

# FREMANTLE ELECTRICITY UNDERTAKING AGREEMENT.

1° Elizabeth II., No. XL.

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No. 40 of 1952.

**AN ACT to approve, ratify and confirm to the extent necessary an Agreement made between the State, The State Electricity Commission of Western Australia and The Fremantle Municipal Tramways and Electric Lighting Board relating to the sale and purchase of an electricity undertaking; and for other purposes.**

[Assented to 18th December, 1952.]

**BE** it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Fremantle Electricity Undertaking Agreement Act, 1952.* Short title.

2. In this Act unless the context requires otherwise— Interpretation.

“Agreement” means the Agreement set out in  
The Schedule to this Act;

No. 40.] *Fremantle Electricity Undertaking* [1952.  
*Agreement.*

“Board” means The Fremantle Municipal Tramways and Electric Lighting Board constituted under the Fremantle Municipal Tramways and Electric Lighting Act, 1903-1946;

“Scheduled agreement” means any agreement set out in paragraph B of the Second Schedule to the Agreement.

Clause 11  
approved,  
ratified and  
confirmed.

3. Clause eleven of the Agreement is hereby approved, ratified and confirmed.

Termination  
of agree-  
ments.

4. (1) Where the Board gives a notice pursuant to subclause (c) of clause six of the Agreement purporting to cancel and determine a Scheduled agreement on the date in the notice provided, on the expiration of the date the agreement to which the notice relates shall be cancelled and determined.

(2) A party to a Scheduled agreement which has been so cancelled and determined shall—

- (a) pay for electricity supplied to it under the terms of the agreement within fourteen days after the date on which the agreement is cancelled and determined;
- (b) not, subject to paragraph (a) of this subsection, have any claim against any other party for compensation, damages or any claim whatsoever for or in respect of the cancellation and determination of the agreement or for or in respect of anything which thereafter remains to be done by any party under the agreement.

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**The Schedule.**

AN AGREEMENT made the 16th day of April One thousand nine hundred and fifty-two BETWEEN *THE HONOURABLE DUNCAN ROSS McLARTY M.L.A.* Premier and Treasurer of the State of Western Australia acting for and on behalf of the State and its Government (in this agreement called “the Government”) of the first part, *THE FREMANTLE MUNICIPAL TRAMWAYS AND ELECTRIC LIGHTING BOARD* a board constituted pursuant to the Fremantle Municipal Tramways and Electric Lighting Act

1952.] *Fremantle Electricity Undertaking* [No. 40.  
*Agreement.*

1903-1946 whose office and principal place of business is situate at William Street Fremantle in the State (in this agreement with its successors and assigns called "the Board") of the second part A N D *THE STATE ELECTRICITY COMMISSION OF WESTERN AUSTRALIA* a body corporate pursuant to the provisions of the State Electricity Commission Act 1945 whose office and principal place of business is situate at Electricity House Murray Street Perth in the State (in this agreement with its successors and assigns called "the Commission") of the third part.

WHEREAS:

(i) By section six of the Oil Refinery Industry (Anglo-Iranian Oil Company Limited) Act, 1952 the Commission may purchase from the Board which may sell to the Commission upon such terms and conditions as the Commission and the Board agree the electricity undertaking controlled and managed by the Board under the provisions of the Fremantle Tramways and Electric Lighting Act 1903-1946 (in this agreement called "the undertaking")

(ii) The Board has agreed to sell and the Commission has agreed to purchase the undertaking more particularly described in Clause 1 of this agreement upon the terms and at the price in this agreement provided:

NOW IT IS HEREBY AGREED as follows:—

1.—THE Board shall sell and the Commission shall purchase the undertaking. The undertaking includes but without limiting the generality of the term "undertaking" the following items as such items exist on the 1st day of June 1952 (in this agreement called "the transfer day"):—

- (i) all distribution works, electric works, generating stations, linking up schemes, service apparatus, transmission works and all other works, appliances and conveniences established, maintained and used for the generating of electricity or other power, and for the reception, storage, distribution, transmission, use and supply of such electricity or other power; and
- (ii) all buildings, works, machinery, plant, towers, vehicles, lines, poles, cables and appliances used for or in connection with the works mentioned in sub-clause (i) of this clause; and
- (iii) all concessions held by the Board under the Electricity Act 1945 and all rights in connection with the undertaking held by the Board under any other Act with respect to the generation, distribution and supply of power;
- (iv) patents (if any) held by the Board for the purposes of or in connection with its business of supplying electricity; and

No. 40.] *Fremantle Electricity Undertaking* [1952.  
*Agreement.*

- (v) all beneficial contracts held by the Board in relation to the generation and supply or sale by the Board of electricity or other power;
- (vi) the land free from all encumbrances, specified in the first schedule to this agreement with the improvements and all easements rights powers authorities and privileges enjoyed or exercisable by the Board in connection with the undertaking pursuant to the last mentioned Act;
- (vii) furniture and books used in connection with the undertaking, stores, trade stocks, and other effects used in connection with the undertaking.

