

GAS UNDERTAKINGS.

11° and 12° GEO. VI., No. LXVIII.

No. 68 of 1947.**AN ACT to amend the law with respect to Gas undertakings.***[Assented to 10th January, 1948.]*

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and 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 *Gas Undertakings Act, 1947*, and shall come into operation on a date to be fixed by proclamation. Short title and commencement.

2. In this Act, unless the context otherwise requires— Interpretation of terms.
- “authorised rates” means the standard rates of dividend prescribed by this Act on the capital of gas undertakers reduced or increased in accordance with the provisions of this Act;
 - “British thermal unit” means the amount of heat which will raise the temperature of one pound of water one degree Fahrenheit;
 - “Commission” means the State Electricity Commission of Western Australia established by the State Electricity Commission Act, 1945;

“co-partner” means a person in the employ of a gas undertaker with whom such undertaker has entered into an agreement regarding the division of surplus profits;

“gas undertaker” or “undertaker” means any company, corporation, firm or person supplying or distributing gas for lighting, heating, motive power, or other purpose, and disposing of the same with a view to profit, but does not include a local authority;

“local authority” means a municipal council or a road board;

“prepayment meter” means any meter or appliance by which the quantity of gas supplied is regulated according to the amount of money pre-paid therefor;

“gas unit” means three thousand four hundred and twelve British thermal units gross.

Administration.

3. Subject to the Minister, this Act shall be administered by the Commission.

Price of gas.

4. (1) The basic price for gas supplied by a gas undertaker shall be such sum per gas unit as is from time to time determined by the Commission in accordance with the provisions contained in section five of this Act.

(2) Within three months after the coming into operation of this Act, every gas undertaker shall charge for gas according to the number of British thermal units supplied.

**Basic price.
cf. N.S.W.
No. 42, 1935,
s. 12.**

5. The Commission shall, at the request in writing of a gas undertaker, and may, at any time of its own motion, enquire and determine what price or prices of gas would, if charged by a gas undertaker and having regard to all the other revenue of such undertaker, enable such undertaker to pay the standard rates of dividend after making provision for—

(a) interest payable on loans;

(b) expenses under the prescribed headings properly chargeable to revenue, including—

- (i) the maximum amount which may be transferred to the special purposes fund in accordance with section eight of this Act;
- (ii) a reasonable amount for depreciation and renewals; and
- (iii) a reasonable sum for contingencies, which shall not exceed the amount necessary to pay one half-year's dividend at authorised rates.

6. (1) Every gas undertaker shall from time to time file for public inspection with the Commission statements of the conditions under which such undertaker is prepared to grant discounts on prices charged by such undertaker, and any such discounts granted by such undertaker shall be alike under the like circumstances.

Provisions relating to basic price.

(2) No sum shall be—

- (a) divided in excess of the standard rate or carried to the reserve fund; and
- (b) paid to the co-partners,

in respect of any period in which the price charged to the ordinary consumer is equal to or more than decimal nought one four of a penny per gas unit in excess of the basic price.

(3) Every gas undertaker shall in each year send to the Commission with the accounts required under section fourteen of this Act a statement showing the number of gas units sold at each of the several net prices during the year to which the accounts relate, and, if thereafter requested by the Commission, shall also furnish to the Commission all such other information relevant to the said matters as the Commission may require.

(4) The accounts of every gas undertaker for each year shall contain such particulars as will enable the Commission to calculate the amount which may be for such year—

- (a) paid as dividend or transferred to the reserve fund; and
- (b) paid to the co-partners.

Limitation of dividends.
cf. N.S.W.
No. 42, 1935,
s. 6.

