

Re Mar 11, 1933

342

ENROLLED BILL
(REGULAR SESSION. 1933)

House Bill No. 342

(By Mr. Matthews)

Passed March 10, 1933

In Effect from Passage

Originated in the House
John S. Hall
Clerk.
Takes effect from
John S. Hall
Clerk of the House of Delegates.
Passage

CORRECTLY ENROLLED

James L. Smith
Chairman House Committee.
James D. Hays
Chairman Senate Committee.

ENROLLED BILL

(H. B. No. 342)

[Passed March 10, 1933; in effect from passage.]

AN ACT authorizing the sale and transfer to Electro Metallurgical Company, its successors and assigns, by New-Kanawha Power Company, of certain permits, rights, powers and authority granted to it by the public service commission under and by virtue of chapter seventeen, acts of the legislature of West Virginia, one thousand nine hundred fifteen, amending such permits, and providing for the payment of the obligations and liabilities of the said New-Kanawha Power Company.

Be it enacted by the Legislature of West Virginia:

Section 1. That the sale and transfer to Electro Metallurgical Company, a West Virginia corporation, its successors and assigns, by New-Kanawha Power Company, a West Virginia corporation, of the permits, together with the rights, powers and authority apurtenant thereto or in anywise thereunto belonging,

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Chairman House Committee.

Chairman Senate Committee.

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6 granted to it by the public service commission under and by
7 virtue of chapter seventeen, acts of the legislature of West Vir-
8 ginia, one thousand nine hundred fifteen, and as set forth in
9 orders of the public service commission made and entered by it
10 in certain cases identified by it in its official records as case
11 number one thousand eight hundred sixty-three and case number
12 one thousand eight hundred sixty-four, and consolidated as one
13 project and identified as said case number one thousand eight
14 hundred sixty-four, and popularly known as the Hawks Nest-
15 Gauley Junction project, and of properties heretofore acquired
16 by New-Kanawha Power Company, be and hereby are authorized.

Sec. 2. That upon the transfer of the said permits by New-
2 Kanawha Power Company, said permits so transferred shall be
3 and hereby are amended in the following manner and the trans-
4 feree of said permits shall by accepting a transfer thereof have
5 agreed to accept such permits as so amended, to-wit:

6 (a) All rights of eminent domain granted under said permits
7 are revoked;

8 (b) In lieu of the annual royalty provided for by section
9 twenty-three, chapter seventeen, acts of the legislature, one thou-
10 sand nine hundred fifteen, there shall be payable during the

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11 term of the said permits and subsequent operation thereunder,
12 as herein provided for, an annual charge computed at the rate
13 of ten dollars for each one hundred horsepower of water wheel
14 capacity of the said project, which capacity shall be calculated
15 as the product of: (1) The average stream flow in cubic feet
16 per second at the intake; (2) the average static head in feet;
17 (3) the factor eight one-hundredths. Such charge shall become
18 payable beginning with the calendar year following the starting
19 of operation of the said project and shall be made to the state
20 tax commissioner annually thereafter prior to March one. If
21 such charge shall not be paid when due hereunder, the state tax
22 commissioner shall proceed to collect the same by any appro-
23 priate remedy, with a penalty of ten percentum added thereto.
24 Such charge shall be a lien in favor of the state on all property
25 of the said project superior to all other liens thereon except
26 liens for taxes due the state or some subdivision thereof. All
27 such charges and penalties collected by the state tax commis-
28 sioner shall be paid by him into the state treasury;
29 (c) From and after the expiration of the term of the said per-
30 mits, the holder thereof may operate thereunder until said per-
31 mits shall be surrendered by the holder thereof by filing written

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Edward A. Hyman
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32 notice of such surrender with the public service commission, or
33 shall be lawfully renewed or the properties covered by said per-
34 mits shall be purchased by the state as hereinafter provided or
35 until said permits shall be otherwise terminated by due process
36 of law.

37 Upon not less than one year's notice in writing from the public
38 service commission, and upon due authorization by the legisla-
39 ture of the state, and after payment as hereinafter provided, the
40 state shall have the right upon or after the expiration of the said
41 permits, to take over at fair value thereof and thereafter main-
42 tain and operate all of the property and rights of the holder of
43 the said permits appurtenant or accessory and valuable and
44 serviceable to the project which is the subject of the said permits.
45 The state may assume all the contracts for electric energy and
46 power entered into by the holder of the said permits and relating
47 to the property and rights so taken by the state, provided such
48 contracts have been approved by the public service commission
49 and shall not extend for more than ten years beyond the date of
50 expiration of said permits. The fair value of such property and
51 rights to be taken over by the state shall be determined by a

