

STATE ENERGY COMMISSION.

No. 65 of 1978.

AN ACT to amend the State Energy Commission Act, 1945-1975.

[Assented to 26th September, 1978.]

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. (1) This Act may be cited as the *State Energy Commission Act Amendment Act, 1978.*

Short title and citation.

(2) In this Act the State Energy Commission Act, 1945-1975, is referred to as the principal Act.

Approved for reprint 23rd September, 1970 as amended by Acts Nos. 8 of 1971, 94 of 1972 (as amended by No. 19 of 1973), 41 of 1973, 27 of 1974 and 25 of 1975.

(3) The principal Act as amended by this Act may be cited as the State Energy Commission Act, 1945-1978.

Section 22
substituted.

2. The principal Act is amended by deleting section 22 and substituting a new section as follows—

Contracts.

22. (1) Subject to the provisions of this Act the Commission may enter into such contracts as are requisite, advantageous or convenient to the exercise and performance of the functions of the Commission under this or any other Act including—

- (i) contracts for the acquisition of energy or any source of energy, and for the supply or sale of energy notwithstanding the source from which that energy was derived, or for the establishment, maintenance or conduct of any linking up scheme;
- (ii) contracts for the holding, acquisition or disposal of undertakings, works, and other property, including options, rights and obligations, whether on its own behalf, or, subject to the approval of the Minister, as trustee, agent, or otherwise on behalf of any other person, body or authority;
- (iii) with the approval of the Minister, contracts with any other person, body or authority for or with respect to the doing, and the control and management, of any matter or thing which the relevant contracting party is by law empowered to do, control or manage that is not inconsistent with the provisions of this Act,

and may carry out every such contract according to its tenor.

(2) In relation to contracts to which the Commission is a party the following provisions shall apply, that is to say—

- (a) every contract made by the Commission may, if the Commission so thinks fit, specify the person to whose

satisfaction the same is to be completed and the mode of determining any dispute which arises concerning or in consequence of such contract;

- (b) a contract made by the Commission where the consideration exceeds two hundred thousand dollars shall not take or have effect unless it is ratified by the Governor;
- (c) except where the contract is of a kind, or is of a class, which the Governor has exempted from the operation of this paragraph, a contract made by the Commission the performance of which appears at the time of execution thereof to be likely to extend over a period of more than three years shall not take or have effect unless it is ratified by the Governor; and
- (d) the Commission may compound and agree with any person or firm who has entered into any contract with it, or against whom any action or suit is brought, for any penalty contained in any such contract, or in any bond or other security for the performance thereof, or for or on account of any breach or non-performance of any such contract, bond or security, for such sum of money or other recompense as the Commission thinks proper.

(3) The Governor may exempt a contract of any kind, or contracts of any class, from the operation of paragraph (c) of subsection (2) of this section, and sufficient particulars of the exemption granted to identify the kind or class of contract in question shall be published by notice in the *Government Gazette*.

(4) Subject to the provisions of any contract relating thereto, where the Commission is acting on behalf of or in association with some other person or body in the execution or contemplated execution of any works the

Commission has power to receive contributions relating thereto and to disburse or arrange for the disbursement of those contributions for the purposes of those works.

(5) In relation to any contract to which subsection (4) of this section applies the Commission shall ensure—

(a) that accounting records are maintained showing the several sources and the purposes for which contributions are received, and the manner in which those moneys are disbursed; and

(b) that such records are open to inspection by responsible officers of the Commission, the Treasury, and the Auditor General.

(6) The Commission shall give proper consideration and, where possible, preference, to Western Australian suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies having regard to the quality, delivery and service obtainable.

Section 28A
added.

3. The principal Act is amended by adding after section 28 a new section, to stand as section 28A, as follows—

Financial
powers.

