

11 GEO. VI. No. 39, 1947. *Electric Supply, Etc., Agreement Act.*

MINING.

An Act with Respect to an Agreement between the State of Queensland and The Electric Supply Corporation (Overseas) Limited; and for purposes incidental thereto and consequent thereon.

11 GEO. VI.
No. 39.
THE
ELECTRIC
SUPPLY
CORPORATION
(OVERSEAS)
LIMITED
AGREEMENT
ACT OF 1947.

[ASSENTED TO 9TH DECEMBER, 1947.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as “*The Electric Supply Corporation (Overseas) Limited Agreement Act of 1947.*” Short title.

2. The Premier and Chief Secretary is hereby authorised to make, for and on behalf of the State of Queensland, with The Electric Supply Corporation (Overseas) Limited, a company duly incorporated in England and having its registered office situate at Brook House, Park Lane, London, the Agreement a copy of which is set out in the Schedule to this Act (herein referred to as “the Agreement”). Execution of Agreement authorised.

3. Upon the making of the Agreement the provisions thereof shall have the force of law as though the Agreement were an enactment of this Act. Executed Agreement to have force of law.

The Governor in Council shall by Proclamation notify the date of the making of the Agreement.

4 The Agreement may be altered pursuant to an agreement made between the Minister for the time being administering this Act and the Company and approved by the Governor in Council by Order in Council and no provision of the Agreement shall be altered or the powers and rights of the Company under the Agreement derogated from except in such manner. Alteration of Agreement.

Any purported alteration of the Agreement not made and approved in such manner shall be void and of no legal effect whatsoever.

Unless and until the Legislative Assembly, pursuant to subsection four of section five of this Act, disallows by resolution an Order in Council approving an alteration of the Agreement made in such manner, the provisions of the agreement making such alteration shall have the force of law as though such lastmentioned agreement were an enactment of this Act.

Proclama-
tions and
Orders in
Council.

5. (1.) Any Proclamation or Order in Council provided for in this Act or in the Agreement may be made by the Governor in Council and, in addition, the Governor in Council may from time to time make all such Proclamations and Orders in Council not inconsistent with the Agreement as he shall think necessary or expedient to provide for, enable and/or regulate the carrying out of the provisions of the Agreement or any of them.

(2.) Any such Proclamation or Order in Council may be revoked or altered by another Proclamation or Order in Council which is not inconsistent with the Agreement.

(3.) Every such Proclamation or Order in Council shall be published in the *Gazette* and such publication shall be conclusive evidence of the matters contained therein.

(4.) Every such Proclamation or Order in Council shall be laid before the Legislative Assembly within fourteen days after such publication if Parliament is sitting for the despatch of business; or, if not, then within fourteen days after Parliament next commences to so sit.

If the Legislative Assembly passes a resolution disallowing any such Proclamation or Order in Council, of which resolution notice has been given at any time within fourteen sitting days of such House after such Proclamation or Order in Council has been laid before it, such Proclamation or Order in Council shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime.

For the purposes of this section the term "sitting days" shall mean days on which the Legislative Assembly actually sits for the despatch of business.

1947. *Electric Supply, Etc., Agreement Act.*

THE SCHEDULE.

THIS AGREEMENT made the _____ day of _____ One thousand nine hundred and forty-seven BETWEEN THE STATE OF QUEENSLAND of the one part and THE ELECTRIC SUPPLY CORPORATION (OVERSEAS) LIMITED (a Company duly incorporated in England and having its registered office situate at Brook House Park Lane London and registered in Queensland under the laws relating to Companies in the State of Queensland) of the other part WHEREAS there are large deposits of coal near Blair Athol in the State of Queensland and the Company after investigation is of opinion that coal can be excavated from the coalfield by civil engineering methods transported to the coast and sold at economic prices and that the Company can sell sufficient quantities of coal overseas to enable the large scale operations necessary to win and sell the coal at a profit AND WHEREAS for such purposes it is necessary to construct works for the crushing screening grading and loading of coal to construct a railway line from the coalfield to a suitable port on the coast and there to provide harbour works and facilities AND WHEREAS the Company is prepared to provide the large capital expenditure required for these purposes in the expectation of earning a commercial return from the undertaking AND WHEREAS the Minister is satisfied that for many years the sale of coal overseas is necessary to enable the large scale production essential for the sale of the coal at prices at which consumers in Australia can afford to buy it and that it is in the interests of the State of Queensland that coal from the coalfields should be produced and sold at the low prices resulting from large scale operations and that the Company should be authorised to construct such works as are necessary for the purposes aforesaid NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS :

1. In this Agreement unless the context otherwise requires the several terms following shall have the meanings respectively assigned to them :—

The term " Coalfield " means an area to be agreed upon between the Company and the Minister within a radius of five miles from the railway station of Blair Athol from which area the Company intends to obtain coal and/or such other area or areas as are from time to time agreed upon between the Company and the Minister and approved by the Governor in Council by Order in Council on the recommendation of the Minister.

The term " Coal Mining Acts " means **" The Coal Mining Acts 1925 to 1947."*

The term " Company " means The Electric Supply Corporation (Overseas) Limited its successors and permitted assigns.

The term " Crown Lands " means all land in Queensland except land which is for the time being

- (a) Lawfully granted or contracted to be granted in fee simple by the Crown, or
- (b) Subject to any lease or license lawfully granted by the Crown provided that land held under an occupation license shall be deemed to be Crown land.

* 16 G. 5 No. 30 and amending Acts.

The term includes land reserved for or dedicated to public purposes (including specifically all timber and camping reserves and reserves for aboriginals) other than land in fee simple.

The term "Date of completion of the construction of the works" means the date determined by the Minister and notified to the Company as being the date upon which in the opinion of the Minister the Works have been completed to an extent enabling large scale production and shipment of coal to begin.

The term "Duff" means coal which will pass through a screen with one quarter inch square holes or its equivalent.

The term "Land" includes—

- (a) Land on the foreshore or below the sea
- (b) Any estate or interest in land
- (c) Land held under any lease or any form of tenure
- (d) Easements
- (e) Licenses to occupy or licenses otherwise relating to land
- (f) Any mining tenure

The term "Local Government Acts" means and includes **"The Local Government Acts 1936 to 1947"* and any other Act or Acts relating to local government.

The term "Minister" means the Premier and Chief Secretary of Queensland or other Minister of the Crown for the time being charged with the administration of †*"The Electric Supply Corporation (Overseas) Limited Agreement Act of 1947."*

The term "Person" means and includes any person firm or body whether incorporated or not.

The term "Port" means the port or harbour near the coastal terminus of the railway from which it is intended that coal will be shipped by the Company.

The term "Railway" means any railway or tramway and any part or portion extension or branch of any railway or tramway constructed or worked pursuant to this Agreement and vested in the Company. The term where necessary includes all lands buildings structures works matters and conveniences connected therewith or appurtenant thereto including chutes conveyer belts aerial ropeways or other methods of conveyance.

The term "Railways Acts" means and includes ‡*"The Railways Acts 1914 to 1946"* and any other Act or Acts relating to the Railways of the Commissioner for Railways.

The term "Special Lease" means any Special Lease granted to the Company pursuant to the provisions of Clause 7 (5) of this Agreement.

The term "Township" means any township to be set up pursuant to this Agreement.