7. A gas undertaker may, subject to and in accordance with the provisions of this Act, increase or reduce the price charged by such undertaker above or below the basic price, but, except as by this Act otherwise provided, the profits of such undertaker available for distribution among the holders of the share capital of such undertaker in any year shall not exceed the following rates (in this Act referred to as "the standard rates of dividend"), that is to say—

- (a) on the ordinary share capital of such undertaker, the rate of six pounds in respect of every one hundred pounds actually paid up, or issued as paid up, of such capital; and
- (b) on the preference capital of such undertaker, the rate of five pounds ten shillings in respect of every one hundred pounds actually paid up, or issued as paid up, of such capital.

Special purposes fund.
cf. *ibid.* s. 7.

8. (1) The directors of a gas undertaker may if they think fit, in any year, transfer out of the revenue of such undertaker as part of the expenditure on revenue account, any sum not exceeding an amount equal to one-half of one per centum of the aggregate of the share capital (inclusive of premiums) and the loan capital to an account to be called "the special purposes fund."

(2) The special purposes fund shall be applicable only to meet such charges as the Commission shall approve as being—

- (a) expenses incurred by reason of accidents, industrial disputes and other circumstances, which due care and management could not have prevented; or
- (b) expenses incurred in the replacement or removal of plant or works, other than expenses requisite for maintenance and renewal of the same.

(3) The maximum amount standing to the credit of the special purposes fund shall not at any time exceed an amount equal to one twentieth part of the aggregate of the share and loan capital of the undertaker as prescribed in subsection one of this section.

(4) So long as there is any balance remaining in the special purposes fund, any expenses of the nature referred to in subsection two of this section shall be charged against such fund.

9. (1) Any moneys which a gas undertaker is by this Act authorised to carry to the reserve fund may be invested in Government or other securities not connected with the business of such undertaker, and the dividends and interest arising from such securities may be invested in the same or like securities in order that the same may accumulate at compound interest and the fund so formed shall be called "the reserve fund" and may be applied in or towards the payment of dividends in any year in which the profits of the undertaker are insufficient to enable such undertaker to pay the standard rates of dividend on the ordinary share capital of such undertaker or to such other purpose or purposes as the directors may determine.

Reserve
fund.
cf. *ibid.* s. 10.

(2) The undertaker may carry to the reserve fund any moneys which under section thirteen of this Act may be applicable to increase of dividends on the ordinary share capital of the undertaker.

(3) The money and securities standing to the credit of the reserve fund of a gas undertaker existing at the coming into operation of this Act shall be credited to the reserve fund provided for by this Act, and save as is by this Act provided, no sum shall in any year or half-year be carried by such undertaker to the reserve fund.

10. (1) Save as authorised in this Act, no sum shall in any year be transferred from revenue by a gas undertaker to any reserve or fund.

Transfers
from
revenue.
cf. *ibid.* s. 11.

(2) Subject to this section the profits of a gas undertaker shall not be utilised otherwise than to pay dividends and to provide a special purposes fund, a renewal fund, a reserve fund, and a suspense or reserve fund to inaugurate a superannuation fund in accordance with this Act.

(3) If the clear profits of a gas undertaker in any year, after providing for all expenses properly chargeable to revenue, interest payable on loans, and any

transfers to any reserve or fund authorised by this Act, amount to a larger sum than is sufficient to pay the authorised rates of dividend, the excess may be carried forward in the profit and loss account; but the balance remaining in the profit and loss account after allowing for payment of accrued dividends shall not at any time exceed the amount required to pay one year's dividend at the standard rates.

(4) A gas undertaker which contravenes any provision of this section shall be liable on summary conviction to a penalty not exceeding one hundred pounds, and a further penalty not exceeding fifty pounds for every day on which, after such conviction, the contravention continues.

Issue of
additional
shares.
cf. *ibid.* s. 13.

11. (1) Notwithstanding the provisions of any Act or of any memorandum or articles of association, all shares (which term in this section includes ordinary and preference shares) issued by any gas undertaker after the coming into operation of this Act, shall be issued in accordance with the provisions of this section.