28A. (1) Subject to the provisions of this Act, in so far as may be necessary or convenient for the exercise and performance of its functions under this Act or any other Act administered by the Commission, the Commission may—

(a) on its own behalf, for the purposes of this Act and in accordance with the provisions of this paragraph but not otherwise,—

(i) borrow moneys in ways additional to or other than those provided by section

forty-four, section forty-five or section forty-five A of this Act;

- (ii) lend moneys;
 - (iii) obtain credit, or extend credit to consumers in the normal course of business (whether or not such credit is to be secured); or
 - (iv) otherwise arrange financial accommodation,
- upon such terms and conditions, and in such manner (being a manner which is accepted as appropriate for trading corporations generally in the normal course of business practice) as the Treasurer may, and is hereby authorised to, approve, whether in the State or elsewhere, and give and accept security therefor;
- (b) subject to the provisions of paragraph (a) of this subsection, draw, make, accept, endorse, discount, execute or issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
 - (c) subject to the provisions of paragraph (a) of this subsection and to subsection (3) of this section—
 - (i) lend or advance money, or give credit otherwise than to a consumer in the normal course of business, to any person, body or authority;
 - (ii) guarantee or give indemnities for the payment of money or the performance of contracts or obligations by any other person, body or authority;
 - (iii) give, or arrange, security for any loans or other financial accommodation, guarantees or indemnities made to or accepted by the Commission on behalf of

some other person, body or authority contracting with the Commission;

- (iv) take, or arrange, security for any loan or other financial accommodation extended by the Commission, or any guarantee or indemnity given by the Commission, to or on behalf of some other person, body or authority contracting with the Commission.

(2) The approval of the Treasurer (for the purposes of this section but not of section twenty-eight B of this Act) shall be deemed to have been given to the exercise of the powers conferred by paragraph (a) of subsection (1) of this section in relation to any proposals or works in respect to which he has agreed in writing a financial programme with the Commission and the manner in which it is to be implemented in so far as those powers are exercised in accordance with and in the manner provided for in that programme, but in any other case such powers shall not be exercised except with the written approval of the Treasurer to the instrument by which the liability is incurred (which may if he thinks fit be given in general terms in relation to specified circumstances or specified types of transaction).

(3) A power conferred by paragraph (c) of subsection (1) of this section shall be exercised only where, and to the extent that, it is required in the interest of the Commission to facilitate the performance of any contract to which the Commission is a party and which relates to any proposal or works in respect of which the Treasurer has agreed in writing a financial programme with the Commission pursuant to which he has authorised the exercise of the power in question.

(4) Any moneys borrowed or financial accommodation entered into by the Commission under this section may be raised or entered into, either in the State or elsewhere, as one loan or transaction or as several loans or transactions in such manner and within such period as the Treasurer may approve, but the amount of the moneys so borrowed or financial accommodation arranged shall not at any one time exceed in the aggregate such amount as the Treasurer approves.

(5) The Commission shall use moneys borrowed or any financial accommodation entered into under the power conferred by this section for such of the purposes of this Act as the Treasurer may in writing approve, and not otherwise.

4. The principal Act is amended by inserting after section 28 a new section, to stand as section 28B, as follows—

Section 28B added.

28B. In so far as the provisions of any instrument relating to a borrowing entered into by the Commission, or to any credit extended to or financial accommodation arranged on behalf of the Commission, have been approved in writing by the Treasurer prior to the execution of that instrument and the transaction to which it relates is the subject of a contract authorised or ratified in accordance with this Act the liability and financial obligations of the Commission as set out in the instrument are hereby guaranteed by the Treasurer on behalf of the State.

Guarantee of Commissions financial obligations, generally.

5. The principal Act is amended by inserting after section 28 a new section, to stand as section 28C, as follows—

Section 28C added.

28C. (1) The Treasurer is authorised to give a guarantee on behalf of the State in accordance with this section, and to make payment, repayment, or payment of interest accordingly.

Specific State guarantees.

(2) Where the Commission proposes to enter into any obligation, whether or not by way of borrowing or financial accommodation and whether on its own behalf or on behalf of another, in the State or elsewhere, for the purposes of performing its functions and giving effect to its powers under this Act or any other Act but to which the provisions of section 28B of this Act do not apply, that obligation may be guaranteed by the Treasurer on behalf of the State in accordance with this section.