The term "Town Commissioner" means any Town Commissioner appointed pursuant to the provisions of this Agreement.

* 1 G. 6 No. 1 and amending Acts.

† This Act.

‡ 5 G. 5 No. 24 and amending Acts.

1947. *Electric Supply, Etc., Agreement Act.*

The term "Undertaking" means and includes the lands works operations and business of the Company within the State of Queensland pursuant to the provisions of this Agreement. The term does not include any other part of the undertaking of the Company.

The term "Works" means and includes the coalfield railway township port jetties wharves harbour works roads houses buildings machinery engines vehicles apparatus works stock chattels matters and things required for the purpose of this Agreement and the business of the Company pursuant to this Agreement.

When one word or phrase includes another the derivatives of the one include those of the other. The masculine includes the feminine and neuter genders and the neuter includes the masculine and feminine genders. The singular includes the plural and the plural includes the singular.

Reference to any statute or Act includes any Act or Acts amending consolidating or substituted for the same.

2. This Agreement may be altered pursuant to agreement between the Minister and the Company with the approval of the Governor in Council by Order in Council and no provision of this Agreement shall be altered or the powers and rights of the Company under this Agreement derogated from except in such manner.

3. The Company will as speedily as possible :—

- (a) Conduct such boring and other tests as are necessary to determine the site or sites extent and area of the coalfield ;
- (b) Survey the route of any necessary railways ;
- (c) Make such surveys as are necessary to locate the site or sites for :—
 - (1) the port and
 - (2) the township or townships and
 - (3) the other works required for the purposes of this Agreement.

4. In order to facilitate such surveys the Minister will use his best endeavours to expedite the completion of an aerial survey now being effected in Central Queensland by the Royal Australian Air Force and the preparation of such contoured maps as are necessary to facilitate such surveys as aforesaid.

5. The Company shall from time to time deposit with the Minister all such plans as are necessary to determine the site or sites extent and area of the coalfield the route of the railway and the site or sites of the port township or townships and other works required by this Agreement which sites and routes all shall be subject to the approval of the Minister.

6. As the route of the railway and such site or sites as aforesaid (or part or parts thereof) is or are approved by the Minister with such modifications (if any) as are agreed upon by the Minister and the Company the Minister shall from time to time notify the Company in writing accordingly. The Company and the Minister shall agree upon the lands and easements required by the Company for the purposes of this Agreement. The Company and the Minister may from time to time agree upon any alteration in the areas of such

lands and easements and upon any further lands and easements required by the Company for the purposes of this Agreement. The Company may acquire by agreement any of the lands or easements aforesaid which shall thereupon be surrendered to the Crown and the provisions of Clause 7 (5) hereof shall apply thereto.

7. (1) The Company will endeavour to acquire by agreement all such coal mining leases and freehold and other property on the coalfield as are at present held by lessees of such coal mining leases or the shares in the Companies holding such coal mining leases. After acquiring such property or such shares the Company shall not later than the date of the completion of the construction of the works cause all such lands as aforesaid (but excluding any improvements thereon which shall remain the property of the Company) to be surrendered by the Company to the Crown and such lands shall thereupon be vested in and held by the Company under the provisions of this Agreement. The sums to be paid by the Company for the purchase of such shares or other property shall not exceed such sums as are approved in writing by the Minister.

(2) If the Governor in Council shall acquire the coal mining leases and freehold and other property on the coalfield at present held by the lessees of such coalfield the Company shall pay to the Governor in Council the cost of acquisition thereof and such lands shall thereupon be vested in and held by the Company under the provisions of this Agreement and all other property acquired by the Governor in Council shall thereupon be transferred to and vested in the Company.

(3) The Company shall be entitled to use and occupy all Crown lands required for the works. All such lands (other than lands required only for temporary occupation) shall be vested in and held by the Company under and pursuant to the provisions of this Agreement as hereinafter provided. The Company shall re-pay to the Minister all expenditure incurred by the Crown in removing or altering any improvements on Crown lands to enable their occupation by the Company. The term "Crown lands" where used in this subclause shall not extend to—

- (a) lands resumed by the Crown under the provisions of Sub-clause 4 hereof; or
- (b) lands occupied by or reserved to the Commissioner for Railways except with the express approval in writing of the Minister.

(4) All lands other than Crown lands and all easements which are required for the works shall and may be resumed and acquired by the Co-ordinator General of Public Works from the owners thereof or the persons having any interest therein under the provisions of **"The State Development and Public Works Organisation Acts 1938 to 1940"* to the same extent as if the works were works authorised by the Governor in Council under those Acts to be carried out by the Co-ordinator General and the provisions of such Acts shall apply and extend accordingly except that any lands taken shall vest in the Crown and any easements taken shall be in the name and for the benefit of the Company but subject to the provisions of this Agreement.

* 2 G. 6 No. 3 and amending Act.

1947. *Electric Supply, Etc., Agreement Act.*

All the purchase money and compensation payable in respect of lands or easements so acquired together with all expenses incurred by the Co-ordinator General in effecting such resumption or acquisition shall forthwith be paid by the Company to the Co-ordinator General and upon such payment the lands resumed or acquired shall be vested in and held by the Company under and pursuant to the provisions of this Agreement. Before resuming or acquiring such lands or easements as aforesaid the Co-ordinator General may require the Company to deposit with him such moneys or such securities as are in his opinion sufficient to ensure the payment by the Company of sums to be paid by the Company as aforesaid.

(5) All lands referred to in this clause shall be vested in and held by the Company by Special Lease under and subject to the provisions of this Agreement until the Thirty-first day of December One thousand nine hundred and ninetyseven and thereafter until the undertaking of the Company is purchased in accordance with the provisions of this Agreement but all coal petroleum helium and minerals are expressly declared to remain the property of the Crown subject to the right of the Company to excavate coal in accordance with the provisions of this Agreement. The Minister shall cause Special Leases of such lands to be granted from time to time to the Company and delivered to the Company. The rentals reserved under such Special Leases shall consist of a nominal or peppercorn rental.

(6) Notwithstanding anything hereinbefore contained the Company shall be granted perpetual leases under the provisions of **"The Land Acts 1910 to 1946"* of all lands in any township reserved to the Company and not being lands required for the purposes set out in Sub-Clause (1) of Clause 11 hereof.

8. (1) The Company may sell lease or otherwise dispose or make use of any lands or works which are not for the time being required for carrying on the business of the Company pursuant to the provisions of this Agreement.

(2) Nothing in this Agreement shall prevent the acquisition of any of the lands of the Company by the Co-ordinator General of Public Works the Commissioner for Railways or the Commissioner of Main Roads subject to the payment of compensation including severance as provided by law.

9. If any land vested in and held by the Company pursuant to the provisions of this Agreement and held under Special Lease as aforesaid is sold the same shall thereupon be excluded from the Special Lease under which the same is held and shall be converted into a non-competitive perpetual lease which shall be granted to the purchaser thereof under the provisions of **"The Land Acts 1910 to 1946."*

10. Nothing herein contained shall prevent the Company from acquiring and holding land in freehold or upon any other form of tenure or any mining tenure or any other right license privilege or concession whatsoever but the same shall not form part of the undertaking unless so agreed between the Minister and the Company.

* 1 G. 5 No. 15 and amending Acts.