2.—THE Commission shall have free access at all reasonable times to any books retained by the Board, which in any way relate to the undertaking, and the Board shall have the like right in relation to any books in any way relating to the transport undertaking of the Board and which the Commission had purchased from the Board under the terms of this agreement.

3.—(a) The consideration for the transfer and sale shall be the sum of SEVEN HUNDRED THOUSAND POUNDS (£700,000) of which sum an amount of ONE HUNDRED THOUSAND POUNDS (£100,000) shall be paid by the Commission to the Board on transfer day. The balance of the purchase price (£600,000) shall be paid as follows—

- (1) a sum of FIFTY THOUSAND POUNDS (£50,000) shall be paid by the Commission to the Board by yearly payments of TEN THOUSAND POUNDS (£10,000) each, the first of the yearly payments to be made on transfer day; and
  - (ii) a sum of FIVE HUNDRED AND FIFTY THOUSAND POUNDS (£550,000) in this agreement referred to as "the loan" shall be retained by the Commission and invested therein as a loan to the Commission for and on behalf of the Board.
- (b) The Commission shall pay to the Board for a period of five years from the transfer day, interest on the loan or the balance from time to time owing, at the rate of four per centum per annum the first payment of interest shall be made on the 1st day of September 1952 and thereafter quarterly.
- (c) After the period of five years until the loan is repaid to the Board the rate of interest on the loan or the balance from time to time owing shall be reviewed by the Commission and the Board at

1952.] *Fremantle Electricity Undertaking* [No. 40.  
*Agreement.*

intervals of five years and the rate of interest then payable on the loan or the balance from time to time owing by the Commission to the Board shall be the rate of interest, which the Commission is then or would be charged by the Treasury of the State for moneys advanced by the Treasury to the Commission at the date when each and every review of interest is made, but the rate of interest shall not in any event be less than three and one eighth per centum per annum.

- (d) The Commission shall have the right to repay the full amount of the loan or any part thereof not being less than TEN THOUSAND POUNDS (£10,000) at any time, on giving to the Board twelve months notice in writing of its intention in that behalf; and the Commission shall repay to the Board the whole of the loan or any part thereof, on a date to be nominated by the Board, and of which date twelve months notice in writing has been given to the Commission by the Board.

4.—THE Board shall discharge all its debts and liabilities up to the transfer day and all moneys (if any) which are or shall prior to the transfer day be or become charged upon or constitute encumbrances on any part of the undertaking.

5.—ALL plant and equipment in connection with the undertaking which has been ordered by the Board prior to the 1st day of February 1952, and for which the Board has not paid the purchase price and which arrived in Fremantle after the 1st day of February 1952 shall become the property of the Commission and the Commission shall assume all liabilities in connection therewith.

6.—(a) The Board warrants and agrees that the agreements set out in the second schedule to this agreement are the only agreements (including any agreements made in pursuance of Clause 15 of the Agreement referred to in Clause 14 of this agreement) which the Board has entered into with consumers (other than individual private consumers) in respect of the supply of electricity or other power from or in respect of the undertaking or matters incidental thereto.

(b) The agreements set out in paragraph A of the second schedule shall be assigned by the Board to the Commission and the Commission shall keep the Board indemnified against all claims by through or under any consumer being a party to such agreements in respect to any breach by the Commission or its agents or servants in respect of the agreements in paragraph A of the second

No. 40.] *Fremantle Electricity Undertaking* [1952.  
*Agreement.*

schedule to this agreement or to any obligations which may have been entered into by the Board under such agreements with such consumers relating to the supply of electricity or other power.

- (c) The Board shall ensure that the agreements set out in paragraph B of the second schedule to this agreement are forthwith on the execution of these presents, terminated by the Board giving to the other respective parties to such agreements, such reasonable notice or notice as may be required in writing by the agreements cancelling and determining them and the Commission shall keep the Board indemnified against all claims which any other party to the agreements may have arising out of or in connection with the cancellation and determination thereof.

7.—THE Board shall—

- (a) until the transfer day, for the benefit and at the risk of the Board, carry on manage and control the undertaking according to its usual course of business, and shall uphold maintain and keep the works and property included in the undertaking, in their present state and condition, and in full and complete efficiency (fair wear and tear and accidents and strikes of workmen excepted) and shall continue to keep proper accounts;
- (b) not at any time up to and including the transfer day, without the previous consent in writing of the Commission, do or knowingly suffer any act or thing whereby the undertaking or any part thereof can be charged or prejudicially affected, or make any contract or alterations reducing the rates or prices charged to consumers or increasing the present usual obligations of the Board or enter into any liability contract or agreement or other obligation in respect of the undertaking, except such as may be necessary in the ordinary course of the proper conduct of the affairs of the undertaking, and with the intention of benefiting the same;
- (c) pay to the Commission for the use of the poles mentioned in clause 10(e) of this agreement a fee of TWO SHILLINGS AND SIXPENCE (2/6d.) per annum for every pole used by the Board as in the clause 10(e) provided. The annual fee shall be paid to the Commission in advance the first payment to be made on the 1st day of June 1952; subject to the written approval of the Commission the Board shall have the right to erect street and other signs on the poles.

