

FEDERAL WATER POWER ACT

Editor's note. The Federal Water Power Act is the Act of June 10, 1920, ch. 285, 41 Stat. 1063, entitled "An Act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto, and to repeal section 18 of the Rivers and Harbor Appropriation Act, approved August 8, 1917, and for other purposes." Section 212 of the Act of August 26, 1935, 49 Stat. 847, provides that the Federal Water Power Act, as amended, shall constitute Part I of an expanded act; and section 213 of the 1935 Act, 49 Stat. 847-63, adds Part II, relating to the regulation of electrical utility companies engaged in interstate commerce, and Part III, dealing with licenses and administrative matters. This expanded act is given the short title of Federal Power Act, 49 Stat. 863. Extracts from Parts II and III appear herein in chronological order under the Act of August 26, 1935.

FEDERAL POWER ACT

PART I

[**Sec. 1. Federal Power Commission—Creation—Composition—Terms of office—Organization.**]—A commission is hereby created and established, to be known as the Federal Power Commission (hereinafter referred to as the "Commission") which shall be composed of five commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as chairman and shall be the principal executive officer of the Commission: *Provided*, That after the expiration of the original term of the commissioner so designated as chairman by the President chairmen shall be elected by the Commission itself, each chairman when so elected to act as such until the expiration of his term of office.

The commissioners first appointed under this section, as amended, shall continue in office for terms of one, two, three, four, and five years, respectively, from the date this section, as amended, takes effect, the term of each to be designated by the President at the time of nomination. Their successors shall be appointed each for a term of five years from the date of the expiration of the term for which his predecessor was appointed and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term. Not more than three of the commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any licensee or to any person, firm, association, or corporation engaged in the generation, transmission, distribution, or sale of power, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold the office of commissioner. Said commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining commissioners to exercise all the powers of the Commission. Three members of the Commission shall constitute a quorum for the transaction of business, and

the Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually elect a vice chairman to act in case of the absence or disability of the chairman or in case of a vacancy in the office of chairman.

Each commissioner shall receive an annual salary of \$ * * *, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from the seat of government upon official business.

The principal office of the Commission shall be in the District of Columbia, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special session in any part of the United States. (41 Stat. 1063; Act of June 23, 1930, 46 Stat. 797; 16 U.S.C. § 792)

EXPLANATORY NOTES

1930 Amendment. The Act of June 23, 1930, 46 Stat. 797, amended section 1 to establish the present independent Commission. Previously, the Commission was composed of the Secretaries of War, Interior and Agriculture.

Commissioners' Salaries. The annual salary of each commissioner was set at \$10,000 by this Act. The Act of October 15, 1949, 63 Stat. 880, 881, increased the rate for all members to \$15,000, and the Act of July 31, 1956, 70 Stat. 737, 738, fixed the Chairman's annual salary at \$20,500 and

that of the members at \$20,000. The Federal Executive Salary Act of 1964, approved August 14, 1964, 78 Stat. 400, 417, 419, placed the Chairman in Level III and the Members in Level IV of the Federal Executive Salary Schedule. At this writing, the annual salaries of executives in Level III is \$28,500, and in Level IV, \$27,000.

Editor's Note, Annotations. Annotations of opinions interpreting this act are included only to the extent deemed relevant to activities of the Bureau of Reclamation.

Sec. 2. [Powers and duties of Commissioners—Administrative provisions.]—The Commission shall have authority to appoint, prescribe the duties, and fix the salaries of, a secretary, a chief engineer, a general counsel, a solicitor, and a chief accountant; and may, subject to the civil service laws, appoint such other officers and employees as are necessary in the execution of its functions and fix their salaries in accordance with the Classification Act of 1949. The Commission may request the President to detail an officer or officers from the Corps of Engineers, or other branches of the United States Army, to serve the Commission as engineer officer or officers, or in any other capacity, in field work outside the seat of government, their duties to be prescribed by the Commission; and such detail is hereby authorized. The President may also, at the request of the Commission, detail, assign, or transfer to the Commission engineers in or under the Departments of the Interior or Agriculture for field work outside the seat of government under the direction of the Commission.

The Commission may make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding) as are necessary to execute its functions. Expenditures by the Commission shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the Commission or by such other member or officer as may be authorized by the Commission for that purpose subject to applicable regula-

tions under the Federal Property and Administrative Services Act of 1949, as amended. (41 Stat. 1063; § 1, Act of June 23, 1930, 46 Stat. 797; Act of October 31, 1951, 65 Stat. 707; 16 U.S.C. § 793)

EXPLANATORY NOTES

1951 Amendment. Section 2(14) of the Act of October 31, 1951, 65 Stat. 707, amended section 2 by inserting the reference to applicable regulations of the Federal Property and Administrative Services Act of 1949, as amended, at the end of the section.

1930 Amendment. The Act of June 23, 1930, 46 Stat. 797, 798, placed personnel and administrative matters under the newly constructed Commission created by the same Act. Previously, the work of the Commission was performed through the Departments of War, Interior and Agriculture.

Sec. 3. [Definitions.]—The words defined in this section shall have the following meanings for purposes of this Act, to wit:

(1) "public lands" means such lands and interest in lands owned by the United States as are subject to private appropriation and disposal under public land laws. It shall not include "reservations", as hereinafter defined;

(2) "reservations" means national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interests in lands owned by the United States, and withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws; also lands and interests in lands acquired and held for any public purposes; but shall not include national monuments or national parks;

(3) "corporation" means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include "municipalities" as hereinafter defined;

(4) "person" means an individual or a corporation;

(5) "licensee" means any person, State, or municipality licensed under the provisions of section 4 of this Act, and any assignee or successor in interest thereof;

(6) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States;

(7) "municipality" means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power;

(8) "navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress

for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority;

(9) "municipal purposes" means and includes all purposes within municipal powers as defined by the constitution or laws of the State or by the charter of the municipality;

(10) "Government dam" means a dam or other work constructed or owned by the United States for Government purposes with or without contribution from others;

(11) "project" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;

(12) "project works" means the physical structures of a project;

(13) "net investment" in a project means the actual legitimate original cost thereof as defined and interpreted in the "classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission," plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created. The term "cost" shall include, insofar as applicable, the elements thereof prescribed in said classification, but shall not include expenditures from funds obtained through donations by States, municipalities, individuals, or others, and said classification of investment of the Interstate Commerce Commission shall insofar as applicable be published and promulgated as a part of the rules and regulations of the Commission;

(14) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively;

(15) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or municipality;

(16) "security" means any note, stock, treasury stock, bond, debenture, or other evidence of interest in or indebtedness of a corporation subject to the provisions of this Act. (41 Stat. 1063; § 201, Act of August 26, 1935, 49 Stat. 838; 16 U.S.C. § 796)

EXPLANATORY NOTE

1935 Amendment. Section 201 of the Act of August 26, 1935, revised the definition of "reservations" in subdivision (2) to exclude national parks and national monuments. This has the effect of confirming the prohibition in the Act of March 3, 1921, 41 Stat. 1353, against granting licenses for projects in national parks and monuments without specific authority of Congress.

