

THE ELECTRICITY TRUST OF SOUTH AUSTRALIA (PENOLA UNDERTAKING) ACT, 1967

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SCHEDULE

THE ELECTRICITY TRUST OF SOUTH AUSTRALIA (PENOLA UNDERTAKING) ACT, 1967

being

The Electricity Trust of South Australia (Penola Undertaking) Act, 1967, No. 19 of 1967 [Assented to 13th April, 1967].

An Act to vest in The Electricity Trust of South Australia certain assets pertaining to an electricity distribution system situated at Penola and elsewhere and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:—

1. This Act may be cited as “The Electricity Trust of South Australia (Penola Undertaking) Act, 1967”. Short title.

2. In this Act, unless the contrary intention appears—

Interpretation.

“distribution system” means the system for the distribution reticulation and supply of electricity described in paragraph (1) of the Schedule to this Act:

“Franchise Agreement” means a certain agreement dated the 26th day of August, 1947, made between The District Council of Penola and Penola Electric Supply Company Limited whereby the Council granted to that Company the sole right for the supply and sale of electrical energy (so far as the Council was competent and legally entitled to confer such right) within the Hundreds of Killanoola, Comaum, Monbulla and Penola for a period of twenty years from the 1st day of July, 1947, and includes any subsequent assignment or variation thereof:

“the Contractor” means Penola Electricity Supply Proprietary Limited and includes any other person or company (if any) generating distributing or supplying electricity or entitled to do so pursuant to the Franchise Agreement on the day of the commencement of this Act:

“the Trust” means The Electricity Trust of South Australia:

“vesting day” means the day immediately following the day upon which the right of the Contractor to supply electricity pursuant to the Franchise Agreement shall be determined.

3. (1) Upon the vesting day the assets comprised in the Schedule shall be vested in the Trust by virtue of this Act free from all mortgages charges liens and encumbrances. Acquisition of assets and vesting in the Trust.

(2) Upon the vesting in the Trust of the assets aforesaid the estate and interest whether legal or equitable of the Contractor or of any other person in any such asset shall be converted into a right to compensation under this Act.

Removal of
distribution
system
prohibited.

4. After the commencement of this Act no person shall without the prior written consent of the Trust alter or remove any part of the distribution system installed or erected at the commencement of this Act except for the purpose of maintenance or repairs or other alterations necessary in the ordinary course of the business of supplying electricity by means of the distribution system.

Trust may alter
distribution
system.

5. (1) The Trust may at any time after the commencement of this Act—

(a) inspect, repair, alter, add to, remove or make any connection with any part of the distribution system for the purpose of preparing the distribution system for connection with the works of the Trust;

and

(b) require the Contractor to isolate electrically the whole or any part of the distribution system and to suspend or interrupt the supply of electricity through the same to enable the Trust to carry out any work pursuant to paragraph (a) of this section.

(2) The Contractor shall do anything which the Trust may require the Contractor to do pursuant to the provisions of paragraph (b) of subsection (1) of this section.

(3) The Trust shall be liable to pay compensation to the Contractor in respect of the suspension or interruption of the supply of electricity through the distribution system pursuant to any requirement of the Trust under this section and to pay for any work done by the Contractor pursuant to a requirement of the Trust under subsection (1) of this section.

(4) The Trust shall carry out any work pursuant to paragraph (a) of subsection (1) of this section in such a manner as will not interrupt the supply of electricity by the Contractor through the distribution system any more than reasonably necessary.

Determination
of
compensation.

6. (1) Compensation for the assets vested in the Trust pursuant to section 3 of this Act or deemed to be vested in the Trust pursuant to paragraph (a) of subsection (5) of this section and in respect of any suspension or interruption referred to in section 5 of this Act shall be fixed by agreement or, failing agreement, shall be determined by the Supreme Court pursuant to this section.

(2) Proceedings for fixing the amount of compensation pursuant to this section may be commenced by the Trust or the Contractor or any other person having a claim to compensation under this Act.

(3) The Supreme Court shall hear any proceedings commenced pursuant to this section and the procedures of the Court applicable to an action commenced by Writ of Summons shall apply *mutatis mutandis* to any such proceedings.