(2) All shares so to be issued, whether the same be at a premium or not, may (with the approval of the Commission to be signified in writing under the hand of the secretary of the Commission), if the gas undertaker thinks fit, be offered to all the gas consumers, and persons in the employ, of the undertaker, and the price at which any such preference shares shall be so offered shall on the occasion of the first issue of the same or of any part thereof be such as shall be determined by the Commission, and on the occasion of any such issue of ordinary shares or of any subsequent issue of preference shares, the price at which the same shall be so offered shall be as near as may be the average market price of such shares in the period of fourteen days immediately preceding such offer. Provided that in no case shall the price at which such shares shall be offered be lower than five per centum below such market price or if (as regards any of such shares) there be no such market price then such a price as shall be determined by the Commission. To ascertain the average market price of any such shares for the purposes of this subsection, the mean daily prices recorded in the Perth Stock Exchange daily official list shall be taken for the said period of fourteen days.

(3) Any shares which have not been so offered as aforesaid or which have been so offered and not taken up shall before being offered to the holders of any shares of the undertaker be offered for sale by public auction or tender in such manner at such times and subject to such conditions of sale as the directors shall from time to time determine. Provided as follows:—

- (a) Notice of the intention to offer or sell any shares in accordance with subsection two or subsection three of this section shall be given in writing to the Commission at least fourteen days before the date of any offer under the said subsection two or the day of auction or the last day for the reception of tenders under this subsection, as the case may be, and shall also be duly advertised once in each of two consecutive weeks in a newspaper published in Perth and once in a newspaper published and circulating in the locality in which the undertaker supplies gas.
- (b) A reserve price shall be fixed for the purposes of any such sale by auction or by tender, and notice thereof shall be sent by the undertaker in a sealed letter to be received by the Commission not less than twenty-four hours before but not to be opened till after the day of auction or the last day for the receipt of tenders, as the case may be.
- (c) No lot offered for sale by auction in accordance with this subsection shall comprise shares of greater nominal value than one hundred pounds.
- (d) In the case of a sale by tender no preference shall be given to one of two or more persons tendering the same sum except that the offer by tender of any holder of shares in the undertaker may be accepted in preference to the offer of the same sum by any person not such a holder as aforesaid, and preference may in a like manner be given to the offer of any employee of the undertaker or consumer of gas supplied by the undertaker.

(e) In the case of a sale by auction a bid shall not be recognised unless it is in advance of the last preceding bid.

(f) It shall be one of the conditions of sale by auction or by tender that the total sum payable by the purchaser shall be paid to the undertaker within such period not exceeding three months after the date of the auction or of the acceptance of the tender, as the case may be, as the directors may determine.

(4) Any shares which have been offered for sale in accordance with subsections two and three or subsection three of this section, and are not sold, may be offered at the reserve price to the holders of ordinary or preference shares in the undertaker, and to the employees of the undertaker, and to the consumers of gas supplied by the undertaker in such proportions as the directors may think fit or to one or more of these classes of persons only. Provided that in the case of an offer to holders of shares if the aggregate number of shares applied for exceeds the aggregate number so offered as aforesaid, the same shall be allotted to and distributed amongst the applicants as nearly as may be in proportion to the number of shares applied for by them respectively.

(5) Any shares which have been offered for sale in accordance with subsections three or four of this section and are not sold may be disposed of for the purpose of realising the best price obtainable at such price and in such manner as the directors may determine.

(6) As soon as possible after the conclusion of the sale or sales the undertaker shall send a report thereof to the Commission stating the total number of each class of shares sold, the total amount (if any) obtained as premium or allowed as discount in each case, and the highest and lowest prices obtained for each class of shares.

(7) The provisions of this section shall not apply to any shares issued for the purpose of any co-partnership scheme of a gas undertaker and the directors may, without any other authority than is given by this section, issue any shares which may be required for the purpose aforesaid.

Provided that any shares issued for the purpose aforesaid shall be issued at as near as may be the average market price of such shares in the period of fourteen days immediately preceding the issue thereof, and that in no case shall the price at which such shares shall be issued be lower than five per centum below such market price. The average market price as aforesaid shall be ascertained in the same manner as is provided in subsection two of this section.