11. After the acquisition of the necessary lands the Company will without unnecessary delay

- (a) Construct any necessary railways from or from the neighbourhood of the coalfield to or to the neighbourhood of the port;
- (b) Construct or provide on the coalfield all such plant machinery and other works as are necessary to excavate coal from the coal-field by large scale operations;
- (c) Construct all such works as are necessary for—
 - (i) The crushing screening and grading of coal ; and
 - (ii) The economic and expeditious loading of coal into railway waggons and ships after such treatment as aforesaid;
- (d) Establish a port and construct all necessary harbour works or alternatively cause all necessary harbour works to be provided at an existing port.

(2) The said works shall be of adequate capacity to handle all coal which the Company is required to supply and sell under the provisions of this Agreement and shall be soundly constructed for the purposes for which they are required and shall possess adequate factors of safety and the system of handling coal shall be such as to be technically sound safe and suitable.

(3) The said works and the additional works referred to in Clause 13 hereof shall be constructed so as to comply with all such requirements as are reasonably stipulated by the Minister for ensuring that the said works comply with the provisions of this clause. If any dispute shall arise between the Minister and the Company under the provisions of this Sub-clause such dispute shall be determined by the Tribunal.

12. (1) The Company will make available free of cost to the Commissioner for Railways such of the lands of the Company as are reasonably required by the Commissioner for the extension of any existing railway line of the Commissioner and the provision of sidings and other necessary facilities for the loading of coal into railway waggons of the Commissioner.

(2) Unless otherwise agreed between the Company and the Minister the Company in order to enable the economic and expeditious loading of coal into railway waggons will either

- (a) Extend its railway to the sidings of the Commissioner for Railways, or
- (b) Construct railways of the same gauge as the railway of the Commissioner for Railways from the railway lines of the Commissioner for Railways to the works of the Company so as to enable the railway waggons of the Commissioner for Railways to be loaded at such works.

13. After the date of completion of the construction of the works the Company will from time to time during the period of this Agreement construct all such additional works as are necessary to enable the Company to handle all such coal as the Company is required to supply and sell pursuant to the provisions of this Agreement.

 1947. *Electric Supply, Etc., Agreement Act.*

14. The Company will at all times maintain the works in safe and sound condition in accordance with up-to-date practice and will replace or substitute all parts thereof which become worn out or obsolete ; but the Company shall be at liberty to discontinue the use of or to sell scrap or dispose of any part of the works which are not for the time being required for carrying on the business of the Company pursuant to the provisions of this Agreement.

15. The Company may become an Electric Authority authorised to supply electricity under the provisions of **" The Electric Light and Power Acts, 1896 to 1946 "* and all lands acquired and works acquired or constructed by the Company for the purposes of supplying electricity shall be deemed to be part of the undertaking of the Company as defined by this Agreement.

16. (1) The Company will raise all such capital as is required for the construction of the works and the completion of the undertaking.

(2) The Company shall have the right at all times to raise capital by the issue of shares in the Company to its existing shareholders or any other person at par or at a premium or (subject to the provisions of any law) at a discount.

(3) The Company will use its best endeavours to obtain the approval of the English Treasury to raising capital required and any other consent or approval required thereto.

(4) If the Company is unable to obtain the necessary approval to raise the necessary capital or if for any other reason whatsoever the Company is unable to begin or continue with the construction of the works it shall immediately notify the Minister in writing accordingly and the Governor-in-Council shall thereupon determine this Agreement and upon such determination the provisions of Clause 48 hereof shall apply as though the Agreement had been determined under that clause.

17. (1) The Company shall have the right in accordance with the provisions of Section 54 of the †*Companies Act, 1929* (England) to pay interest on share capital during the period of construction and to charge the sum so paid by way of interest on capital as part of the cost of construction of the works.

(2) The Minister shall certify to the Company the date of completion of the construction of the works.

18. (1) The Company shall in each year after the date of completion of the construction of the works provide depreciation upon all works in respect of which depreciation is normally provided.

(2) The rates of depreciation shall be such as are from time to time agreed upon between the Minister and the Company but failing agreement shall be determined by the Tribunal.

(3) Unless and until otherwise agreed or determined the Company will provide depreciation at the respective rates allowed by the Commissioner of Taxation.

(4) Where any works of the Company are sold scrapped disposed of lost or destroyed the Company will provide additional depreciation to cover the entire cost thereof.

* 60 V. No. 24 and amending Acts.

† 19 and 20 G. 5 c. 23.

19. (1) The Company may at any time establish an amortisation or depreciation fund or funds to provide for the amortisation or depreciation of any part of the undertaking which is not subject to depreciation in accordance with the provisions of clause 18 hereof.

(2) If at any time it shall appear to the Minister that by reason of the exhaustion of the coal on the coalfield or for any other reason any part of the undertaking which is not subject to depreciation in accordance with the provisions of clause 18 hereof should be amortised or depreciated the Minister may require the Company to establish an amortisation or depreciation fund or funds.

(3) The minimum amounts (if any) to be provided for such amortisation or depreciation fund or funds shall from time to time be agreed upon between the Company and the Minister, but failing agreement shall be determined by the Tribunal.

20. The Company shall keep registers wherein shall be recorded the following particulars relating to such parts of the lands and works of the Company as for the time being form part of the undertaking of the Company :

- (a) All lands held by the Company and the cost of acquiring same ;
- (b) All works and the cost of construction of such works ;
- (c) The depreciation provided in respect of such works ;
- (d) All amounts credited or standing to the credit of any amortisation or depreciation fund or funds ;
- (e) All sums paid by the Company for the acquisition of any coal mining leases or freehold or other property on the coalfield or the shares referred to in clause 7 hereof.

Such register shall be open at all times for inspection by any person appointed by the Minister for that purpose who may make copies thereof or extracts therefrom.

21. (1) The Company shall be at liberty at all times to borrow money on the security of its undertaking and no mortgage mortgage debenture or other instrument constituting a mortgage or charge on the undertaking or any part thereof shall require the consent of the Minister or of the Governor-in-Council.

(2) Every mortgage mortgage debenture or other instrument constituting a mortgage or charge on the undertaking shall be deemed to comprise a charge on the purchase money payable to the Company by the Governor-in-Council and no such mortgage mortgage debenture or other instrument shall remain a charge on the undertaking or any part thereof in the event of the undertaking being acquired by the Governor-in-Council.

(3) Every mortgage mortgage debenture or other instrument constituting a mortgage or charge on the undertaking or any part thereof shall contain the following express provisions or provisions to the like effect namely :—

- (a) No Mortgagee shall have any greater right to sell or dispose of any part of the undertaking of the Company without the consent of the Governor-in-Council than the Company itself possesses under the provisions of this Agreement ;

1947. *Electric Supply, Etc., Agreement Act.*

(b) In the event of the undertaking being acquired by the Governor-in-Council pursuant to the provisions of this Agreement—

- (i) Such mortgage mortgage debenture or other instrument shall not thereafter constitute a mortgage or charge on the undertaking or any part thereof ;
- (ii) The Minister shall be empowered on behalf of the mortgagee or other person entitled to the benefit of the mortgage mortgage debenture or other instrument to sign and execute a release of any mortgage or charge constituted by such mortgage mortgage debenture or other instrument on the undertaking of the Company or any part thereof.

(4) No mortgage mortgage debenture or other instrument shall constitute a mortgage or charge on the undertaking or any part thereof unless it contains the foregoing express provisions or provisions to the like effect.