(4) The Supreme Court may in any such proceedings—

(a) determine in accordance with subsection (6) of this section the amount of compensation payable for the whole or any part of the assets vested or deemed to be vested in the Trust as provided by this Act or in respect of any suspension or interruption referred to in section 5 of this Act;

(b) apportion compensation among different parties in such manner as it thinks just and proper;

and

(c) make such order as to costs as it thinks just and proper.

(5) If the Trust in the exercise of any of the powers conferred on it by subsection (1) of section 5 of this Act—

- (a) removes any part of the distribution system whether for the purpose of replacing that part or otherwise, then in each such case the part or parts so removed shall for the purpose of fixing compensation be deemed to be assets vested in the Trust for the purposes of section 3 of this Act;

or

- (b) adds to any part of the distribution system, whether in replacement of a part or parts removed by it or otherwise, then and in each such case the addition shall for the purpose of fixing compensation be deemed not to be assets vested in the Trust for the purposes of section 3 of this Act but shall remain the property of the Trust notwithstanding that it is affixed to or used in connection with the distribution system.

(6) The amount of compensation payable for any part or parts of the distribution system deemed by virtue of subsection (5) of this section to be assets vested in the Trust for the purposes of section 3 of this Act shall be the fair value of such part or parts immediately prior to removal thereof from the distribution system, but—

- (a) the amount of compensation payable for the distribution system shall be the value of the distribution system as a going concern without regard to the date on which the right of the Contractor to supply electricity pursuant to the Franchise Agreement is to be determined;
- (b) the amount of compensation payable for any other asset vested in the Trust pursuant to section 3 of this act shall be the fair value of such asset on the vesting day;

and

- (c) the amount of compensation payable pursuant to subsection (3) of section 5 of this Act in respect of any suspension or interruption referred to in that subsection shall be the monetary loss suffered by the Contractor in consequence of the suspension or interruption.

7. (1) Compensation as fixed by agreement or determined by the Supreme Court shall be payable by the Trust on the vesting day. Payment of compensation.

(2) If compensation is not paid on the vesting day (whether or not agreed or determined on or before that day) the Trust shall pay interest on the amount of compensation at the rate of five and a half per centum per annum from the vesting day to the day of payment of such compensation.

8. Except for compensation as provided by this Act, neither the Contractor nor any other person shall have any claim against the Trust or the District Council of Penola by reason of the vesting in the Trust of any assets by or pursuant to this Act or by reason of any request of the District Council to the Trust to supply electricity or by reason of the Trust supplying on or after the vesting day electricity to consumers in the Town of Penola or elsewhere in the Hundreds of Killanoola, Comaum, Monbulla and Penola or doing any other act or thing authorized by this Act. No rights except for compensation.

Saving of
Franchise
Agreement.

9. Except as provided in sections 4, 5 and 8 of this Act, nothing contained in this Act shall affect the respective rights and obligations of the Contractor or the District Council of Penola under the Franchise Agreement.

THE SCHEDULE

The assets vested in the Trust pursuant to section 3 of this Act comprise—

- (1) The whole of the system for the distribution reticulation and supply of electricity situated in the Town of Penola and elsewhere in the Hundreds of Killanoola, Comaum, Monbulla and Penola including (but without limiting the generality thereof) all poles, cross-arms, braces, conductors, insulators, transformers, switches (including time switches), fuses, services to consumers' premises, meters and street lighting equipment and all other fixtures and fittings installed in the said system (in this Act referred to as the "distribution system");

and

- (2) All articles and materials held in stock as spare parts or materials and capable of being installed in or used as part of the distribution system,

which immediately before the vesting day were the property of or in the possession of or under the control of or held used or operated by the Contractor or any person or company on behalf of or by arrangement with or deriving title directly or indirectly from the Contractor but expressly excluding—

- (a) all generators, alternators, diesel or petrol engines and all associated equipment including (but without limiting the generality thereof) instruments, spare parts and material, switches, switchboards, meters, conductors and transformers fixed or attached to or situated on the land comprised in Certificates of Title Register Book Volume 759 Folio 195, Volume 1953 Folio 116 and Volume 1953 Folio 117, or to any building or fixture situated thereon;
 - (b) all motor vehicles;
 - (c) any land or interest in land or any building or part of a building;
- and
- (d) any petrol, oil, or any other fuel or lubricant.