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D. Hyatt

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52 board of appraisers, of whom one appraiser shall be selected by
53 the public service commission and one by the holder of the said
54 permits, and in case of disagreement the two thus selected shall
55 select a third; if, in the event of such disagreement, the said two
56 appraisers are likewise unable to agree in selecting a third ap-
57 praiser, then upon application of either appraiser, after thirty
58 days' notice to the other appraiser the supreme court of appeals
59 shall appoint the third appraiser: *Provided*, That if the supreme
60 court of appeals shall refuse or fail to appoint the third ap-
61 praiser, then upon application of either appraiser after thirty
62 days' notice to the other appraiser, the governor shall appoint
63 the third appraiser. If either the public service commission or
64 the holder of the said permits shall fail or refuse to appoint its
65 appraiser as aforesaid, then after thirty days' notice by the
66 other appraiser, or by the public service commission or the holder
67 of the said permits, as the case may be, the governor shall ap-
68 point said second appraiser. The determination of the majority
69 of the said appraisers shall be considered prima facie the just
70 compensation therefor: *Provided, however*, That the said com-
71 pensation to be paid by the state shall not exceed the true and

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72 actual cost of said property. In making such determination the
73 board of appraisers shall make no allowance for unreasonable
74 costs of financing, for promoters' profits, or for the value of the
75 said permits or of any franchise, rights or privilege granted by
76 the state or any political subdivision thereof or any intangible
77 values arising therefrom. From the decision of the appraisers
78 determining the fair value of such property and rights to be
79 acquired by the state and the amount of the severance damages
80 as aforesaid, either the public service commission or the holder
81 of the said permits may, within ninety days after notice of such
82 determination, appeal to the circuit court of Kanawha county,
83 and may appeal from the decision of said circuit court to the
84 supreme court of appeals within ninety days from the time the
85 decision of the circuit court is rendered. Such appeals shall be
86 by petition and shall be allowed as a matter of right. The hear-
87 ing before the circuit court shall be as a trial de novo: *Provided,*
88 *however,* That the original record before the appraisers, duly
89 certified by them, or by any two of them, shall be received in
90 evidence and used in connection with any additional evidence
91 offered by either party. After hearing, the circuit court shall fix
92 and determine the fair value of such property and rights and the

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Anna D. Higgins

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93 amount of severance damages as aforesaid and enter its order
94 and judgment accordingly. In case of appeal to the supreme
95 court of appeals the same shall be upon the record in the circuit
96 court in the usual manner, and that court shall enter such judg-
97 ment or order as the circuit court should have entered.

98 The said transferee shall, within six months after the com-
99 pletion of the said project, file with the public service commis-
100 sion, a sworn, itemized statement, showing the true and actual
101 costs thereof, such statement of costs to be subject to the
102 approval of the said commission.

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103 (d) The transferee of the said permits shall not, because of
104 the acquisition or ownership thereof or operation thereunder,
105 be deemed to be a public service corporation, or be subject to
106 the laws of the state with respect to public service corporations
107 or the jurisdiction of the public service commission with respect
108 to any matter other than measures for the safety of the public
109 and for the protection of all public and private rights in the
110 waters of the state, in connection with the construction, opera-
111 tion and maintenance of structures to be used in the exercise of
112 said permits.

Sec. 3. That the sale and transfer of the said permits, to-

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2 gether with all the rights, powers and authority appurtenant
3 thereto, to the Electro Metallurgical Company is hereby author-
4 ized on condition that the said Electro Metallurgical Company,
5 or its successors or assigns, shall pay all present and future
6 judgments, if any, rendered against the said New-Kanawha
7 Power Company on account of any torts or claims arising from
8 and in any wise growing out of any work done for, or by, the
9 said New-Kanawha Power Company, and upon the further con-
10 dition that the said Electro Metallurgical Company, its succe-
11 sors or assigns, shall pay all judgments, if any, which may be
12 rendered against the said New-Kanawha Power Company upon
13 any attachments or suggestions which have been or may here-
14 after be issued and served upon the said New-Kanawha Power
15 Company in connection with the construction of the hydro-
16 electric plant development on New River in Fayette county.

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James D. Hine
Chairman Senate Committee

B. M. Shiner
Speaker of the House of Delegates.

John S. Wolf
Clerk of the House of Delegates.

A. G. Matthews
President of the Senate.

Robert A. Miley
Clerk of the Senate.

James L. Smith
Chairman House Committee

The within is.....

this..... day of..... 1933.

.....
Governor.

Filed in the office of the Secretary of State
of West Virginia MAR 18 1933
Wm. S. O'BRIEN,
Secretary of State