22. (1) With the consent of the Governor-in-Council the Company may from time to time assign and transfer or let the undertaking of the Company or any part thereof (including the railway or any part thereof and the equipment thereof).

(2) Except as specifically provided in this Agreement the Company shall not without such consent as aforesaid assign or transfer or let the undertaking of the Company or any part thereof.

(3) The person to whom the same is assigned (with such consent as aforesaid) or during the period of such letting the person to whom the same is let (with such consent as aforesaid) shall so far as such assignment or letting extends have the same rights powers and privileges and be subject to the same duties obligations and penalties as the Company has and is subject to under the provisions of this Agreement.

23. (1) The Company shall have and may from time to time exercise in respect of the railway all the powers and authorities which the Commissioner for Railways may exercise under the provisions of Sections 37 and 40 of the Railways Acts but in the exercise of such powers the Company shall do as little damage as may be and all persons interested in any land taken used injured or prejudicially affected may recover from the Company all damage by them sustained by reason of the exercise of such powers.

(2) The Company shall have the same obligations to provide and maintain accommodation works as the Commissioner is required to provide and maintain under the provisions of Section 73 of the Railways Acts and the provisions of such Section shall *mutatis mutandis* apply.

(3) The Company shall have the same power of making By-laws with the approval of the Governor-in-Council as the Commissioner for Railways possesses and the provisions of Sections 133 to 135 of the Railways Acts shall *mutatis mutandis* apply.

24. Lands to be taken and used for the railway shall not exceed 200 links in width except where a greater width is necessary for :

- (a) Affording an approach to the railway or
- (b) Affording room for rolling stock to cross turn or pass or

- (c) Raising embankments to cross valleys or low ground or
- (d) Cutting through high ground or
- (e) Erecting temporary or permanent machinery stations or other structures or buildings or
- (f) Sidings shunting yards and railway yards or
- (g) Excavating removing or depositing earth or other materials or
- (h) Any other purposes connected with the construction or working of the railway.

25. Land acquired or used for the purposes of the railway shall be exempt from rating under the provisions of the Local Government Acts but this exemption shall not extend to any land acquired or used for the purpose of any other works or other business of the Company.

26. (1) The railway need not be of continuous construction ; coal and other goods may be moved over sections of the railway by chutes conveyor belts aerial ropeways or other methods of conveyance.

(2) The gauge of the railway shall be such as is agreed upon between the Minister and the Company.

(3) The railway and all engines and rolling stock shall be soundly constructed for the purposes for which it and they are required and shall possess adequate factors of safety and the system of working the railway shall be such as to be technically sound safe and suitable.

(4) The Company will from time to time construct such extensions and deviations of the railway and such branch railways as may be necessary for the purposes of the business of the Company pursuant to the provisions of this Agreement and the provisions of this Agreement and the term " railway " shall extend to and include every such deviation extension or branch railway.

(5) In operating the railway the Company will comply with all statutory provisions for the time being in force relating to safety.

27. The following provisions shall be applicable to cases where the railway is constructed across or traverses any road or tramway :

(1) If it is found necessary to cross cut through raise lower or use any part of any road so as to render it extraordinarily inconvenient for public traffic the Company shall before the commencement of any such operation cause a sufficient substituted road to be made. Any person who suffers special damage by reason of the failure of the Company to cause such substituted road to be made before it interferes with an existing road may recover the amount of such damage from the Company with costs by action in any Court of competent jurisdiction. If the said road could be restored compatibly with the use of the railway it shall with reasonable expedition be restored to a substantial condition. If it cannot be restored compatibly with the use of the railway the Company shall with reasonable expedition cause a sufficient substituted road to be put into a permanently substantial condition equally convenient as the former road or as near thereto as circumstances permit. The question of the sufficiency of such substituted road shall in case of dispute be determined by the Governor-in-Council.

1947.

Electric Supply, Etc., Agreement Act.

(2) Notwithstanding anything contained in the Local Government Acts where a road of less width than 66 feet is interfered with a substituted road need not be of greater but shall not (except in the case of a railway crossing over and above such road by means of a bridge or other structure or in the case of such road being taken over the railway by means of a bridge or other structure) be of less width than the road so interfered with.

(3) With the consent of the Minister but not otherwise in any case a road parallel and contiguous to any part of the railway may be lessened to not less than 33 feet in width or may be made of a width of not less than 33 feet.

(4) If the railway crosses a road other than on the level or if a road crosses the railway other than on the level the Company shall provide a suitable bridge or sub-way or other structure to the satisfaction of the Commissioner of Main Roads in respect of roads proclaimed under **"The Main Roads Acts 1920 to 1943"* and to the satisfaction of the Minister in the case of other roads.

(5) Where it is expedient to alter the levels of any road for the purpose of the construction of the railway the Company shall pay all reasonable expenses incurred in connection therewith unless otherwise agreed upon. The owner of any land prejudicially affected by such alterations of the level of any road within any city or town the level of which has been fixed under the Local Government Acts shall be entitled to recover from the Company all damages sustained by him by reason of such alteration.

(6) The Company shall maintain in good order and repair the railway on a road and if within a city or town the surface of the roadway between the rails and for the space of 36 inches outside each rail. The character of the maintenance shall be in keeping with the road on which the railway has been constructed.

(7) The Company shall at once repair any damage occasioned to any sewer drain gas or water main or works for the supply of electricity during the construction or maintenance of any railway on a road.

(8) If the Company deems it necessary that any road or part thereof should be closed it shall deposit in the office of the Local Authority having jurisdiction over such road a map and description of the road or part thereof proposed to be closed and shall notify in the Queensland Government Gazette that such map and description are there open for inspection and that any person interested may make an objection to such closure by forwarding to the Company within 30 days after such publication a notice of objection. All such objections shall be duly considered by the Company and it may cause an inquiry to be held into the matter of any such objection. Before any such closure is authorised the Company shall report to the Minister on the proposed closure and any objections thereto and the objectors shall be heard by the Minister if they so desire. Thereupon the Governor-in-Council may by Order in Council close such road or part thereof.

(9) If it is found necessary to cross or traverse any tramway the Company shall effect such crossing so as not to impede the efficient working of such tramway and shall to the extent necessary cause a sufficient substituted tramway to be made. The owner of any such

* 10 G. 5 No. 26 and amending Acts.

tramway who suffers damage by reason of the construction of such crossing or of the substitution of such tramway shall be entitled to recover from the Company all damages sustained by him thereby. The sufficiency of such crossing or of such substituted tramway shall in case of dispute be determined by the Governor-in-Council.

28. If it shall be necessary for the railway to cross or traverse any of the railways of the Commissioner for Railways such crossings or traversings shall be constructed to the reasonable satisfaction of the Commissioner and so as not to impede the safe working of the railways of the Commissioner and during the period of construction so as not unnecessarily to obstruct the working thereof. The Commissioner may agree with the Company to reconstruct at the expense of the Company any part of his railways and to make any temporary deviation thereof to facilitate construction of the railways of the Company. If any dispute shall arise between the Company and the Commissioner for Railways under the provisions of this clause the question in dispute shall be determined by the Governor-in-Council.

29. (1) It shall not be lawful to carry on any mining operations whatever under any land used for the purposes of the railway unless the consent in writing of the Company or of the Minister has been obtained.