Provided also that this section shall not apply to any unissued shares of a company existing at the time of the passing of this Act.

12. (1) The directors of a gas company may with the sanction of a majority of the shareholders of the company present in person or by proxy and voting at a general meeting of the company prepare, put in force and from time to time modify, alter or rescind a scheme or schemes for participation by the employees of the company in the profits thereof and for enabling one or more, but not exceeding three, of the employee co-partners of the company to become a director or directors of the company.

Co-partner-
ship and
employee
directors.

(2) The qualification of an employee director shall be fixed by the scheme for the time being in force, but each such director shall at the date when he becomes a director have been not less than seven years in the constant employ of the company and shall for not less than one year prior to such date have held in his own right not less than fifty pounds nominal value of the ordinary shares of the company and if any person being an employee director shall while he is a director cease to hold as aforesaid at least such amount of ordinary shares, he shall cease to be a director.

(3) The fees to be paid to an employee director for his attendance at meetings of the directors shall be fixed by the scheme and shall bear some proportion (to be so fixed) to the amount of the qualification, not being less for each attendance than his ordinary day's pay.

(4) If and whenever any scheme made under the provisions of this section shall have ceased to have effect, the directors may, but subject to such provisions and with such sanction of the shareholders as aforesaid, put in force and from time to time modify, alter or rescind a new scheme or schemes.

(5) A gas company may pay out of its revenue any bonus addition to the salaries and wages of employee co-partners, which bonus addition may be payable in accordance with any scheme as aforesaid.

Division
of surplus
profits.

13. The surplus profits of a gas undertaker shall be divided into the following proportions, namely, three-fourths to the consumers, and one-fourth equally between the holders of the ordinary share capital of the undertaker and the employee co-partners of the undertaker, and with reference thereto the following provisions shall apply:—

- (a) At the end of each year or half-year, a sum shall be calculated representing the amount by which the total amount payable by consumers during such year or half-year has been less than the amount which would have been payable if the gas had been charged for at the basic price, and such sum so calculated shall be called "the consumers' share," and for the purposes of this section "the surplus profits" shall mean a sum of which the consumers' share is three-quarters.
- (b) If and so far as the balance standing to the credit of the net revenue account after providing for dividends at the standard rates of dividend on both the ordinary and the preference share capital of the undertaker, in the opinion of the directors permits, a sum not exceeding one-quarter of the surplus profits shall be applied in two equal parts for the benefit of the holders of ordinary share capital and for the benefit of the employee co-partners of the undertaker in manner hereinafter mentioned.
- (c) Any sum so to be applied for the holders of ordinary share capital may be applied in the increase of the dividends above the standard rates of dividend, and, if and so far as not so applied, shall be carried to the reserve fund.
- (d) The sum so to be applied for the benefit of the employee co-partners of the undertaker shall be carried to the co-partnership fund,

and the moneys so carried to such fund shall be allocated by way of a uniform percentage of bonus on the salaries and wages of such employee co-partners.

- (e) Any balance of the profits of the undertaker, not applied as aforesaid, shall be carried to the credit of the net revenue account of the undertaker for the next following year or half-year. Provided that the sum standing to the credit of such net revenue account shall not at any time exceed the amount required to pay one year's dividends at the standard rates of dividend on the ordinary and preference share capital of the undertaker.

14. (1) Every gas undertaker shall furnish to the Commission at such times and in such form and manner as the Commission may direct an annual account and such statistics and returns as the Commission may require.

Accounts and returns.

(2) Every gas undertaker shall embody in such annual account as aforesaid a certificate by the auditors of such undertaker setting out the amounts which may be—

- (a) applied as dividend or transferred to reserve, and
 (b) applied for the benefit of co-partners.