Sec. 4. [General powers of Commission.]—The Commission is hereby authorized and empowered—

(a) **[Investigations and data.]**—To make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water-power industry and its relation to other industries and to interstate or foreign commerce, and concerning the location, capacity, development costs, and relation to markets of power sites, and whether the power from Government dams can be advantageously used by the United States for its public purposes, and what is a fair value of such power, to the extent the Commission may deem necessary or useful for the purposes of this Act.

(b) **[Statement of costs of construction, etc., to be filed by licensees—Commission to have free access to project, records, etc.]**—To determine the actual legitimate original cost of and the net investment in a licensed project, and to aid the Commission in such determinations, each licensee shall, upon oath, within a reasonable period of time to be fixed by the Commission, after the construction of the original project or any addition thereto or betterment thereof, file with the Commission in such detail as the Commission may require, a statement in duplicate showing the actual legitimate original cost of construction of such project, addition, or betterment, and of the price paid for water rights, rights-of-way, lands, or interest in lands. The licensee shall grant to the Commission or to its duly authorized agent or agents, at all reasonable times free access to such project, addition, or betterment, and to all maps, profiles, contracts, reports of engineers, accounts, books, records and all other papers and documents relating thereto. The statement of actual legitimate original cost of said project and revisions thereof as determined by the Commission, shall be filed with the Secretary of the Treasury.

(c) **[Cooperation with Federal and State agencies.]**—To cooperate with the executive departments and other agencies of State or National Governments in such investigations; and for such purpose the several departments and agencies of the National Government are authorized and directed upon the request of the Commission, to furnish such records, papers, and information in their possession as may be requested by the Commission, and temporarily to detail to the Commission such officers or experts as may be necessary in such investigations.

(d) **[Public information and use of Commissions reports and investigations—Report to Congress.]**—To make public from time to time the information secured hereunder and to provide for the publication of its reports and investigations in such form and manner as may be best adapted for public information and use. The Commission, on or before the 3d day of January of each year, shall submit to Congress for the fiscal year preceding a classified report showing the permits and licenses issued under this Part, and in each case the

parties thereto, the terms prescribed, and the moneys received if any, on account thereof. Such report shall contain the names and show the compensation of the persons employed by the Commission.

(e) [**Licenses for dams and other facilities.**]—To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided*, That licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservations: *Provided further*, That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting the navigation have been approved by the Chief of Engineers and the Secretary of the Army. Whenever the contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the Commission and shall become a part of the records of the Commission: *Provided further*, That in case the Commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to Congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to June 10, 1920: *And provided further*, That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (f) of this section, notice shall be given and published as required by the proviso of said subsection.

(f) [**Preliminary permits.**]—To issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by section 9 hereof: *Provided, however*, That upon the filing of any application for a preliminary permit by any person, association, or corporation the Commission, before granting such application, shall at once give notice of such application in writing to any State or municipality likely to be interested in or affected by such application; and shall also publish notice of such application once each week for four weeks in a daily or weekly newspaper published in the

county or counties in which the project or any part thereof or the lands affected thereby are situated.

(g) [Investigation of occupancy for developing power—Orders.]—Upon its own motion to order an investigation of any occupancy of, or evidenced intention to occupy, for the purpose of developing electric power, public lands, reservations, or streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States by any person, corporation, State, or municipality and to issue such order as it may find appropriate, expedient, and in the public interest to conserve and utilize the navigation and water-power resources of the region. (41 Stat. 1065; § 202, Act of August 26, 1935, 49 Stat. 839; 16 U.S.C. § 797)

EXPLANATORY NOTES

1953 Modification. Section 3 of the Act of August 15, 1953, as amended, 67 Stat. 587, provides that subsection 4(b) shall not apply to any project owned by a State or a municipality. The text of the 1953 Act appears herein as a note following section 14 of this Act.

1935 Amendment. Section 202 of the Act of August 26, 1935, (1) changed the designation of the subsections; (2) in subsection (e) substituted "streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several states" for "navigable waters of the United States"; (3) added subsection (g); (4) eliminated material dealing with subjects covered in Parts II and III; and

(5) made several additional technical changes.

1921 Limitation on Projects in National Parks. The Act of March 3, 1921, repealed so much of the original Federal Water Power Act as authorized the granting of licenses by the Federal Power Commission for facilities in existing national parks and monuments. The text of the 1921 Act appears herein in chronological order. Section 212 of the Act of August 26, 1935, 49 Stat. 847, provides specifically that the 1921 Act and any other act relating to national parks and monuments are not affected.

Editor's Note, Annotations. Annotations of opinions interpreting this Act are included only to the extent deemed relevant to activities of the Bureau of Reclamation.

NOTES OF OPINIONS

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1. Licenses—Relation to State laws

It was the intention of Congress in enacting the Federal Power Act to secure comprehensive development of national resources and not merely to prevent obstructions to navigation. The detailed provisions of the Act providing for the Federal plan of regulation leave no room or need for conflicting state controls. Where the Federal Government supersedes the state government, there is no suggestion that the two agencies both shall have final authority. Therefore, since a state permit is not required, there is no justification for the Federal Power Commission, as a condition precedent to considering an application for a license for a water power project on navigable waters, to require that the applicant first obtain a permit for the

project under state law. The securing of a state permit is not in any sense a condition precedent or an administrative procedure that must be exhausted before securing a Federal license. *First Iowa Cooperative v. Federal Power Commission*, 328 U.S. 152 (1946).