(2) It shall not be lawful for the owner lessee or occupier of any mines or minerals lying under or near the railway or land used for the purposes of the railway to make any tunnel or excavation which might render such railway or land unsafe to use for railway purposes or to work any mine so as to endanger the railway or interfere with the stability thereof.

(3) The Minister at the request of the Company shall from time to time authorise some competent person to make such examination and enquiries as are necessary to ascertain whether the provisions of the last preceding sub-clause are complied with and every person so authorised by the Minister may at all reasonable times by day and night enter inspect examine and make a survey of any mine and every part thereof but so as not to impede or obstruct unnecessarily the working of the mine.

(4) If it appears that any such mine has been or is being or is likely to be worked so as to endanger the railway or interfere with the stability thereof the Company in addition to any other remedy may require the owner lessee or occupier thereof to construct such works and adopt such means as are necessary for making safe such railway and preventing injury thereto and if such owner lessee or occupier shall not forthwith so do the Company may itself construct such works and adopt such means as are necessary for making safe the railway and preventing injury thereto and recover the expense of so doing from such owner lessee or occupier by action in any Court of competent jurisdiction.

(5) Before authorising the Company to use for the purposes of the railway any land on which mining operations are carried on the Minister may require the Company to pay compensation to such amount as is determined by the Minister to any person who in the opinion of the Minister may be prejudicially affected by the provisions of this clause.

1947. *Electric Supply, Etc., Agreement Act.*

30. In any action brought against the Company to recover damages or compensation in respect of loss or injury by reason of the burning of the grass or other property of any owner or occupier of land alleged to have been occasioned by sparks from any railway engine or from some act or default of any employee for whose act or default the Company is liable the Court or jury shall not find or assess nor shall judgment be given or entered for the plaintiff for any sum of money exceeding One thousand pounds ; moreover the plaintiff in any such case shall not be entitled to recover any sum of money whatever unless he proves that on his part he has adopted all such measures and precautions for the prevention of fire on and the spread of fire into and upon the land whereof he is owner or occupier as are prescribed by by-laws with the approval of the Governor-in-Council whether generally or relating to any particular locality place or circumstances. The Company shall take all proper precautions by burning off or poisoning grass and other means to prevent fire on lands used for the purposes of the railway.

31. Whilst it is intended that the railway should primarily be used for the haulage of coal the Company may use the railway for the carriage of :

- (a) Employees of the Company and their families
- (b) Persons associated with or having business dealings with the Company
- (c) Employees of persons or Companies associated with or having business dealings with the Company and their families
- (d) Goods belonging to or consigned to or by the Company or any such person or Company as aforesaid.

The Company may make such charges (if any) for the carriage of such persons and goods as are fixed by the by-laws issued by the Company or as are from time to time approved by the Minister.

The Company may also use the railway for the carriage of any other person or goods provided that (except as is hereafter provided) no charge shall be made for such carriage unless in any particular case the Minister approves of the making of a charge.

32. The railway shall not be used for the public carriage of passengers or goods except in accordance with the provisions of any agreement which may be entered into between the Company and the Minister with the approval of the Governor-in-Council. Any such agreement shall contain the following provisions or provisions to the like effect :

- (a) The charges to be made by the Company for the carriage of passengers and goods shall be such as are from time to time agreed upon between the Company and the Minister but failing agreement shall be determined by the Tribunal ;
- (b) The liability of the Company shall not exceed the liability of a common carrier and the Company shall at all times be entitled to the benefits and privileges to which a common carrier shall be entitled ;

- (c) Subject as herein provided :
- (i) All charges for the carriage of passengers and goods shall be at all times charged equally to all persons and after the same rate in respect of all traffic of the same description ;
 - (ii) The Company shall not afford or give any undue or unreasonable preference or advantage to any particular person in any respect whatsoever nor shall the Company subject any particular person to any undue or unnecessary prejudice or disadvantage in any respect whatsoever ;
 - (iii) No reduction or advance in any charges shall be made either directly or indirectly in favour of or against any particular Company or person using or travelling upon the railway ;
 - (iv) Subject as aforesaid the Company may make contracts with any person for the carriage of any passengers or goods upon the railway at such rates as are agreed upon between the Company and such person :

PROVIDED ALWAYS HOWEVER THAT

- (i) The Company shall not be required to carry any passengers or goods to such an extent or at such times or in such manner as might impede or interfere with the efficient and speedy working of the railway for the carriage of the Company's own goods ;
 - (ii) The Company shall not be required to carry coal or other goods competitive with the coal or other goods produced or sold by the Company except upon terms which will reasonably protect the Company against the competition of such coal or other goods ;
 - (iii) The Company may make lesser or greater charges for the carriage of passengers or goods referred to in Clause 31 hereof or any of them ;
 - (iv) The Company may carry any passengers or goods without charge ;
 - (v) If any dispute shall arise between the Company and the Minister under the provisions of Sub-clause (i) or Sub-clause (ii) of this proviso such dispute shall be referred to the Tribunal for decision ;
 - (vi) If the Company shall commit any breach of the provisions of Sub-clause (i) or Sub-clause (ii) of this proviso any person aggrieved by such breach may pursue his remedy against the Company in respect of such breach in any Court of competent jurisdiction ;
- (d) The Company shall if required by the Minister carry without charge upon the railway all or any persons who are entitled to travel free on all railways vested in the Commissioner for Railways ;

 1947. *Electric Supply, Etc., Agreement Act.*

- (e) Accidents shall be reported to the Minister and enquired into by the Company in the same manner as accidents are reported and enquired into by the Minister under the provisions of the Railways Acts and the Governor-in-Council may direct a formal investigation in the same manner as under the provisions of the Railways Acts and the provisions of Sections 127, 128, 129, and 143 of the Railways Acts shall have application accordingly.

33. (1) When the site and area of any township has been approved by the Minister the area of the township shall be excluded from the area of any existing local authority and shall be constituted as a separate local authority area.

(2) In respect of each such township a Town Commissioner shall be appointed who shall be the Director of Local Government for the time being or such other person as is from time to time appointed as Town Commissioner by the Governor-in-Council.

(3) The Town Commissioner shall be and be deemed to be a Local Authority and shall have and exercise all the powers functions and authorities conferred upon a Local Authority by the Local Government Acts and by **"The Health Acts 1937 to 1946."*

(4) The Town Commissioner may contract with the Company for the construction or performance of any public works or services or other works or services of any description whatsoever.

(5) The Governor-in-Council may prohibit the Town Commissioner from entering into any contracts of a value exceeding Two hundred pounds (£200) without the approval of the Governor-in-Council which approval may be either general or specific.

(6) The Governor-in-Council may at any time terminate the appointment of the Town Commissioner and constitute a Local Authority for the area of the township or merge the area of the township in any other local authority area.

34. (1) The Company shall prepare a detailed survey of the township and shall prepare and submit for the approval of the Town Commissioner a comprehensive town planning scheme. Such town planning scheme shall be submitted to the Town Commissioner by the Company within such time as the Minister shall by notice in writing to the Company direct or within such extended time as the Minister or the Tribunal may allow.

(2) Such town planning scheme shall reserve to the Company not more than one-half of the total area of the township. The land to be reserved to the Company may include all of the lands adjacent to the roads upon which the Company intends immediately to provide drainage or other facilities. All land so reserved (other than such part thereof as is granted to the Company under Special Lease under the provisions of this Agreement) shall be granted to the Company by Perpetual Lease under the provisions of †*"The Land Acts 1910 to 1946."*

* 1 G. 6 No 31 and amending Acts.

