

Western Australia

**Katanning Electricity Supply Undertaking
Acquisition Act 1961**

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Western Australia

Katanning Electricity Supply Undertaking Acquisition Act 1961

An Act relating to an Electricity Supply Undertaking carried on under the provisions of the *Katanning Electric Lighting and Power (Private) Act, 1904*; and for incidental and other purposes.

[Assented to 23rd November, 1961.]

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. Short title

This Act may be cited as the *Katanning Electricity Supply Undertaking Acquisition Act 1961*.

2. Interpretation

Unless the contrary intention appears in this Act —

“**Commission**” means The State Electricity Commission of Western Australia established under the *State Electricity Commission Act 1945*;

“**Company**” means the Katanning Flour Mills Limited, its successors and assigns;

“**property**” includes land;

“**transfer day**” means the fourth day of December, one thousand nine hundred and sixty-one;

“the Agreement” means the agreement a copy of which is contained in the Schedule to this Act;

“undertaking” means the property comprising the electricity supply undertaking of the Company agreed to be sold by the Company to the Commission under the Agreement.

3. Acquisition by Commission of undertaking

On the transfer day —

- (a) the Company shall be deemed to have sold the undertaking under the provisions of the Agreement and the Commission shall be deemed to have purchased it thereunder;
- (b) the undertaking shall, by force of this Act —
 - (i) become the absolute property of the Commission; and
 - (ii) be freed and discharged from all trusts, obligations, estates, interests, contracts (except the Agreement as affected by this Act), licenses, charges, rates, liens, pledges and easements, except any right of carriageway reserved under the *Transfer of Land Act 1893*, affecting the undertaking; and
- (c) the Company shall give possession of the undertaking to the Commission and deliver or cause to be delivered to it any certificate, deed or other instrument evidencing title to the undertaking, together with all documents, if any, required to enable the undertaking to be registered under the appropriate Act in the name of the Commission.

4. Apportionment of rates, taxes, outgoings on and satisfaction of interests in the undertaking

- (1) On or before the transfer day the Company shall pay all rates, taxes and outgoings that —
 - (a) will be or are payable on the transfer day;

- (b) are by an Act a charge on the undertaking; and
- (c) as between the Company and the Commission are payable by the Company.

(2) On the transfer day the Company shall —

- (a) apportion between the Company and the Commission, all such rates, taxes and outgoings then accruing; and
- (b) satisfy the claims of all persons, if any, having any estate or interest in the undertaking, whether legal or equitable, or undertake in writing, to the satisfaction of the Minister, to do so.

5. Payment on account of purchase money of undertaking

- (1) On the transfer day the Commission shall, if the Company has complied with the matters required by this Act to be complied with by the Company on or prior to that day, pay and the Company shall accept the sum of sixty thousand pounds on account of the purchase price of the undertaking as finally determined under the Agreement and section six of this Act.
- (2) If the purchase price of the undertaking, as so finally determined, exceeds the sum of sixty thousand pounds the Commission shall, after such determination and within seven days after receiving a written request from the Company to do so, pay to the Company the amount of such excess together with interest thereon at the rate of six per centum per annum calculated on and from the transfer day to and including the day on which the amount of the excess is so paid.

6. Determination of purchase price

Subject to the provisions of section five of this Act, the amount of the purchase price of the undertaking to which the Company is entitled is such amount —

- (a) as the Company and the Commission agree that the Commission is required to pay to the Company under the Agreement; or

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- (b) in default of such agreement between the Company and the Commission, as is properly determined by an award made under the Agreement under the *Arbitration Act 1895*, and that award is final and is no longer subject to or liable to be subject to an appeal to any court.

7. Civil remedies not affected. Agreement to operate

- (1) Subject to subsection (2) of this section nothing in this Act affects or prejudices the right of the Company or the Commission to have the amount of the purchase price of the undertaking, that is payable under the Agreement, determined by agreement between them or by arbitration or legal proceedings in any court of competent jurisdiction and, except where inconsistent with this Act, the Agreement shall continue to operate as between the parties thereto.
- (2) All legal costs as between solicitor and client to an amount approved by the Master of the Supreme court that are incurred after the ninth day of November, one thousand nine hundred and sixty-one by the Commission or the Company in respect to any appeal to the Court of Appeal in or about the proper interpretation of the Agreement or the arbitration thereunder shall be borne and paid by the Commission as also shall such costs arising from any appeal by the Commission against any judgment of that Court.

[Section 7 amended by No. 45 of 2004 s. 37.]

8. Penalty

- (1) If the Company or the Commission does not do that which by this Act it is required to do, it is guilty of an offence.
Penalty: One hundred pounds.
- (2) Where any offence is committed by the Company or the Commission by reason of its failure to comply with any provision of this Act by or under which it is required to do anything within a particular period, that offence, for the

purposes of this section, shall be deemed to continue so long as the thing required to be done by it remains undone, notwithstanding that such period has elapsed and the Company or the Commission is liable to an additional penalty of twenty pounds for each day during which the offence so continues.

- (3) Notwithstanding the provisions of any Act, the amount of any penalty incurred by the Commission under this section shall be paid to the Company.
- (4) Nothing in this section takes away or diminishes any remedy, right or obligation that the Company or the Commission has under the foregoing sections of this Act.

9. Repeal of certain Acts

On the transfer day the *Katanning Electric Lighting and Power (Private) Act 1904*, and the *Katanning Electric Lighting and Power Repeal Act 1959*, are repealed.