The Congress has the same power under the Property Clause of the Constitution to grant exclusive regulatory authority to the Federal Power Commission to issue licenses for water power projects on a non-navigable stream on lands in the ownership or control of the United States, as it does under the Commerce Clause with respect to navigable waters. *Federal Power Commission v. Oregon*, 349 U.S. 435, 441-46 (1955).

In reviewing a license issued by the Federal Power Commission for a water power project on a non-navigable stream on reserved lands of the United States, it is not necessary for the court to pass upon the contention of the State of Oregon that the Acts of July 26, 1866, July 9, 1870, and the Desert Land Act of 1877 constitute an

express Congressional delegation or conveyance to the State of the power to regulate the use of such waters because those Acts do not apply to reserved lands. *Federal Power Commission v. Oregon*, 349 U.S. 435, 446-48 (1955).

2. —National parks and monuments

The Federal Power Commission does not have authority to grant licenses for power works within national parks or national monuments, whether or not there are navigable waters within such reservations. Acting Solicitor Kirgis Opinion, 56 I.D. 372 (1938).

3. —Transmission lines

The Act of March 4, 1911, 36 Stat. 1253, regarding transmission line easements over public lands, national forests, and reservations, has not been superseded, so far as Federal reclamation project transmission lines are concerned, by the Federal Water Power Act of June 10, 1920, 41 Stat. 1063. Decision of Assistant Secretary, A-17072 (April 25, 1933).

The applicability of the Acts of February 15, 1901, and March 4, 1911, to rights of way for power purposes over public lands, was superseded by the Federal Water Power Act, as amended. Therefore, applications to the United States for hydroelectric power plant sites on public lands or rights of way

for main or primary hydroelectric power transmission lines must be made to the Federal Power Commission. On the other hand, rights of way for transmission lines which are not primary lines must be secured under the 1901 or 1911 Acts. 43 C.F.R. § 2234.4-1(3) (1965).

In the exercise of its responsibility as guardian of the public domain—waterways and public lands—under sections 4(e), 4(g) and 10(a) of the Federal Power Act, the Commission might well determine that a license should be granted to a public utility only on condition that it make available its excess transmission capacity to transmit energy generated in power plants of the United States. *Federal Power Commission v. Idaho Power Co.*, 344 U.S. 17 (1952).

4. —Standing to sue

The Secretary of the Interior and an association of power cooperatives have standing to petition for judicial review of an order of the Federal Power Commission granting a license to a private power company to construct a hydroelectric generating plant on a site (Roanoke Rapids) allegedly approved by Congress for Federal development. *United States ex rel Chapman v. Federal Power Commission*, 345 U.S. 153 (1953), reversing on this ground 191 F. 2d 796 (4th Cir. 1951).

Sec. 5. [Preliminary permit—Conditions—Cancellation for cause.]—Each preliminary permit issued under this Part shall be for the sole purpose of maintaining priority of application for a license under the terms of this Act for such period or periods, not exceeding a total of three years, as in the discretion of the Commission may be necessary for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements. Each such permit shall set forth the conditions under which priority shall be maintained. Such permits shall not be transferable, and may be canceled by order of the Commission upon failure of permittees to comply with the conditions thereof or for other good cause shown after notice and opportunity for hearing. (41 Stat. 1067; § 203, Act of August 26, 1935, 49 Stat. 841; 16 U.S.C. § 798)

EXPLANATORY NOTE

1935 Amendment. The Act of August 26, 1935, 49 Stat. 841, amended section 5 by eliminating the words "and a license issued" which appeared at the end of the second

sentence and by adding at the end of the last sentence the words "or for other good cause shown after notice and opportunity for hearing."

Sec. 6. [Term of license—Acceptance of conditions by licensee—Revocation or surrender of license.]—Licenses under this Part shall be issued for a period not exceeding fifty years. Each such license shall be conditioned upon acceptance by the licensee of all the terms and conditions of this Act and such further conditions, if any, as the Commission shall prescribe in conformity with this

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Act, which said terms and conditions and the acceptance thereof shall be expressed in said license. Licenses may be revoked only for the reasons and in the manner prescribed under the provisions of this Act, and may be altered or surrendered only upon mutual agreement between the licensee and the Commission after thirty days' public notice. Copies of all licenses issued under the provisions of this Part and calling for the payment of annual charges shall be deposited with the General Accounting Office, in compliance with section 3743, Revised Statutes, as amended (U.S.C., title 41, sec. 20). (41 Stat. 1067; § 204, Act of August 26, 1935, 49 Stat. 841; 16 U.S.C. § 799)

EXPLANATORY NOTE

1935 Amendment. The Act of August 26, 1935, 49 Stat. 841, amended section 6 by substituting the words "thirty days" for "ninety days" in the third sentence and by adding the last sentence to the section.

Sec. 7. (a) [Preference to States and municipalities.]—In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof, the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.

(b) [Recommendation for development by United States.]—Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find appropriate concerning such development (41 Stat. 1067; § 205, Act of August 26, 1935, 49 Stat. 842; 16 U.S.C. § 800)

EXPLANATORY NOTE

1935 Amendment. Section 205 of the Act of August 26, 1935, eliminated the words "navigation and" before the words "water resources" wherever they appeared in subsection (a) and lettered the paragraphs (a) and (b).

Sec. 8. [Conditions for voluntary transfer of license—Exceptions.]—No voluntary transfer of any license, or of the rights thereunder granted, shall be made without the written approval of the Commission; and any successor or assign of the rights of such licensee, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the license under which such rights are held by such licensee and also subject to all the provisions and conditions of this Act to the same extent as though such successor

or assign were the original licensee hereunder: *Provided*, That a mortgage or trust deed or judicial sales made thereunder or under tax sales shall not be deemed voluntary transfers within the meaning of this section. (41 Stat. 1068; 16 U.S.C. § 801)

Sec. 9. Each applicant for a license hereunder shall submit to the Commission—

(a) [**Applicant to submit plans, specifications, cost estimates, etc.**]—Such maps, plans, specifications, and estimates of cost as may be required for a full understanding of the proposed project. Such maps, plans, and specifications when approved by the Commission shall be made a part of the license; and thereafter no change shall be made in said maps, plans, or specifications until such changes shall have been approved and made a part of such license by the Commission.

