

WATER COMPANIES, LIMITED PERMITS
Act of Jun. 14, 1923, P.L. 704, No. 294
AN ACT

Cl. 32

Relating to limited power permits and limited water supply permits from the Water Supply Commission of Pennsylvania and the conditions thereof, to the flooding and use by holders of limited power permits of islands owned by the Commonwealth, to the unlawful use for water or steam power development of dams and changes in streams hereafter constructed or made otherwise than under limited power permits, and to proceedings for the enforcement of this act.

Section 1. Be it enacted, &c., That where used in this act singular words shall be construed as including the plural, masculine words shall be construed as including the feminine and neuter, and the following words shall have the following meanings respectively designated for each:

The term "commission" means the Water Supply Commission of Pennsylvania.

The term "dam" means an obstruction, dam, wall, wingwall, wharf, embankment, abutment, projection, or similar analogous structure, or any other obstruction whatever in, along, across, or projecting into any stream or body of water wholly or partly within, or forming part of the boundary of, this Commonwealth, except the tidal waters of the Delaware River and of its navigable tributaries.

The term "dam to develop water power" means a dam for the purpose of developing water power only, or a dam for said purpose and for any other purpose.

The term "dam to supply water for steam power" means a dam for the main purpose of storing, cooling, diverting, and using, or any of them, water for steam raising or steam condensation, or both, in the generation of electric energy for use in public service, which is not a dam to develop water power as hereinbefore defined.

The term "water supply dam" means a dam for the purpose of supplying water, which is not a dam to develop water power nor a dam to supply water for steam power as hereinbefore defined.

The term "power dam" includes dams to develop water power and dams to supply water for steam power.

The term "change in stream to develop water power" means any change in or diminution of the course, current, or cross-section of any stream or body of water for the sole purpose of developing water power, or for said purpose and any other purpose, whether the dam or other means effecting the change be within or without the Commonwealth of Pennsylvania.

The term "change in stream to supply water for steam power" means any such change or diminution for the main purpose of storing, cooling, diverting, and using, or any of them, water for steam raising or steam condensation, or both, in the generation of electric energy for use in public service, which is not a change in stream to develop water power as hereinbefore defined, whether the dam or other means effecting the change be within or without the Commonwealth of Pennsylvania.

The term "change in stream for water supply" means any such change or diminution for the purpose of supplying water, which is not a change in stream to develop water power, nor a change in stream to supply water for steam power, as hereinbefore defined, whether the dam or other means effecting the change be within or without the Commonwealth of Pennsylvania.

The term "change in stream to develop power" includes changes in stream to develop water power and changes in stream to supply water for steam power.

The term "limited power permit" means a permit for a power dam or for a change in stream to develop power, or both, granted under this act.

The term "limited water supply permit" means a permit for a water supply dam or for a change in stream for water supply, or both, granted under this act.

The term "power project" means a complete unit of improvement or development for the supply of water power, or for the procuring or supply, or both, of light, heat, and power, or any of them, by electricity, consisting of a power dam or change in stream to develop power, or both, for which a limited power permit at any time is being sought or has been granted, a power house, water conduits, all dams and appurtenant works which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power from the power house to the point of junction with the distribution system or with an interconnected primary transmission system, all miscellaneous structures used and useful in connection with such 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 construction, maintenance, and operation of such unit.

The term "water supply project" means a complete unit of improvement or development for the procuring or supply, or both, of water, which is not a power project as hereinbefore defined, consisting of a water supply dam or change in stream for water supply, or both, for which a limited water supply permit at any time is being sought or has been granted, a reservoir, the dam and other works appurtenant thereto, and all primary water conduits leading immediately therefrom to the point of junction with the distribution system or with an interconnected primary water conduit, and all water rights, rights of way, ditches, dams, reservoirs, and lands or interests in lands, the use and occupancy of which is necessary or appropriate in the construction, maintenance, and operation of such unit.

The term "permittee" means the holder of a limited power permit or a limited water supply permit, and his heirs, successors, and assigns.

The term "navigable waters of the United States" 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 conditions, 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.

Section 2. A power dam or change in stream to develop power shall be deemed to be within the jurisdiction of the United States, within the meaning of this section, whenever (1) such dam or change is constructed or made, or to be constructed or made, in or upon navigable waters of the United States, or (2) the Federal Power Commission shall have found that the interests

of interstate or foreign commerce would be affected by the construction of such dam or the making of such change.

Every permit hereafter granted by the commission for the construction of a power dam or for a change in stream to develop power, not within the jurisdiction of the United States, shall be limited to such periods not exceeding fifty years as the said commission shall determine and set forth therein: Provided, That the permittee shall be entitled to extension and renewal of such permit upon the terms thereof until the permittee shall have received through recapture or purchase by the Commonwealth, or by a duly authorized subsequent permittee, repayment of the capital prudently invested in the power project upon the faith of the permit, plus such reasonable damages, if any, to property of the permittee valuable, serviceable, and dependent for its usefulness upon the continuance of such permit, but not recaptured or purchased, as may be caused by the severance therefrom of property taken.