(3) The power of the Commission under this section to require statistics and returns as aforesaid shall include power to require different statistics and returns from different gas undertakers, and to require any particular statistics or returns to be certified by the auditors of the undertaker.

(4) Any gas undertaker failing to comply with the provisions of this section shall be liable on summary conviction to a fine not exceeding two pounds for each day during which the default continues.

15. The directors of a gas undertaker may, if they think fit, in any year, charge against the revenue of the undertaker as part of the expenditure on revenue account any sum not exceeding an amount equal to three per centum of the book values (after deducting depreciation

Depreciation. cf. N.S.W. No. 42, 1935, s. 8.

or allowing for any amount in the depreciation reserve, as the case may require), of the manufacturing and distributing plant, buildings and equipment of the undertaker calculated on the average monthly balances of such book values throughout the year, and any sum so charged shall be applied in writing down such book values or be carried to a depreciation reserve.

Gas undertaker to pay interest on deposits.
cf. ibid. s. 19.

16. Where a person is required by a gas undertaker to give security for a supply of gas or for the payment of the rental of a meter or any apparatus whatsoever, and such security is in the form of a deposit of cash or the equivalent of cash, such undertaker shall, in accordance with the regulations, pay interest thereon to such person at the rate payable for the time being by the Commonwealth Savings Bank of Australia upon a savings bank deposit of a like amount.

Publication of charges for gas.

17. (1) A gas undertaker shall from time to time publish (by exhibiting notices in its showrooms and offices which are open to the public and sending copies thereof to the Commission) and shall include as part of any general statement of the charges of such undertaker, the price per gas unit at which the undertaker is prepared to sell gas to persons who require a supply and are not willing to enter into any special contract as to price.

(2) Such price shall be known as the undertaker's "ordinary" price and shall be a price exclusive of any discount which the undertaker may be required or may be prepared to grant.

(3) Any provision in this or any other Act or in any regulation or by-law made thereunder—

- (a) which prescribes a maximum price which may be charged in respect of gas;
- (b) which prescribes a basic price in respect of gas with variations in the rate of dividend payable according to the price actually charged in respect of gas;
- (c) which prevents an undertaker from paying a dividend in excess of the basic rate when the price charged to any consumer has equalled or exceeded the basic price,

shall not apply to gas sold at a price other than the "ordinary" price.

18. Any twenty occupiers or owners of premises situated in a defined locality within the limits wherein which a gas undertaker is authorised to supply gas may address a request to the Commission setting forth that the said premises are not supplied with gas, and could conveniently be so supplied and ought reasonably to be so supplied by such undertaker, and undertaking to become consumers of gas for a period of at least twelve months thereafter upon its being so supplied.

Gas undertaker may be ordered to supply gas. cf. Queensland 7, Geo. V., No. 11, s. 10.

Thereupon the Commission shall hear and determine the matter accordingly and provided that the return by gross sales of gas from such extension or supply of gas shall not be less than twenty pounds per centum per annum on the outlay incurred by the undertaker in making such extension or giving such supply, the Commission may determine that the request should be given effect to, whether in whole or in part, and may then order the undertaker within a time to be fixed by the Commission, to lay such mains and pipes and to do all such other works and things as are required for the purpose of supplying gas to the premises within a locality to be defined by the Commission, and the undertaker shall obey such order.

19. The directors of any gas undertaker may grant retiring or superannuation allowances to officers and employees of the undertaker, or pensions to such officers and employees or their widows and dependants, by directly granting such pensions and allowances and by contribution to existing superannuation funds, and for that purpose may apply the funds and revenues of the undertaker.

Power to grant pensions, etc.

20. The directors of any gas undertaker may subscribe or make donations to infirmaries or hospitals and to convalescent homes and similar institutions and to any industrial exhibitions and trade associations, and to sick funds of the employees of the undertaker, and may for any of such purposes apply the funds and revenues of the undertaker.

Power to make donations, etc.

Prepayment
meters.