(b) [**Applicant to submit evidence of compliance with State law.**]—Satisfactory evidence that the applicant has complied with the requirements of the laws of the State or States within which the proposed project is to be located with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power, and in any other business necessary to effect the purposes of a license under this Act.

(c) [**Additional information.**]—Such additional information as the Commission may require. (41 Stat. 1068; 16 U.S.C. § 802)

NOTE OF OPINION

1. Relation to State laws

The Federal Power Act establishes a dual system of control consisting merely of the division of the common enterprise between cooperating Federal and state agencies of Government, each with final authority in its own jurisdiction. The Act leaves to the States their traditional jurisdiction over proprietary rights to beds and banks of streams and to divert or use water, and

over legal rights to engage locally in the business of developing, transmitting and distributing power, to the extent not superseded by superior Federal powers. Section 27 of the Act expressly "saves" certain state laws relating to proprietary rights as to the use of water, but section 9(b) does not itself require compliance with any state laws. *First Iowa Cooperative v. Federal Power Commission*, 328 U.S. 152 (1946).

Sec. 10. [**Conditions of licenses.**]—All licenses issued under this Part shall be on the following conditions:

(a) [**Comprehensive plan.**]—The project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, or the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

(b) [**Substantial alterations.**]—Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed hereunder of an installed capacity

in excess of two thousand horsepower without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

(c) [**Operation of projects—Liability for damages.**—]The licensee shall maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, shall make all necessary renewals and replacements, shall establish and maintain adequate depreciation reserves for such purposes, shall so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property. Each licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under the license, and in no event shall the United States be liable therefor.

(d) [**Amortization reserves.**—]After the first twenty years of operation, out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the net investment of a licensee in any project or projects under license, the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the Commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return and the proportion of such surplus earnings to be paid into and held in such reserves shall be set forth in the license.

(e) [**Annual charges payable by licensees.**—]The licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require: *Provided*, That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the Commission shall, subject to the approval of the Secretary of the Interior in the case of such dams or structures in reclamation projects and, in the case of such tribal lands, subject to the approval of the Indian tribe having jurisdiction of such lands as provided in section 16 of the Act of June 18, 1934 (48 Stat. 984), fix a reasonable annual charge for the use thereof, and such charges may with like approval be readjusted by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter upon notice and opportunity for hearing: *Provided further*, That licenses for the development, transmission, or distribution of power by States or municipalitie

shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation, licenses therefor shall be issued without charge; and that licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than two thousand horsepower installed capacity may be issued without charge, except on tribal lands within Indian reservations; but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that the amount charged therefor in any license shall be such as determined by the Commission. In the event an overpayment of any charge due under the section shall be made by a licensee, the Commission is authorized to allow a credit for such overpayment when charges are due for any subsequent period.

(f) [**Headwater benefits.**]—Whenever any licensee hereunder is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by any licensee shall be determined by the Commission. The licensees or permittees affected shall pay to the United States the cost of making such determination as fixed by the Commission.

Whenever such reservoir or other improvement is constructed by the United States the Commission shall assess similar charges against any licensee directly benefited thereby, and any amount so assessed shall be paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvements as provided in section 17 hereof.

Whenever any power project not under license is benefited by the construction work of a licensee or permittee, the United States or any agency thereof, the Commission, after notice to the owner or owners of such unlicensed project, shall determine and fix a reasonable and equitable annual charge to be paid to the licensee or permittee on account of such benefits, or to the United States if it be the owner of such headwater improvement.

(g) [**Other conditions.**]—Such other conditions not inconsistent with the provisions of this chapter as the Commission may require.

(h) [**Monopolistic combinations prohibited.**]—Combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service, are hereby prohibited.

(i) [**Waiver of conditions.**]—In issuing licenses for a minor part only of a complete project, or for a complete project of not more than two thousand horsepower installed capacity, the Commission may in its discretion waive such conditions, provisions, and requirements of this Part, except the license period of fifty years, as it may deem to be to the public interest to waive under the

circumstances: *Provided*, That the provisions hereof shall not apply to annual charges for use of lands within Indian reservations. (41 Stat. 1068; § 206, Act of August 26, 1935, 49 Stat. 842; Act of September 7, 1962, 76 Stat. 447; 16 U.S.C. § 803)

EXPLANATORY NOTES

1962 Amendment. The Act of September 7, 1962, substituted "two thousand horsepower" for "one hundred horsepower" wherever the latter appeared. For legislative history of the 1962 Act see S. 1606, Public Law 87-647 in the 87th Congress; S. Rept. No. 664; H.R. Rept. No. 2241.

1935 Amendment. Section 206 of the Act of August 26, 1935, (1) elaborated the description of the comprehensive plan in subsection (a); (2) amended subsection (e) by inserting the requirement for approval by the Secretary of the Interior or the Indian

tribe in the case of reclamation projects or projects on Indian lands, respectively, and by adding the last sentence relating to overpayment of charges; (3) amended subsection (f) by adding the last sentence of the first paragraph; and (4) made other technical changes.

Reference in the Text. The Act of June 18, 1934, referred to in subsection (e) is the so-called Wheeler-Howard Act. Section 16, 48 Stat. 987, 25 U.S.C. § 476, relates to the constitution and bylaws of a tribe and to the powers of the tribal council.

NOTES OF OPINIONS

Comprehensive plan 1**Headwater benefits 2****1. Comprehensive plan**

In the exercise of its responsibility as guardian of the public domain—waterways and public lands—under sections 4(e), 4(g) and 10(a) of the Federal Power Act, the Commission might well determine that a license should be granted to a public utility only on condition that it make available its excess transmission capacity to transmit energy generated in power plants of the United States. *Federal Power Commis-*

sion v. Idaho Power Co., 344 U.S. 17 (1952).

2. Headwater benefits

Moneys received from power licenses, under assessments made by the Federal Power Commission pursuant to section 10(f) of the Federal Power Act, for headwater benefits attributable to Reclamation reservoirs, shall be paid into the Reclamation Fund in accordance with the Hayden-O'Mahoney Amendment of 1938. Dec. Comp. Gen. B-156498 (May 24, 1966).