1952.] *Fremantle Electricity Undertaking* [No. 40.  
*Agreement.*

8.—THE Board shall within 14 days of the transfer day, in the presence of duly authorised officers of the Commission cause consumers' meters to be read, and shall adjust up to the date of the reading of each meter, all discounts due to any consumer, calculated proportionately on the amount of electricity used by each consumer up to the date of such reading.

9.—THE Board shall on the transfer day—

- (a) supply to the Commission in writing a schedule of the names and addresses of all its consumers of electricity with particulars of deposits held by it on their behalf;
- (b) collect and retain for its own benefit all debts then due to it by consumers and other parties whomsoever;
- (c) execute such assignments and assurances of the undertaking agreed herein to be transferred and sold, in favour of the Commission as the solicitors for the Commission may properly require for the purpose of vesting the undertaking free from all encumbrances in the Commission;
- (d) cease to carry on the business of supplying electric power or current in the districts of the Fremantle, North Fremantle and East Fremantle Municipalities, and the road districts of Melville, Fremantle and Rockingham.

10.—THE Commission shall—

- (a) take over at times convenient to the Board but within one month after the transfer day, and retain in its employment subject to the relevant industrial awards, such salaried officers and workmen as are nominated by the Board, and who shall on the transfer day be employed by the Board in the undertaking, on terms and conditions not less favourable than those under which they are employed with the Board on the transfer day, save and except, as to the Provident or Superannuation Fund now conducted by the Board and to which such salaried officers and workmen may be subscribers. As from the transfer day the salaried officers and workmen shall be deemed to be officers and servants appointed and employed by virtue of section thirty-six of the State Electricity Commission Act 1945;
- (b) be responsible for holidays and long service leave (if any) partly accrued up to the transfer day and due to the salaried officers and workmen taken over by the Commission as provided in the last preceding subclause whilst they were employed with the Board;

No. 40.] *Fremantle Electricity Undertaking* [1952.  
*Agreement.*

- (c) supply until the 30th day of June 1967, electric current for the lighting of the existing street lights within the districts of the Municipalities of Fremantle and East Fremantle, at the same rates for current supplied as the rates existing as at the transfer day. Where the Municipalities or either of them add any street lights to the number existing as at the transfer day, or increase the wattage of any street lights then existing, the Commission shall be entitled to charge for the electric current supplied thereto at the schedule rates of the Commission from time to time prevailing;
  - (d) supply electric power to the Board for all purposes (including tram traction) at the Commission's standard tariff rates from time to time prevailing;
  - (e) permit the Board to use for its trolley lines, any poles transferred to the Commission under the terms of this agreement, and which sustain trolley lines and carry overhead lines; and the Commission shall maintain and keep the poles in good order and condition;
  - (f) as from the transfer day take over and assume liability for the repayment to the respective consumers of the Board the amount of the consumers' deposits lodged with the Board up to the transfer day, together with the amount of interest accrued thereon to the transfer day.
- 11.—(a) The Board may as from the transfer day until the 30th day of June 1967, in relation to the undertaking, continue under its existing constitution in an advisory capacity only, and shall thereafter regularly conduct its meetings in a manner similar to the meetings conducted by it prior to the transfer day.
- (b) The Board shall confine its duties as an advisory Board, to matters affecting the supply of electricity and matters incidental thereto, in respect of the whole of the districts of the Municipalities of Fremantle and East Fremantle and the road districts of Melville, Fremantle and Rockingham only, as constituted on the transfer day.
  - (c) As from the transfer day until the 30th day of June 1967 a member of the Board (who shall be nominated by the Board every two years and approved of by the Commission) shall have the right to attend all meetings of the Commission, and vote on all matters dealing with the supply of electricity within the districts of the Municipality and the road boards mentioned in the preceding subclause, and as constituted on the



1952.] *Fremantle Electricity Undertaking* [No. 40.  
*Agreement.*

transfer day. Such member of the Board shall receive the same payment for attending the meeting of the Commission, as a member of the Commission representing the consumers of the Metropolitan area or the remaining part of the State from time to time receives.

- (d) This clause is made subject to the approval and ratification by the Parliament of Western Australia; if the approval and ratification is not given by the 31st day of December 1952 this clause shall not operate and the remaining clauses of this agreement shall stand in full force and effect.

