exempt from all taxation in the city of Calais.

Sec. 14. Execution of instruments. Any and all instruments to be executed by the district may, upon authorization by the board of trustees, be executed in its behalf by its president and treasurer who may impress its corporate seal and make any necessary acknowledgment thereof, except that upon interest coupons attached to any bonds to be issued, the facsimile signature of the treasurer shall be sufficient.

Sec. 15. Rates; application of revenue; sinking fund. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates established by said board of trustees for the service used by them, and said rates shall be uniform within the territory supplied by the district and subject to the approval of the public utilities commission. Said rates shall be so established as to provide revenue for the following purposes:

I. To pay the current expenses for operating and maintaining the water, light and power.

II. To provide for the payment of the interest on the indebtedness created or assumed by the district.

III. To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created or assumed by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of said indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in such securities as savings banks are allowed to hold. Provided, however, that the trustees, may, in their discretion and in lieu of the establishment of a sinking fund, issue the bonds of the district so that not less than 1% of the amount of the bonds so issued shall mature and be retired each year.

IV. If any surplus remains at the end of the year, it may be turned into the sinking fund.

Sec. 16. Incidental powers granted. All incidental powers, rights and privileges necessary to the accomplishment of the main object herein set forth are granted to the corporation hereby created.

Sec. 17. Existing statutes not affected; rights conferred subject to provisions of law. Nothing herein contained is intended to repeal, or shall be construed as repealing, the whole or any part of any existing statute, and all the rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of chapter 40 of the revised statutes of 1944 and all acts amendatory thereof and additional thereto.

Sec. 18. Act void unless property or one or more of these companies is acquired. If said utilities district shall fail to purchase or file its petition to take by eminent domain before July 1, 1950, as in this act provided, the plant, property, franchises, rights and privileges owned by the Calais Water and Power Company and/or the St. Croix Electric Company and the International Power Company, and used or usable in supplying water, light and power in the city of Calais, then this act shall become null and void.

Sec. 19. Successors or assigns of the aforesaid companies. It is specially authorized by this act that the said utilities district shall have the right to acquire as herein provided the franchises and properties of any of the aforesaid companies or their successors or assigns.

Sec. 20. Referendum; effective date. This act shall take effect 90 days after the adjournment of the legislature, only for the purpose of permitting its submission to the legal voters of said proposed district at the next biennial city election, or at a special city election called and held at the regu-

lar voting places of the city by the officers of the city of Calais authorized to call such special election. Such special election shall be called, advertised and conducted according to the law relating to such municipal elections and shall be held before the next biennial election; provided, however, that the board of registration in said city shall not be required to prepare for posting, nor the city clerk to post, a new list of voters, and for the purpose of registration of voters said board shall be in session the 3 secular days preceding such election, the first 2 days thereof to be devoted to registration of voters and the last day to enable the board to verify the corrections of said lists and to complete and close up their records of said sessions. A check-list shall be used at such election. The city clerk shall prepare the required ballots on which he shall reduce the subject matter of this act to the following question: "Shall the act Creating the Calais Utilities District be accepted?" and the voters shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same. The result shall be declared by the municipal officers and due certificate thereof filed by the city clerk with the secretary of state.

This act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters voting at said election; provided, however, that the total number of votes cast for and against the acceptance of this act at said election equaled or exceeded 20% of the total vote for all candidates for governor cast in said city at the next previous gubernatorial election.