Sec. 11. [Dams on navigable waters.]—If the dam or other project works are to be constructed across, along, or in any of the navigable waters of the United States, the Commission may, insofar as it deems the same reasonably necessary to promote the present and future needs of navigation and consistent with a reasonable investment cost to the licensee, include in the license any one or more of the following provisions or requirements:

(a) **[Construction of locks, etc., by licensee.]**—Such licensee shall, to the extent necessary to preserve and improve navigation facilities, construct, in whole or in part, without expense to the United States, in connection with such dam, a lock or locks, booms, sluices, or other structures for navigation purposes, in accordance with plans and specifications approved by the Chief of Engineers and the Secretary of the Army and made part of such license.

(b) **[Conveyance by the licensee to the United States of lands, etc., required for navigation facilities.]**—In case such structures for navigation purposes are not made a part of the original construction at the expense of the licensee, then whenever the United States shall desire to complete such navigation facilities the licensee shall convey to the United States, free of cost, such of its land and its rights of way and such right of passage through its dams or other struc-

tures, and permit such control of pools as may be required to complete such navigation facilities.

(c) [Free power to be furnished by licensee for operation of navigation facilities.]—Such licensee shall furnish free of cost to the United States power for the operation of such navigation facilities, whether constructed by the licensee or by the United States. (41 Stat. 1070; 16 U.S.C. § 804)

Sec. 12. [Licensee to install locks, etc., on navigable waters if Government fails to do so—Report to Congress concerning United States share of construction costs.]—Whenever application is filed for a project hereunder involving navigable waters of the United States, and the Commission shall find upon investigation that the needs of navigation require the construction of a lock or locks or other navigation structures, and that such structures cannot, consistent with a reasonable investment cost to the applicant, be provided in the manner specified in section 11, subsection (a) hereof, the Commission may grant the application with the provision to be expressed in the license that the licensee will install the necessary navigation structures if the Government fails to make provision therefor within a time to be fixed in the license and cause a report upon such project to be prepared, with estimates of cost of the power development and of the navigation structures, and shall submit such report to Congress with such recommendations as it deems appropriate concerning the participation of the United States in the cost of construction of such navigation structures. (41 Stat. 1070; 16 U.S.C. § 805)

Sec. 13. [Time limit for construction and operation—Extensions—Termination of license on failure to construct—Proceedings if project is only partially completed in time prescribed.]—The licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof, shall thereafter in good faith and with due diligence prosecute such construction, and shall within the time fixed in the license complete and put into operation such part of the ultimate development as the Commission shall deem necessary to supply the reasonable needs of the then available market, and shall from time to time thereafter construct such portion of the balance of such development as the Commission may direct, so as to supply adequately the reasonable market demands until such development shall have been completed. The periods for the commencement of construction may be extended once but not longer than two additional years and the period for the completion of construction carried on in good faith and with reasonable diligence may be extended by the Commission when not incompatible with the public interests. In case the licensee shall not commence actual construction of the project works, or of any specified part thereof, within the time prescribed in the license or as extended by the Commission, then, after due notice given, the license shall, as to such project works or part thereof, be terminated upon written order of the Commission. In case the construction of the project works, or of any specified part thereof, have been begun but not completed within the time prescribed in the license, or as extended by the Commission, then the Attorney General, upon the request of the Commission, shall institute proceedings in equity in the district court of the United States for the district in which any part of the

project is situated for the revocation of said license, the sale of the works constructed, and such other equitable relief as the case may demand, as provided for in section 26 hereof. (41 Stat. 1071; 16 U.S.C. § 806)

Sec. 14. [Right of Government to take over project at expiration of license—Payment to licensee—Determination of value of project—Right of condemnation reserved to Federal, State and local governments.]—Upon not less than two years' notice in writing from the Commission the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project or projects as defined in section 3 hereof, and covered in whole or in part by the license, or the right to take over upon mutual agreement with the licensee all property owned and held by the licensee then valuable and serviceable in the development, transmission, or distribution of power and which is then dependent for its usefulness upon the continuance of the license, together with any lock or locks or other aids to navigation constructed at the expense of the licensee, upon the condition that before taking possession it shall pay the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severance therefrom of property taken, and shall assume all contracts entered into by the licensee with the approval of the Commission. The net investment of the licensee in the project or projects so taken and the amount of such severance damages, if any, shall be determined by the Commission after notice and opportunity for hearing. Such net investment shall not include or be affected by the value of any lands, rights-of-way, or other property of the United States licensed by the Commission under this Act, by the license or by good will, going value, or prospective revenues; nor shall the values allowed for water rights, rights-of-way, lands, or interest in lands be in excess of the actual reasonable cost thereof at the time of acquisition by the licensee: *Provided*, That the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under this Act at any time by condemnation proceedings upon payment of just compensation is hereby expressly reserved. (41 Stat. 1071; § 207, Act of August 26, 1935, 49 Stat. 844; 16 U.S.C. § 807)

EXPLANATORY NOTES

1953 Modification. The Act of August 15, 1953, 67 Stat. 587, as amended by the Act of July 31, 1959, 73 Stat. 271, provides that section 14 shall not apply to any project owned by a State or a municipality. The 1953 Act reads as follows:

"In order to facilitate the development and construction by States and municipalities of water conservation facilities, certain requirements in the Federal Power Act are made inapplicable to States and municipalities as provided in this Act.

"Sec. 2. The words used in this Act shall have the same meanings ascribed to them in the Federal Power Act.

"Sec. 3. Section 14 of the Federal Power

Act pertaining to the taking over by the United States of any project upon or after the expiration of a license, and sections 301 and 302 of said Act requiring certain records and accounting procedures and section 4(b) requiring the preparation and filing of the statement of actual legitimate original cost of a project, shall not be applicable to any project owned by a State or municipality, and such rights and requirements shall not exist under any license heretofore or hereafter granted to any State or municipality. The Federal Power Commission in determining the amount of annual charges applicable to any such project may determine the annual charges with

reference to the actual cost of services incurred by the Commission with respect to the project.

"Sec. 4. Except as herein provided, the provisions of this Act shall not be construed as repealing or affecting any of the provisions of the Federal Power Act."

1935 Amendment. The Act of August 26, 1935, 49 Stat. 844, amended section 14 by

substituting "by the Commission after notice and opportunity for hearing" in the second sentence of the section, for "by agreement between the Commission and the licensee, and in case they cannot agree, by proceedings in equity instituted by the United States in the District Court of the United States in the district within which any such property may be located."