12.—EACH party to this agreement shall pay its own costs in connection with the preparation of this agreement and all matters incidental thereto. Any stamp duty payable in respect to this agreement shall be borne by the Commission.

13.—ANY notice or writing authorised or required by this agreement to be given or sent shall be deemed to have been duly given or sent by the Commission if signed by the Chairman of the Commission for the time being and forwarded by prepaid post to the Board at its office address as aforesaid and by the Board if signed by the Secretary thereof and forwarded by prepaid post to the Chairman of the Commission at the address of the Commission aforesaid and any such notice or other writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

14.—THAT a certain agreement made the 28th day of January 1916 between the Honourable John Scaddan then Premier of the State of the first part, the Commissioner of Railways of the second part and the Board of the third part and all supplementary agreements, variations or renewals thereof are from the transfer day hereby mutually cancelled and determined, without compensation being paid to or by either or any party thereto, and the Board itself indemnifies and shall keep indemnified the Government, the State and the Commission against all claims, actions, suits and demands of whatsoever nature arising out of or in respect of the agreement or anything relating thereto which the Board may now or at any time have in respect thereof.

15.—THIS agreement is made subject to any delays in the performance of obligations under this agreement which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of the obligations including delays caused by or arising from act of God, act of war, force majeure, act of public enemies, strikes, lockouts, stoppages, restraint of labour or other similar acts whether partial or general shortage of essential materials, riots and civil commotion.

No. 40.] *Fremantle Electricity Undertaking* [1952-  
*Agreement.*

16.—IN case any dispute or difference shall arise between the parties hereto in respect of this agreement the same shall be submitted to arbitration in accordance with the provisions of the Arbitration Act 1895 and its amendments.

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*THE FIRST SCHEDULE.*

1. Portion of Rockingham Suburban Lot 1 and being Lot 153 on plan No. 5742 Volume 1046 Folium 721.
2. Portion of Fremantle Town Lot 1508 and being Lots 1, 2 and 3 on diagram 9418 Volume 1037 Folium 622.

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*THE SECOND SCHEDULE.*

A.

1. An Agreement dated the 28th day of March 1919 made between the Board of the one part and The Fremantle District Road Board of the other part.
2. An Agreement dated the 18th day of March 1931 made between the Shell Company of Australia Limited of the one part and the Board of the other part.
3. An Agreement dated the 24th day of April 1935 made between the Board of the one part and Rockingham Road Board of the other part.
4. An Agreement dated the 24th day of April 1935 made between the Board of the one part and Fremantle Road Board of the other part.
5. An Agreement dated the 24th day of April 1935 made between the Board of the one part and Fremantle Road Board of the other part.
6. An Agreement dated the 2nd day of February 1943 between The Commissioner of Railways of the one part and the Board of the other part.
7. An Agreement to lease dated the 9th day of September 1946 between Harold Alfred Watson Bruce Watson and Robert Wallace Watson of the one part and the Board of the other part.

B.

1. An Agreement dated 26th day of November 1926 between the Board of the one part and Mount Lyall Mining and Railway Company Limited of the other part.
2. An Agreement dated the 26th day of November 1926 between the Board of the one part and North Fremantle Municipality of the other part.

1952.] *Fremantle Electricity Undertaking* [No. 40.  
*Agreement.*

3. An Agreement dated 27th day of May 1932 between the Board of the one part and North Fremantle Municipality of the second part and Great Southern Roller Flour Mills Limited of the third part.
4. An Agreement dated the 1st day of February 1935 between the Board of the one part and The Melville Road Board of the other part.
5. An Agreement dated 4th day of March 1942 between the Board of the one part and North Fremantle Municipality of the other part.

IN WITNESS whereof the parties have set their seals the day and year first hereinbefore written.

SIGNED SEALED AND DELIVERED }  
BY *THE HONOURABLE DUNCAN* }  
*ROSS McLARTY* in the presence of: }

(Sgd) Ross McLarty  
(L.S.)

(Sgd) R. J. Dumas

SEALED with the Official Seal of }  
*THE FREMANTLE MUNICIPAL* }  
*TRAMWAYS AND ELECTRIC* }  
*LIGHTING BOARD* and signed in }  
authentication by *FRANK ERNEST* }  
*GIBSON* the Chairman and *CLAUDE* }  
*ALEXANDER LAW* the Secretary in }  
the presence of: }

Sgd. F. E. Gibson  
Sgd. C. Law  
(L.S.)

Sgd. C. W. Jerrat.

The Common Seal of *THE STATE* }  
*ELECTRICITY COMMISSION* was }  
hereto affixed in the presence of— }

(Sgd) R. J. Dumas  
Chairman  
(L.S.)

Sgd. W. Orr Secretary.

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