21. (1) A gas undertaker shall not charge for any gas supplied through a prepayment meter any greater charge, rate or rent than the undertaker is entitled to charge for gas supplied to consumers through any other kind of meter, or by any other method of supply.

(2) Any consumer whose gas is supplied through a prepayment meter may, upon payment of any charges involved, require the undertaker to supply and fix an ordinary meter, and upon such request the undertaker shall so supply and fix an ordinary meter.

(3) No meter shall be issued for the use of a consumer by an undertaker until it has been first tested and stamped by a gas examiner in accordance with the regulations. Within twelve months, or such further time as the Minister deems necessary, after the commencement of this Act, every meter in use on the premises of any consumer at the commencement of this Act shall be so tested and, if found accurate, stamped.

All meters issued by an undertaker and in use shall be again tested and, if found accurate, re-stamped at intervals of not more than seven years.

(4) Except as provided in this section, a gas undertaker shall not make any charge, whether directly or indirectly, and by whatever name such charge is designated, for the hire of any meter.

Where more than one meter is installed on any premises, a gas undertaker may charge for the hire of all meters in excess of one.

Inquiry as to
superannua-
tion schemes,
etc.
cf. N.S.W.
No. 42, 1935,
s. 22.

22. The Governor may, after the Commission has inquired and reported that such action would be desirable, by proclamation published in the *Government Gazette*, authorise—

- (a) any scheme for the superannuation of the employees of a gas undertaker, including the provision to set aside sufficient funds from suspense accounts or reserves to inaugurate such a scheme, and the provision of funds for the support of the same as an expense properly chargeable to revenue;

- (b) the amendment of any superannuation scheme in operation at the commencement of this Act, or authorised under this section after such commencement, and of any deed executed to give effect to any such scheme.

23. Where by any Act a local authority is empowered to compulsorily purchase a gas undertaking, then the amount of purchase money to be paid by such local authority for such undertaking shall be a sum not exceeding the amount which would reasonably be required to purchase and establish a plant of equivalent capacity, counting at its fair market value the land to be purchased.

Price on compulsory purchase.

This section shall be read in conjunction with section fifty of the Fremantle Gas and Coke Company's Act.

24. (1) The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed, or which it may be necessary or convenient to prescribe for giving effect to this Act.

Regulations.

(2) All courts and magistrates shall take judicial notice of all regulations and proclamations under this Act.

25. The Minister may, by notice published in the *Government Gazette*, and upon and subject to such terms and conditions as the Minister may stipulate in the notice, declare that the provisions of this Act shall not apply to any gas undertaker which, in any period of twelve months expiring on the thirtieth day of June in any one year, shall have sold less than a quantity of gas, not being more than twenty-five million cubic feet of gas, which the Minister shall specify in such notice; and the Minister may, by any subsequent notice published as aforesaid, at any time and from time to time, revoke or vary any previous notice under this section.

Minister may declare that this Act not to apply to certain undertakers.

26. Any provisions of this Act with respect to any matter for which provision is made in this Act shall have effect in lieu of any provisions whether to the same effect or inconsistent therewith in any other Act relating to any gas undertaker, and any such other Act shall, so far as applicable and with all necessary adaptations, be read and construed accordingly.

Act to supersede provisions in other Acts as to matters provided for in this Act.

Penalties.

27. (1) A gas undertaker who contravenes any provision of this Act, or of any regulation made under this Act, shall, if no penalty is specifically provided for such contravention, be liable upon summary conviction to a penalty not exceeding ten pounds.

(2) A prescribed penalty may be imposed by and recovered before a magistrate or any two justices in petty sessions.

**Recovery by
Commission
of expenses.**

28. Any expenses of the Commission which, in the opinion of the Treasurer, are directly or indirectly attributable to the exercise by it of any of its powers and duties under this Act, or any of the provisions thereof, shall be a charge upon the gas undertaker concerned and be recoverable by the Commission from such undertaker accordingly.