Every permit hereafter granted by the commission for the construction of a power dam or for a change in stream to develop power, within the jurisdiction of the United States, shall be on the following conditions, which shall be expressed in such permit, namely: (a) That the permit shall become null and void unless, within the time specified therein, the permittee (or, as to a change in stream within the Commonwealth effected or to be effected by a dam or other means without the Commonwealth, those constructing or purposing to construct, maintain, or operate such dam or other means) shall secure from the Federal Power Commission a license for such dam or change; and (b) that if and to the extent that any of the rights or powers set forth or reserved as rights or powers of the United States in or pursuant to the provisions of such license shall be waived by the United States or be unenforceable by the United States, then and to that extent such rights and powers (including, if so waived or unenforceable, any rights of recapture, extension, or renewal so set forth or reserved) may be exercised and enforced by the Commonwealth of Pennsylvania, subject to such alterations in plans, specifications, or structures, and such extensions of time for commencing or completing construction, as may be made or granted by the Federal Power Commission.

The provisions of this act relating to dams or changes in streams to supply water for steam power within the jurisdiction of the United States shall be suspended and postponed until the Federal Power Commission shall require licenses for such dams or changes in streams; and during the period in which the provisions of this act shall be so suspended and postponed, any such dams or changes in streams shall continue to be subject to existing laws relating to water obstructions.

Every permit granted under this section shall be subject to such reasonable annual charge, specified therein, as the commission shall fix, for the purpose of reimbursing the Commonwealth for the costs of administration of this act, and may, in the discretion of the commission, embody such other terms, conditions, and stipulations as the commission shall deem necessary to protect the present and future interests of the Commonwealth and its people in the construction, maintenance, and operation of the project, and in the water and power resources to be utilized thereby, and suitable to secure to the permittee a reasonable opportunity for a fair return on the actual investment prudently made in the project.

(2 amended July 29, 1953, P.L.1007, No.255)

Section 3. The commission in granting every limited water supply permit shall specify a reasonable annual charge, in an

amount fixed by the commission, to be paid by the permittee for the purpose of reimbursing the Commonwealth for the cost of administration of this act, and the commission shall embody therein such other terms, conditions, and stipulations as the commission shall deem necessary and proper to protect the present and future interests of the Commonwealth and its people in the construction, maintenance, and operation of the project and in the water resources to be utilized thereby.

Section 3.1. All moneys hereafter received by the Treasury Department from the Department of Revenue, arising from the annual charges on limited power permits and limited water supply permits, as provided in the two preceding sections, shall be credited to the State Forests and Waters Fund.

(3.1 added July 19, 1935, P.L.1363, No.430)

Section 4. It shall be unlawful for any corporation or natural person to use for the development of water power, or for the main purpose of storing, cooling, diverting, and using, or any of them, water for steam raising or steam condensation, or both, in the generation of electric energy for use in public service, any dam constructed under any permit hereafter issued otherwise than under section two of this act, or to divert or use for said purposes, or for said main purpose, any stream or body of water the course, current, or cross-section of which shall have been changed or diminished at the point of diversion, or use, under any permit hereafter granted, otherwise than under section two of this act.

Section 5. Any permittee holding a permit granted under section two of this act may, with the consent of the commission, which consent may be set forth in such permit, overflow, submerge, occupy, and use, as appurtenant to the power project in behalf of which such permit is granted, and subject to the terms, stipulations, and conditions expressed therein, any island owned by the Commonwealth in the river Susquehanna, or any of its branches, or in any other stream or water over which the commission has jurisdiction.

Section 6. The provisions of this act shall not be construed as affecting any permit or authority heretofore granted or given pursuant to law for the construction of any dam, or for the changing or diminution of the course, current, or cross-section of any stream or body of water; but the holder of any such permit or authority may apply for a limited power permit or a limited water supply permit under this act, and, if and when any such applicant is granted the same, he shall have all the rights and be subject to all the duties conferred or imposed by or under this act.

Section 7. The commission is hereby authorized and empowered to make such rules and regulations, and issue such orders, as may be necessary and proper for carrying out the provisions of this act.

Section 8. The Attorney General may, on the request of the commission, institute proceedings in any court now or hereafter by law clothed with jurisdiction in civil cases in which the Commonwealth is a party for the purpose of remedying or correcting, by injunction, mandamus, or other process, any action of commission or omission in violation of the provisions of this act, or of the terms, conditions, or stipulations of any limited power permit or limited water supply permit granted hereunder, or of any lawful regulation or order promulgated hereunder. In the event of the failure of any permittee to comply with the requirements of any final decree in any such proceedings, the Attorney General may institute proceedings for the purpose of revoking the permit. The said courts shall have

jurisdiction over all the above-mentioned proceedings, and shall have power to issue and execute all necessary process, and to make and enforce all rights, orders, and decrees to compel compliance with the lawful orders and regulations of the commission in respect of any so permitted dam or appurtenant works, and in respect of any so permitted change or diminution of the course, current, or cross-section of any stream or body of water, and to compel the performance of any condition imposed under the provisions of this act. In the event a decree revoking a permit is entered, the court is empowered to sell the whole or any part of the dam, together with any or all works, lands, and water rights appurtenant thereto or existing under the permit, to wind up the business of such permittee conducted in connection with such dam, change, or diminution, 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 permittee, and shall perform the duties of such permittee and assume all outstanding obligations and liabilities of the permittee which the court may deem equitable in the premises.

Section 9. Nothing in this act shall be construed to deprive the Public Service Commission of the Commonwealth of Pennsylvania of any jurisdiction, powers, or duties now vested in it by the laws of the Commonwealth.

Section 10. The right to amend and repeal this act is hereby expressly reserved, but no such alteration, amendment, or repeal shall effect any permit theretofore issued under the provisions of this act, or the rights of any permittee thereunder.