Sec. 15. [Reissuance of license to original licensee at expiration of license upon such terms as authorized or required under then existing laws and regulations—Provision for annual renewal of license until property is taken over by Government or a new license is issued.]—If the United States does not, at the expiration of the original license, exercise its right to take over, maintain, and operate any project or projects of the licensee, as provided in section 14 hereof, the Commission is authorized to issue a new license to the original licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee, which license may cover any project or projects covered by the original license, and shall be issued on the condition that the new licensee shall, before taking possession of such project or projects, pay such amount, and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof: *Provided*, That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the original licensee, upon reasonable terms, then the Commission shall issue from year to year an annual license to the then licensee under the terms and conditions of the original license until the property is taken over or a new license is issued as aforesaid. (41 Stat. 1072; 16 U.S.C. § 808)

Sec. 16. [Temporary possession of project by Government if safety of the United States demands it.]—When in the opinion of the President of the United States, evidenced by a written order addressed to the holder of any license hereunder, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any project, or part thereof, constructed, maintained, or operated under said license, for the purpose of manufacturing nitrates, explosives, or munitions of war, or for any other purpose involving the safety of the United States, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes and then to restore possession and control to the party or parties entitled thereto; and in the event that the United States shall exercise such right it shall pay to the party or parties entitled thereto just and fair compensation for the use of said property as may be fixed by the Commission upon the basis of a reasonable profit in time of peace, and the cost of restoring said property to as good condition as existed at the time of the taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the licensee. (41 Stat. 1072; 16 U.S.C. § 809)

Sec. 17. [Disposition of proceeds—Reclamation fund.]—(a) All proceeds from any Indian reservation shall be placed to the credit of the Indians of such reservation. All other charges arising from licenses hereunder, except charges fixed by the Commission for the purpose of reimbursing the United States for the costs of administration of this Part shall be paid into the Treasury of the United States, subject to the following distribution: 12½ per centum thereof is hereby appropriated to be paid into the Treasury of the United States and credited to "Miscellaneous receipts"; 50 per centum of the charges arising from licenses hereunder for the occupancy and use of public lands and national forests shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902; and 37½ per centum of the charges arising from licenses hereunder for the occupancy and use of national forests and public lands from development within the boundaries of any State shall be paid by the Secretary of the Treasury to such State; and 50 per centum of the charges arising from all other licenses hereunder is reserved and appropriated as a special fund in the Treasury to be expended under the direction of the Secretary of the Army in the maintenance and operation of dams and other navigation structures owned by the United States or in the construction, maintenance, or operation of headwater or other improvements of navigable waters of the United States. The proceeds of charges made by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part shall be paid into the Treasury of the United States and credited to miscellaneous receipts.

(b) In case of delinquency on the part of any licensee in the payment of annual charges a penalty of 5 per centum of the total amount so delinquent may be added to the total charges which shall apply for the first month or part of month so delinquent with an additional penalty of 3 per centum for each subsequent month until the total of the charges and penalties are paid or until the license is canceled and the charges and penalties satisfied in accordance with law. (41 Stat. 1072; § 208, Act of August 26, 1935, 49 Stat. 845; 16 U.S.C. § 810)

EXPLANATORY NOTE

1935 Amendment. The Act of August 26, 1935, 49 Stat. 845, amended section 17 by designating the existing provisions of the section as subsection (a) and adding the words "except charges fixed by the Commission for the purpose of reimbursing the United States for the costs of administration of this Part," in the second sentence of the

subsection; by substituting "national forests" for "national monuments, national forests, and national parks" wherever appearing; and by adding the last sentence of the subsection relating to payment of proceeds of charges into the Treasury; and by adding subsection (b).

NOTE OF OPINION

1. Charges

The charges arising from occupancy and use of public lands and national forests, which are subject to distribution under this

section, include administrative charges as well as occupancy charges. Dec. Comp. Gen., A-29747 (February 3, 1930); also supplemental A-29747 (May 7, 1930).

Sec. 18. [Licensee to maintain navigational lights and signals and fishways—Navigational aids and reservoir level to be controlled by regulations of the Secretary of the Army—Penalty for non-compliance.]—The Commission shall

require the construction, maintenance, and operation by a licensee at its own expense of such lights and signals as may be directed by the Secretary of the Department in which the Coast Guard is operating, and such fishways as may be prescribed by the Secretary of the Interior. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this Act, whether at the expense of a licensee hereunder or of the United States, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of the Army, and for willful failure to comply with any such rule or regulation such licensee shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 316 hereof. (41 Stat. 1073; § 209, Act of August 26, 1935, 49 Stat. 845; § 2, Act of June 4, 1956, 70 Stat. 226; 16 U.S.C. § 811)

EXPLANATORY NOTES

1956 Amendment. The Act of June 4, 1956, 70 Stat. 226, amended section 18 by substituting the words "Secretary of the Department in which the Coast Guard is operating" for the words "Secretary of War" in the first sentence of the section.

1935 Amendment. The Act of August 26, 1935, 49 Stat. 845, amended section 18 by adding the first sentence of the section,

and by eliminating the clause which read: "Such rules and regulations may include the maintenance and operation by such licensee at its own expense of such lights and signals as may be directed by the Secretary of the Army and such fishways as may be prescribed by the Secretary of the Interior.", and by substituting "section 316" for "section 25" in the last sentence of the section.