† 1 G. 5 No. 15 and amending Acts.

(3) Such town planning scheme shall include adequate provision for :

- (a) Roads ;
- (b) Reserves and public purposes ;
- (c) Land for public occupation and use and the occupation and use of persons other than the Company.

(4) When such town planning scheme has been approved by the Town Commissioner and the Governor-in-Council the township shall be established in accordance with such scheme.

(5) Land in the township other than land reserved to the Company under the town planning scheme will be made available by the Crown for occupation in accordance with the town planning scheme so as to result in close settlement and avoid ribbon development. The Town Commissioner will ensure that such land is not occupied for speculative purposes and that all such improvements as are reasonably required will be immediately erected thereon.

(6) Subject to the town planning scheme the land reserved to the Company may be used by the Company or leased or sold by the Company to other persons.

(7) Subject as hereinafter provided the town planning scheme may from time to time be amended and brought up to date by the Town Commissioner with the approval of the Governor-in-Council.

35. (1) Until such time as is fixed by the Governor-in-Council either generally or in respect of any particular works or services—

- (a) The Company shall and shall be empowered to construct and provide such works and services as are necessary for the purposes of the township ;
- (b) The Company shall act as agent of the Town Commissioner and the Town Commissioner shall delegate to the Company such of his powers functions duties and authorities as are necessary for the purposes aforesaid ;
- (c) The Town Commissioner may pay to the Company in any year such sum or sums (if any) as are agreed upon between the Town Commissioner and the Company for the provision of any services and the maintenance of any such works or services as aforesaid ;
- (d) The town planning scheme may from time to time be amended by the Company but no such amendment shall take effect unless and until the same is approved by the Governor-in-Council on the recommendation of the Town Commissioner.

(2) All works and services constructed or provided by the Company for the Town Commissioner shall become and be the property of the Town Commissioner.

(3) The purchase price for any such works or services shall be such sum or sums as are agreed upon between the Company and the Town Commissioner with the approval of the Minister and such sum or sums shall be payable at such time or times as are so agreed.

1947. *Electric Supply, Etc., Agreement Act.*

(4) The Company and the Town Commissioner may enter into such agreements as are necessary or expedient to give effect to the provisions of this Clause and Clauses 33 and 34 hereof. Every such agreement shall be subject to the approval of the Governor-in-Council and may from time to time be amended or varied with the like approval.

36. (1) Until such time as a Harbour Board is constituted for the port the Corporation of the Treasurer of Queensland constituted by **"The Harbour Boards Acts 1892 to 1941"* shall in regard to the port have all the powers functions duties and authorities conferred upon a Harbour Board.

(2) Until such time as is fixed by the Governor-in-Council the Corporation shall delegate to the Company such of its powers functions duties and authorities as are necessary to enable the Company to establish all necessary harbour works and the Company shall construct all such necessary harbour works. All such harbour works shall be and remain the property of the Corporation. The Corporation shall pay to the Company for and in respect of the construction and maintenance of the harbour works such sums payable at such times and in respect of such works as are agreed upon between the Corporation and the Company with the approval of the Minister.

(3) The term "harbour works" where used in this clause does not include any works upon any land vested in the Company pursuant to the provisions of this Agreement or otherwise owned or occupied by the Company.

(4) The Company and the Corporation of the Treasurer of Queensland may enter into such agreements as are necessary or expedient to give effect to the provisions of this Clause. Every such agreement shall be subject to the approval of the Governor-in-Council and may from time to time be amended or varied with the like approval.

37. (1) As soon as possible after the date of completion of the construction of the works the Company will excavate coal from the coalfield by large scale operations and all such coal shall thereupon become the property of the Company. The Company will fill in excavations made by it consistent with the future operations of the Company and the provision of works to prevent flooding.

(2) The Company shall pay to the Crown a royalty on coal won from the coalfield after the date of completion of the construction of the works at the following rates :—

For the first 1,000,000 tons in any year 6d. per ton

For the next 1,000,000 tons in any year 3d. per ton

For each ton thereafter in any year 1d. per ton.

(3) For the year in which the works are completed the tonnages set out in Sub-clause 2 hereof shall be calculated pro rata according to the part of the year remaining after the date of completion of the construction of the works.

* 56 V. No. 26 and amending Acts.

Electric Supply, Etc., Agreement Act. 11 GEO. VI. No. 39,

(4) For the purpose of ascertaining the royalty to be paid coal will be weighed after crushing screening and grading except that coal sold or used by the Company without such treatment will be weighed before being sold or used by the Company. A royalty will not be payable on duff except duff actually sold by the Company.

(5) The Company may sell dispose of destroy or make use of duff in such manner as it thinks fit.

(6) Not later than the tenth day of each month in each year the Company will forward to the Minister a return in such form as is required by the Minister showing the following particulars in respect of the preceding month :

- (a) The amount of duff sold by the Company ;
- (b) The amount of other coal sold or used by the Company after being crushed screened and graded ;
- (c) The amount of coal sold or used by the Company without being crushed screened and graded ;
- (d) Such other particulars as the Minister may require.

(7) The Company shall forthwith pay to the Minister the amount (if any) due as royalty on coal for the preceding month.

(8) Any person thereunto authorised by the Minister may inspect the records of coal sold or used by the Company for the purpose of checking the amount of the royalty to be paid by the Company and for that purpose may make copies thereof or extracts therefrom.

(9) If any coal shall be won by the Company before the date of completion of the construction of the works the Company will from time to time pay a royalty thereon at the current rates under the provisions of the Coal Mining Acts.

38. (1) At all times after the date of completion of the construction of the works the Company will sell and supply coal at or in proximity to the coalfield as well as at the port graded in such manner as the Company for the time being finds desirable in such quantities as are necessary to meet the full demand for such coal for intra-State use and also to meet the full regular demand for inter-State and overseas use so far as such demands can be reasonably anticipated and met.

(2) Subject to this Agreement

- (a) The Company will be free to sell coal to any person or to refuse to sell coal to any person in its absolute discretion ;
- (b) The Company will be free to sell coal at such price or prices as it may determine and may charge different prices to different consumers and different prices for different grades of coal.

(3) In the event of scarcity or inadequacy in the supply of coal the Minister may by order in writing direct the Company to supply coal to the Queensland Government the Commissioner for Railways or to any person or persons whatsoever in such quantities as are specified in such order and the Company shall supply at the ruling price or prices the coal specified in any such order.

 1947. *Electric Supply, Etc., Agreement Act.*

39. The Company will excavate coal from the coalfield by civil engineering methods and will comply with all provisions of the Coal Mining Acts and all other laws whatsoever relating to the operations aforesaid. The Company will not except with the approval of the Governor-in-Council win coal by means of shafts tunnels or underground workings or operate the coalfield as a mine.

40. (1) The Company will to the best of its ability so operate its works as not to endanger the safety or health of its employees.

(2) After the date of completion of the construction of the works if the Governor-in-Council shall be of opinion that it is desirable that provision should be made for the payment of pensions to employees of the Company or some of them the Governor-in-Council may require the Company to establish or contribute to a fund or scheme for the provision of pensions to such employees to such extent as is determined by the Governor-in-Council by Order in Council.