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Schedule

[Section 2]

AN INDENTURE made this FOURTEENTH day of DECEMBER 1948 BETWEEN THE STATE ELECTRICITY COMMISSION of Western Australia a body corporate constituted pursuant to the provisions of the *State Electricity Commission Act 1945* and having its office and principal place of business situate at Electricity House, Murray Street, Perth, in the State of Western Australia (hereinafter with its successors and assigns referred to as “the Commission”) of the first part and KATANNING FLOUR MILLS LIMITED a limited liability company incorporated under the provisions of the *Companies Act 1893* and having its registered office and principal place of business situate at 130 Clive Street, Katanning aforesaid (hereinafter with its successors and assigns referred to as “the Company”) of the second part.

WHEREAS by virtue of the provisions of the “*Katanning Electric Lighting and Power (Private) Act 1904*” Frederick Henry Piesse and his assigns were authorized and empowered to manufacture generate distribute sell and supply Electric Light Power and Heat in the township of Katanning and to construct all necessary works in connection therewith subject to certain provisions contained In the said Act.

AND WHEREAS the Company is the assignee of the said Frederick Henry Piesse and as such assignee exercises all the powers contained in the said Act in respect of the supply of Electric Light Power and Heat in the Katanning Townsite Area.

NOW THIS INDENTURE WITNESSETH AND IT IS HEREBY MUTUALLY AGREED AND DECLARED by and between the parties hereto as follows: —

1. The Company unless prevented by strikes lock-outs or other unavoidable and unforeseen causes shall continue to supply to consumers within the Katanning Townsite Area direct electric current for a period extending up to the day on which the Company’s Undertaking is purchased by the Commission or for such lesser period as the parties hereto may mutually agree upon subject to the provisions hereinafter contained.

2. The Commission shall when alternating current becomes available for supply to Katanning or such earlier date as the Commission and the Company may mutually agree upon purchase from the Company and the Company shall sell to the Commission all its right title and interest In the Company's electricity supply undertaking.
3. The purchase price of the Company's electricity supply undertaking shall be the total assessed value as at the date of purchase of the engines, motors, generating machinery, switchboards, buildings, land, transmission and distribution systems, meters, and all other fittings which together constitute the undertaking and are used in connection with the matters aforesaid, but excluding all electrical equipment wiring and other things used on or in connection with the Company's business premises. In the event of any dispute or disagreement arising between the Company and the Commission respecting such purchase price as aforesaid then it shall be lawful for either party to require that it shall be left to arbitration to determine what amount of purchase money shall be paid, and in such event each party shall name one person: and if such two persons cannot agree upon the amount to be paid the same shall be referred to the umpirage of some third person to be appointed by such two first-named persons previously to their entering upon the arbitration; and the determination of such arbitrators or umpire, as the case may be, shall be binding and conclusive on the said parties and their respective successors and assigns.
4. The Company shall forthwith on the receipt of the purchase price of its said electricity supply undertaking give possession of such undertaking to the Commission and shall make available to the commission all such records books documents and information deemed necessary by the Commission for the purpose of carrying on the company's undertaking as a going concern. The Company shall also as from such date agree to and facilitate the repeal of the Katanning Electric Lighting and Power (Private) Act 1904.
5. That subsequent to the purchase of the Company's electricity supply undertaking by the Commission and within one month's time after alternating current electricity becomes available from the South-West Power Scheme the Commission shall commence the conversion of direct current electrical equipment in the Company's Flour Mills and allied industries from direct current to alternating current. The necessary equipment and materials shall be ordered by the

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Commission in advance and the Commission shall complete the changeover within six months from the date of commencement unless prevented by causes beyond its control. The conversion shall be carried out with the least possible interference with the Company's other works and at the cost of the Commission in all things and at all times prior to such purchase by the Commission of the Company's electricity supply undertaking the Company agrees to consider and if thought reasonable give effect to any proposal submitted by the Commission for conversion or partial conversion of the Company's electricity undertaking to alternating current.

6. The Company shall take from the Commission and the Commission shall supply the Company with for a period of ten years subsequent to the purchase of the Company's electricity supply undertaking the Company's electricity requirements at the lowest schedule of tariff rates struck in respect of the South-West Power Scheme in respect of the supply of electricity excepting to Courtaulds Ltd.
7. In the event of the parties hereto failing to agree on any of the matters hereinbefore referred to the same shall be submitted to arbitration in accordance with the procedure set out in Section 3 of this Agreement.

THE COMMON SEAL OF THE
STATE ELECTRICITY COMMIS
SION OF WESTERN AUSTRALIA
is hereunto affixed in the presence
of: —

}

Signed R.J. DUMAS.
CHAIRMAN

Signed A. McCay.

THE COMMON SEAL OF THE
KATANNING FLOUR MILLS
LIMITED is hereunto affixed
pursuant to a proper resolution in that
behalf in the presence of::

}

C.S.

Signed S. Hedges-Dale. DIRECTOR.

Signed Ashton Hunter. SECRETARY

Notes

- ^{1.} This is a compilation of the *Katanning Electricity Supply Undertaking Acquisition Act 1961*. The following table contains information about that Act.

Compilation table

Act	Number and Year	Assent	Commencement
<i>Katanning Electricity Supply Undertaking Acquisition Act 1961</i>	56 of 1961	23 Nov 1961	4 Dec 1961
<i>Acts Amendment (Court of Appeal) Act 2004 s. 37</i>	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)