Sec. 19. [Public service licensees—State regulation to control—Regulation by the Commission if no State provision therefor—Commission's jurisdiction to cease when State provides means of regulation and control.]—As a condition of the license, every licensee hereunder which is a public-service corporation, or a person, association, or corporation owning or operating any project and developing, transmitting, or distributing power for sale or use in public service, shall abide by such reasonable regulation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged. That in case of the development, transmission, or distribution, or use in public service of power by any licensee hereunder or by its customer engaged in public service within a State which has not authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by such licensee or by its customer engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of such license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control: *Provided*, That the jurisdiction of the Commission shall cease and determine as to each specific matter of regulation and control prescribed in this section as soon as the State shall have provided a commission

or other authority for the regulation and control of that specific matter. (41 Stat. 1073; 16 U.S.C. § 812)

Sec. 20. [Reasonable rates for power use in interstate commerce—Discriminatory rates unlawful—Commission to enforce rate provisions if no enforcement authority provided by State—Section to be administered according to procedure and practice in fixing and regulating rates, etc., of railroad companies—Valuation of property for rate making limited.]—When said power or any part thereof shall enter into interstate or foreign commerce the rates charged and the service rendered by any such licensee, or by any subsidiary corporation, the stock of which is owned or controlled directly or indirectly by such licensee, or by any person, corporation, or association purchasing power from such licensee for sale and distribution or use in public service shall be reasonable nondiscriminatory, and just to the customer and all unreasonable discriminatory and unjust rates or services are hereby prohibited and declared to be unlawful and whenever any of the States directly concerned has not provided a commissioner or other authority to enforce the requirements of this section within such State or to regulate and control the amount and character of securities to be issued by any of such parties or such States are unable to agree through their properly constituted authorities on the services to be rendered or on the rates or charges of payment therefor, or on the amount or character of securities to be issued by any of said parties, jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved, upon the request of any State concerned, or upon its own initiative to enforce the provisions of this section, to regulate and control so much of the services rendered, and of the rates and charges of payment therefor as constitute interstate or foreign commerce and to regulate the issuance of securities by the parties included within this section, and securities issued by the licensee subject to such regulations shall be allowed only for the bona fide purposes of financing and conducting the business of such licensee.

The administration of the provisions of this section, so far as applicable, shall be according to the procedure and practice in fixing and regulating the rates, charges, and practices of railroad companies as provided in the Act to regulate interstate commerce, approved February 4, 1887, as amended, and that the parties subject to such regulation shall have the same rights of hearing, defense, and review as said companies in such cases.

In any valuation of the property of any licensee hereunder for purposes of rate making, no value shall be claimed by the licensee or allowed by the Commission for any project or projects under license in excess of the value or value prescribed in section 14 hereof for the purposes of purchase by the United States; but there shall be included the cost to such licensee of the construction of locks or locks or other aids of navigation and all other capital expenditures required by the United States, and no value shall be claimed or allowed for the rights granted by the Commission or by this Act. (41 Stat. 1073; 16 U.S.C. § 813)

Sec. 21. [Licensee may acquire property through the exercise of the right of eminent domain—Jurisdiction of Federal district court where owner's property claims amount in excess of \$3,000—Procedure to conform as nearl

as may be with State court procedure.]—When any licensee cannot acquire by contract or pledges an unimproved dam site or the right to use or damage the lands or property of others necessary to the construction, maintenance, or operation of any dam, reservoir, diversion structure, or the works appurtenant or accessory thereto, in conjunction with an improvement which in the judgment of the Commission is desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such land or other property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000. (41 Stat. 1074; 16 U.S.C. § 814)

Sec. 22. [Contracts for service beyond term of license permitted—Joint approval of Commission and State authority required.]—Whenever the public interest requires or justifies the execution by the licensee of contracts for the sale and delivery of power for periods extending beyond the date of termination of the license, such contracts may be entered into upon the joint approval of the Commission and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made, or if sold or delivered in a State which has no such public-service commission, then upon the approval of the Commission, and thereafter, in the event of failure to issue a new license to the original licensee at the termination of the license, the United States or the new licensee, as the case may be, shall assume and fulfill all such contracts. (41 Stat. 1074; 16 U.S.C. § 815)

Sec. 23. (a) [Existing rights, etc., protected—Holders of existing rights, etc., may apply for license under this part—Valuation of existing projects.]—The provisions of this Part shall not be construed as affecting any permit or valid existing right-of-way heretofore granted or as confirming or otherwise affecting any claim, or as affecting any authority heretofore given pursuant to law, but any person, association, corporation, State, or municipality holding or possessing such permit, right-of-way, or authority may apply for a license hereunder, and upon such application the Commission may issue to any such applicant a license in accordance with the provisions of this Part and in such case the provisions of this Act shall apply to such applicant as a licensee hereunder: *Provided*, That when application is made for a license under this section for a project or projects already constructed the fair value of said project or projects determined as provided in this section, shall for the purposes of this Part and of said license be deemed to be the amount to be allowed as the net investment of the applicant in such project or projects as of the date of such license, or as of the date of such determination, if license has not been issued. Such fair value

shall be determined by the Commission after notice and opportunity for hearing. (41 Stat. 1075; § 210, Act of August 26, 1935, 49 Stat. 846; 16 U.S.C. § 816)

(b) [Projects on navigable streams for water or power purposes unlawful except under a permit granted prior to June 10, 1920, in accordance with this act—Projects on waters defined as other than navigable to be licensed if interests of interstate or foreign commerce are involved.]—It shall be unlawful for any person, State, or municipality, for the purpose of developing electric power, to construct, operate, or maintain any dam, water conduit, reservoir, power house, or other works incidental thereto across, along, or in any of the navigable waters of the United States, or upon any part of the public lands or reservations of the United States (including the Territories), or utilize the surplus water or water power from any Government dam, except under and in accordance with the terms of a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to this Act. Any person, association, corporation, State, or municipality intending to construct a dam or other project works across, along, over, or in any stream or part thereof, other than those defined herein as navigable waters, and over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States shall before such construction file declaration of such intention with the Commission, whereupon the Commission shall cause immediate investigation of such proposed construction to be made, and if upon investigation it shall find that the interests of interstate or foreign commerce would be affected by such proposed construction such person, association, corporation, State, or municipality shall not construct, maintain, or operate such dam or other project works until it shall have applied for and shall have received a license under the provisions of this Act. If the Commission shall not so find, and if no public lands or reservations are affected, permission is hereby granted to construct such dam or other project works in such stream upon compliance with State laws. (41 Stat. 1075; § 210, Act of August 26, 1935, 49 Stat. 846; 16 U.S.C. § 817)

EXPLANATORY NOTE

1935 Amendment. The Act of August 26, 1935, 49 Stat. 846, amended the section by designating the first paragraph as subsection (a), and the second paragraph as subsection (b). Subsection (a) was amended by substituting the word "Part" for "Act" wherever it appeared and by substituting the last sentence of subsection (a) for the following: "Such fair value may, in the discretion of the Commission, be determined by mutual agreement between the Commission and the applicant or, in case they cannot agree, jurisdiction is hereby conferred upon the district court of the United States in the district within which such project or

projects may be located, upon the application of either party to hear and determine the amount of such fair value."