(3) The Governor-in-Council may from time to time determine by Order-in-Council the employees or classes of employees of the Company who shall be mine workers under and within the meaning of **The Coal and Oil Shale Mine Workers (Pensions) Acts 1941 to 1947.**

The sums to be contributed by the Company to the fund established under the said Acts shall be assessed under the said Acts not on the basis of the amount of coal won but on the basis of the number of employees who are for the time being mine workers as aforesaid and shall bear the same proportion to the contributions of the said mine workers as owners contributions bear to mine workers' contributions under the said Acts.

Except as determined as aforesaid employees of the Company shall not be mine workers under and within the meaning of the said Acts.

(4) Nothing in this Clause contained shall prevent the Company from establishing or contributing to any superannuation or pension fund for the benefit of the employees of the Company or any of them.

41. (1) The Company shall be subject to and shall obey all laws of the State of Queensland for the fixation of prices or for the regulation or control of the production supply or sale of coal or for the establishment of any Coal Board which may be lawfully enacted or established by the State of Queensland provided that there shall be no unfair discrimination against the Company under any such law or by any such Board.

(2) Nothing in the foregoing provisions of this Clause shall extend to coal supplied or sold for export (whether in ships' holds or bunkers) and the Company shall be at liberty to supply and sell such coal at such prices as it from time to time determines.

42. (1) The Company will not seek to create a monopoly or to close down any existing coal mines in Queensland by unfair price cutting or dumping. If any person shall allege any of the matters aforesaid he shall give notice thereof to the Company and to the Minister so that the same may be remedied if thought proper and damages recoverable by such person shall be limited to damages arising after such notice to the Company.

* 5 G. 6 No. 24 and amending Acts.

If the Minister is of opinion that any of the matters alleged require to be remedied by the Company and have not been so remedied or if so required by the Company he shall refer the matter to the Tribunal for decision. The Tribunal shall make a finding whether any of the matters alleged have or have not been done by the Company and such finding shall be published in the *Gazette*.

In any proceedings brought in any Court in respect of any of the matters aforesaid which have been referred to the Tribunal the Court shall not receive any evidence whether any of such matters have or have not been done by the Company other than a copy of the *Gazette* containing the finding of the Tribunal which shall be conclusive proof that any of such matters have or have not been done by the Company.

(2) The Company in respect of any of the matters set out in Clause 41 (1) hereof shall not be subjected to unfair discrimination by any administrative act of the State of Queensland or by any person authority or body whatever pursuant to any law of the State of Queensland.

If the Company alleges unfair discrimination as aforesaid it shall give notice thereof to the Minister so that he may remedy the same if he thinks proper and damages recoverable by the Company shall be limited to damages arising after such notice.

Either the Minister or the Company may require the matter to be referred to the Tribunal for decision. The Tribunal shall make a finding whether or not there has been unfair discrimination and such finding shall be published in the *Gazette*.

In any proceedings brought in any Court in respect of any of the matters aforesaid the Court shall not receive any evidence whether or not there has been unfair discrimination other than a copy of the *Gazette* containing a finding of the Tribunal which shall be conclusive proof that there has or has not been unfair discrimination.

43. (1) The Governor-in-Council shall from time to time as required constitute a Tribunal to decide and determine all matters which by this Agreement are required to be or may be referred to the Tribunal for its decision.

(2) The Tribunal shall consist of either :—

(a) A Judge of the Supreme Court of Queensland appointed by the Governor-in-Council or

(b) A Barrister of not less than ten years' standing appointed by the Governor-in-Council upon the recommendation of the Chief Justice of Queensland.

(3) The Tribunal may be assisted by assessors who shall make such recommendations to the Tribunal as they or any of them shall think fit.

(4) Upon each reference to the Tribunal such assessors shall be appointed to assist the Tribunal as are agreed upon between the Minister and the Company. The Tribunal may appoint any assessor or assessors.

 1947. *Electric Supply, Etc., Agreement Act.*

(5) The Tribunal after hearing the representations of all parties interested and considering the recommendations (if any) of the assessors will make such recommendation and report to the Minister as is proper or such Order as is just.

(6) Every such Order of the Tribunal shall subject to review as hereinafter provided remain in force for such period as is fixed by the Order and every such Order shall be published in the Queensland Government Gazette and shall be binding upon all persons and shall have the force of law.

(7) The Minister may of his own volition and shall when required by the Company refer to the Tribunal any matter requiring decision under the provisions of this Agreement but no decision of the Tribunal shall be reviewed at intervals of less than one year unless so agreed between the Minister and the Company.

(8) The Minister may at any time of his own volition or at the request of the Company refer to the Tribunal for consideration and report to the Minister any matter relating to the undertaking of the Company or otherwise arising under the provisions of this Agreement and the Tribunal shall make such report to the Minister as it thinks proper.

(9) The Tribunal shall be deemed to be a commission within the meaning of "*The Official Inquiries Evidence Acts 1910 to 1929*" and the provisions of such Acts shall apply to the Tribunal and all the proceedings thereof.

(10) Every party to proceedings before the Tribunal shall unless the Tribunal otherwise directs pay his or its own costs. The Tribunal may order that any party to any proceedings pay (whether by way of a lump sum or otherwise) the whole or such part as the Tribunal may think fit of the costs of and incidental to those proceedings incurred by any other party thereto or any costs incurred by the Tribunal including the remuneration of any assessor or assessors. In case of difference as to the amount (other than a lump sum) of any costs directed to be paid as aforesaid such costs shall be taxed by a taxing officer of the Supreme Court of Queensland as if the proceedings before the Tribunal had been proceedings in the Supreme Court. A direction or decision of the Tribunal insofar as it relates to costs may be enforced in the same manner as a judgment or order of the Supreme Court.

44. (1) The Governor-in-Council shall have the right to acquire the whole of the undertaking of the Company upon the thirty-first day of December One thousand nine hundred and ninety-seven and at the expiration of each period of twenty-one years thereafter.

(2) The purchase price to be paid by the Governor-in-Council shall be ascertained by the addition of the following sums that is to say :

- (a) The actual cost of acquiring all lands then vested in held or owned by the Company whether held or owned by the Company under Special Lease or otherwise ;
- (b) The actual cost of constructing all works other than works which have been sold disposed of or destroyed ;

* 1 G. 5 No. 26 and amending Act.