In addition, the 1935 Act amended subsection (b) by adding the first sentence to the subsection, by substituting the words "with foreign nations" for "between foreign nations", by substituting "shall before such construction" for the words "may in their discretion" before the word "file", and by substituting the words "shall not construct maintain, or operate such dam or other project works" for the words "shall not proceed with such construction."

Sec. 24. [Power sites.]—Any lands of the United States included in any proposed project under the provisions of this Part, shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by

Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located. Whenever the Commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, for such purpose or purposes and under such restrictions as the Commission may determine, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the Commission, for the purposes of this Part, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Part, upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the Commission: *Provided*, That locations, entries, selections, or filings heretofore made for lands reserved as water-power sites, or in connection with water-power development, or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained: *Provided further*, That before any lands applied for, or heretofore or hereafter reserved, or classified as power sites, are declared open to location, entry, or selection by the Secretary of the Interior, notice of intention to make such declaration shall be given to the Governor of the State within which such lands are located, and such State shall have ninety days from the date of such notice within which to file, under any statute or regulation applicable thereto, an application for the reservation to the State, or any political subdivision thereof, of any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways, and a copy of such application shall be filed with the Federal Power Commission; and any location, entry, or selection of such lands, or subsequent patent thereof, shall be subject to any rights granted the State pursuant to such application. (14 Stat. 1075; § 211, Act of August 26, 1935, 49 Stat. 846; Act of May 28, 1948, 62 Stat. 275; 16 U.S.C. § 818)

EXPLANATORY NOTES

1948 Amendment. The Act of May 28, 1948, amended the section by adding the second proviso to the last sentence which permits States to reserve for highway purposes power sites that are to be released. For legislative history of the 1948 Act see S. 1305, Public Law 559 in the 80th Con-

gress; S. Rept. No. 686; H.R. Rept. No. 1922.

1935 Amendment. Section 211 of the Act of August 26, 1935, amended the third sentence by adding the words "for such purpose or purposes and under such restrictions as the Commission may determine."

Sec. 25. [Penalty for violations by licensee, etc.]—*Repealed.*

EXPLANATORY NOTE

Section Repealed, Covered in Title II. Title II, Section 212 of the Public Utility Act of August 26, 1935, 49 Stat. 847, repealed section 25. Offenses and punishment under the Act are covered in Title II, section 213 of the 1935 Act, as amended, 16 U.S.C. § 825m, *et seq.*

Sec. 26. [Equity proceedings for revoking licenses, etc.—U.S. District Courts have jurisdiction—Power of courts to sell projects, etc.—Vendee to take rights and assume obligations of licensee—United States may become purchaser.]—The Attorney General may, on request of the Commission or of the Secretary of the Army, institute proceedings in equity in the district court of the United States in the district in which any project or part thereof is situated for the purpose of revoking for violation of its terms any permit or license issued hereunder, or for the purpose of remedying or correcting by injunction, mandamus, or other process any act of commission or omission in violation of the provisions of this Act or of any lawful regulation or order promulgated hereunder. The district courts shall have jurisdiction over all of the above-mentioned proceedings and shall have power to issue and execute all necessary process and to make and enforce all writs, orders, and decrees to compel compliance with the lawful orders and regulations of the Commission and of the Secretary of the Army, and to compel the performance of any condition imposed under the provisions of this Act. In the event a decree revoking a license is entered, the court is empowered to sell the whole or any part of the project or projects under license, to wind up the business of such licensee conducted in connection with such project or projects, to distribute the proceeds to the parties entitled to the same, and to make and enforce such further orders and decrees as equity and justice may require. At such sale or sales the vendee shall take the rights and privileges belonging to the licensee and shall perform the duties of such licensee and assume all outstanding obligations and liabilities of the license which the court may deem equitable in the premises; and at such sale or sales the United States may become a purchaser, but it shall not be required to pay a greater amount than it would be required to pay under the provisions of section 14 hereof at the termination of the license. (41 Stat. 1076; 16 U.S.C. § 820)

Sec. 27. [State laws not affected.]—Nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein. (41 Stat. 1077; 16 U.S.C. § 821)

NOTE OF OPINION

1. Relation to State laws

The Federal Power Act establishes a dual system of control consisting merely of the division of the common enterprise between cooperating Federal and state agencies of Government, each with final authority in its own jurisdiction. The Act leaves to the

States their traditional jurisdiction over proprietary rights to beds and banks of stream and to divert or use water, and over legal rights to engage locally in the business of developing, transmitting and distributing power, to the extent not superseded by superior Federal powers. Section 27 of the Ac

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expressly "saves" certain state laws relating to proprietary rights as to the use of water, but section 9(b) does not itself require com-

pliance with any state laws. *First Iowa Co-operative v. Federal Power Commission*, 328 U.S. 152 (1946).

Sec. 28. [Reservation clause—Licensees' rights unaffected by change in Act.]—The right to alter, amend, or repeal this Act is hereby expressly reserved; but no such alteration, amendment, or repeal shall affect any license theretofore issued under the provisions of this Act, or the rights of any licensee thereunder. (41 Stat. 1077; 16 U.S.C. § 822)

Sec. 29. [Acts repealed—Act granting rights to the city and county of San Francisco unaffected.]—All Acts or parts of Acts inconsistent with this Act are hereby repealed: *Provided*, That nothing herein contained shall be held or construed to modify or repeal any of the provisions of the Act of Congress approved December 19, 1913, granting certain rights-of-way to the city and county of San Francisco, in the State of California: *Provided further*, That section 18 of an Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, approved August 8, 1917, is hereby repealed. (41 Stat. 1077; 16 U.S.C. § 823)

Sec. 30. [Short title.]—*Repealed.*

EXPLANATORY NOTES

Section Repealed. Section 212 of the Public Utility Act of August 26, 1935, 49 Stat. 847, repealed section 30, and provided that the "Federal Water Power Act", as amended, shall constitute Part I of the "Federal Power Act."

Legislative History. H.R. 3184, Public Law 280 in the 66th Congress. H.R. Rept. No. 61. S. Rept. No. 180. S. Doc. No. 269 and H.R. Rept. No. 910 (conference reports).