- (c) Any amount paid by the Company for acquiring the shares in companies holding coal mining leases or other property on the coalfield and which is not included in the amounts ascertained under sub-clauses (a) and (b) hereof ;
 - (d) Any amount paid by the Company for acquiring coal mining leases and other property on the coalfield for which payment is not allowed under sub-clauses (a) (b) or (c) hereof.
- (3) From such aggregate sum there shall be deducted
- (a) All sums which the Company has provided or is required to provide for depreciation in respect of the aforesaid works under the provisions of this Agreement ;
 - (b) The amount standing to the credit of the said amortisation or depreciation fund or funds.
- 45.** (1) Nothing contained in this Agreement shall prevent the Governor-in-Council from acquiring the undertaking of the Company at any time if the Governor-in-Council shall by reason of special circumstances be of opinion that it is necessary in the interests of the State of Queensland to acquire such undertaking.
- (2) In such case the undertaking shall be acquired under the provisions of **" The Public Works Land Resumption Acts 1906 to 1940 "* and the provisions of such Acts shall have application accordingly.
- (3) The purchase price to be paid to the Company for the undertaking of the Company by the Governor-in-Council shall be the fair value of the Company's undertaking valued as a going concern. Subject as hereinafter provided nothing shall be added to or included in such price for the value of coal in the coalfield other than coal actually raised by the Company from the coalfield upon which royalties have been paid or are payable by the Company but in arriving at such value as aforesaid regard shall be had to the amounts paid by the Company for the purchase of shares in companies holding coal mining leases or other property on the coalfield or for the purchase of coal mining leases freehold or other property on the coalfield pursuant to Clause 7 hereof although some part of such payments may have been made in respect of coal in the coalfield.
- 46.** (1) The right of acquisition of the undertaking of the Company whether under the provisions of Clause 44 or Clause 45 hereof shall be exercised by the Minister giving to the Company not less than two years' previous notice in writing of the intention of the Governor-in-Council so to acquire the undertaking of the Company.
- (2) The property to be acquired by the Governor-in-Council shall be the whole undertaking of the Company but shall not include :
- (a) Any cash held by the Company or to the credit of the Company with its bankers, or
 - (b) Any investments of the Company, or
 - (c) The Book and other debts of the Company.

* 6 E. 7 No. 14 and amending Acts.

1947. *Electric Supply, Etc., Agreement Act.*

(3) As of the day upon which the purchase takes effect all lands and works so acquired by the Governor-in-Council shall be divested from the Company and vest in His Majesty free from any debts mortgages or similar obligations of the Company or attaching to or charged or secured upon the undertaking of the Company or to or upon the said lands or works but subject to any lease license or similar interest lawfully granted by the Company and the powers of the Company under this Agreement shall absolutely cease and determine so far as regards the Company but the same shall vest in His Majesty.

(4) The following contracts and agreements shall be taken over acquired and performed by the Governor-in-Council as of the date upon which the purchase takes effect :—

(a) Contracts and agreements entered into by the Company in respect of the business of the Company pursuant to the provisions of this Agreement which contracts or agreements are to be performed within the space of five years from the making thereof ;

(b) Contracts and agreements entered into by the Company in respect of the business of the Company pursuant to the provisions of this Agreement which contracts or agreements are to be performed within twelve years from the date of completion of the construction of the works ;

(c) Contracts and agreements entered into by the Company in respect of the business of the Company pursuant to the provisions of this Agreement and approved by the Governor-in-Council which contracts or agreements are not to be performed within the space of five years from the making thereof ;

(d) Contracts and agreements entered into by the Company which the Governor-in-Council specifically agrees to take over and acquire in the event of the Governor-in-Council acquiring the undertaking.

(5) All other contracts and agreements entered into by the Company in respect of the business of the Company pursuant to the provisions of this Agreement shall be terminated and annulled as from the date upon which the purchase takes effect, but without prejudice to the rights of the parties thereto then accrued.

(6) As of the date upon which the purchase takes effect all payments due or accruing due under contracts and agreements taken over and acquired by the Governor-in-Council, shall be apportioned and the purchase price shall be adjusted accordingly. All such contracts and agreements shall be carried out by the Governor-in-Council as though he were named as a contracting party thereto instead of the Company and the Governor-in-Council shall as from that date be entitled to the benefits thereof and shall assume liability for the obligations thereunder and indemnify the Company against the same but the Company shall meet and discharge all obligations arising under such contracts and agreements before that date and shall indemnify the Governor-in-Council against the same.

(7) After such time as the Minister shall have given the Company notice in writing of the intention of the Governor-in-Council to acquire the undertaking of the Company the Company shall not without the consent in writing of the Minister enter into any contracts or agreements not to be performed within the period covered by such notice unless the same are capable of determination by not more than one calendar month's notice.

47. By agreement between the Minister and the Company with the approval of the Governor-in-Council the Minister may purchase the whole of the undertaking of the Company or any part thereof.

The Governor in Council may purchase the undertaking of the Company as an Electric Authority under the provisions of **The Electric Light and Power Acts 1896 to 1946*” and †*The State Electricity Commission Acts 1937 to 1947*” separately from the rest of the undertaking of the Company. Except as aforesaid, the Company shall not be required to sell or dispose of any part of the undertaking of the Company otherwise than in accordance with the provisions of Clause 44 or Clause 45 of this Agreement.

48. (1) If the Company

- (a) Fails to make the necessary boring tests or surveys as speedily as possible ; or
- (b) Fails to commence or continue the construction of the works without unnecessary delay ; or
- (c) Commits any breach of or fails to observe any of the provisions of this Agreement

the Minister may give to the Company notice in writing requiring the Company to make such boring tests or surveys or to commence or continue the construction of the works or to make good and rectify such default within such reasonable time as is specified in the notice.

(2) If the Company shall fail to comply with the provisions of such Notice within such time as is so specified or within such extended time as may be granted by the Minister or the Tribunal the Governor-in-Council may by notice in writing to the Company determine this Agreement and thereupon subject as hereinafter provided the Company shall forfeit to the Crown freed from all mortgages and charges as aforesaid all lands vested in the Company pursuant to this Agreement and the same shall vest in the Crown and the rights of the Company under this Agreement shall thereupon cease and determine.

(3) Upon the determination of this Agreement pursuant to the provisions of this Clause the Company shall be granted a coal mining lease or coal mining leases under the provisions of the Coal Mining Acts of the area then comprised in the coalfield. If such area shall exceed the maximum area which may be held by a Company under such Acts the Company shall within a period of six calendar months transfer and assign such part or parts of such coal mining lease or leases as is or are necessary to comply with the provisions of such Acts.

* 60 V. No. 24 and amending Acts.

† 1 G. 6 No. 26 and amending Acts.

1947. *Electric Supply, Etc., Agreement Act.*

(4) The Company shall have the right within a reasonable time to remove and sell or dispose of any of the works.

(5) The Company shall not be held to be in default under the provisions of this Clause if any delay or default is occasioned by floods storms tempests war riots civil commotions strikes or any other cause whatsoever beyond the control of the Company.

(6) The failure of the Company to raise the required capital shall not constitute an excuse to the Company for non-compliance with any of the provisions of this Agreement and such failure shall not prevent the Minister from giving to the Company notice as aforesaid or prevent the Governor-in-Council from determining this Agreement as aforesaid.

49. The Company may with the consent in writing of the Governor-in-Council assign the benefit of this Agreement but shall not assign or purport to assign the same except with such consent as aforesaid.

50. The Company shall in respect of its undertaking in addition to the powers rights privileges and authorities conferred upon it by **"The Electric Supply Corporation (Overseas) Limited Agreement Act of 1947"* have and possess all the powers rights privileges and authorities conferred upon it by this Agreement and the provisions of this Agreement shall be paramount. Subject as aforesaid the Company shall be bound by and shall comply with all laws for the time being in force in the State of Queensland.

EXECUTED the day and year aforesaid.

SIGNED by THE HONOURABLE
EDWARD MICHAEL HANLON
Premier and Chief Secretary of the
State of Queensland for and on
behalf of the said State in the
presence of

SIGNED by THEODORE JAMES
HIRST for and on behalf of THE
ELECTRIC SUPPLY CORPORA-
TION (OVERSEAS) LIMITED and
duly authorised in that behalf in
the presence of

THE ELECTRIC SUPPLY
CORPORATION (OVER-
SEAS) LIMITED By its
Attorney

* This Act.