(3) The Treasurer shall not give a guarantee under this section unless or until—

- (a) the terms and conditions relating to the obligation and the manner in which it is to be entered into have been disclosed to and approved by the Treasurer;
- (b) the Commission gives to the Treasurer such security, if any, as the Treasurer may require, and executes all such instruments as may in his opinion be necessary for that purpose;
- (c) the form of any security for the obligation to be entered into by the Commission and guaranteed under this section, and all other documents relating to that obligation, are approved by the Treasurer;
- (d) the Commission has obtained the approval of the Minister to the proposed guarantee; and
- (e) the giving of the proposed guarantee has been approved by the Governor.

Section 43
amended.

6. Section 43 of the principal Act is amended by deleting paragraph (c) of subsection (1) and substituting a new paragraph as follows—

(c) prescribing—

- (i) the fees and charges that are from time to time to apply in relation to electricity or other power supplied by the Commission;

- (ii) the establishment, conditions, and discontinuance of such supply;
- (iii) the accounting procedures relating thereto and the fees payable in respect of accounting, the conditions upon and subject to which security by way of deposit or guarantee or otherwise shall be given to secure the payment of accounts or for other purposes and the manner in which moneys relating thereto shall be dealt with;
- (iv) the making of a fixed charge in respect of a supply effected whether or not utilised;
- (v) re-connection and service fees;
- (vi) the rent for the use of meters, fittings and other apparatus;
- (vii) the different rates to be applicable to particular areas and uses, periods of supply and other circumstances;
- (viii) the apportionment and assessment of accounts; and
- (ix) generally as to the liability of persons for payment to the Commission in respect of supply or services; .

7. The principal Act is amended by inserting after section 43 a new section, to stand as section 43A, as follows—

43A. (1) For the purpose of securing the payment of any moneys due or likely to become due to the Commission, or to cover the costs of any property of the Commission on the premises of any consumer, the Commission may, by contract or otherwise by notice in writing, from time to time require a person to whom or on whose behalf energy is supplied on any premises to furnish to the Commission security as a condition of the supply or of the continuance of the supply.

Deposits, or
guarantees,
to secure
accounts.

(2) The amount of the security which the Commission may require a person to furnish pursuant to subsection (1) of this section shall not exceed—

- (a) in respect of energy to be supplied on the basis of the domestic tariff prescribed, such amount as has been deposited with the Commission in respect thereof prior to the coming into operation of this section or such other amount as may be prescribed; and
- (b) in respect of energy to be supplied on the basis of any other tariff prescribed,—
 - (i) in the case of a monthly account, twice the average amount of the monthly account taken over the three preceding monthly accounting periods;
 - (ii) in the case of a bi-monthly account, twice the average amount of the bi-monthly account taken over the three preceding bi-monthly accounting periods;
 - (iii) in the case of a quarterly account, one and one-half times the average amount of the quarterly account taken over the three preceding quarterly accounting periods; and
 - (iv) in the case of a new account, or of an account where it is anticipated upon reasonable grounds that the consumption will be substantially increased, or where the accounting period is less frequent than quarterly, such amount as the Commission determines having regard to the methods of assessment set out

in the preceding subparagraphs unless or until any of those subparagraphs becomes applicable.

(3) Where a deposit is made or any other security is given in excess of the amount applicable pursuant to subsection (2) of this section, the amount required by the Commission shall be re-assessed and the security modified or the depositor refunded or credited accordingly.

(4) Where the consumer elects to furnish the security by means of a bank guarantee or in some other manner which in the opinion of the Commission is sufficient to safeguard the financial interest of the Commission, the Commission shall not require a security to be given by way of a deposit of moneys.

(5) Where a supply is discontinued or a deposit of moneys otherwise becomes refundable and the person entitled to the refund can not be traced without undue expense, the amount so to be refunded shall be dealt with as though it was money held by the Commission as a company within the meaning of the Unclaimed Moneys Act, 1912.

8. Section 44 of the principal Act is amended—

Section 44
amended.

- (a) as to subsection (1), by inserting after the word "borrow", in line two of paragraph (c), the words "or may derive from financial accommodation entered into";
- (b) as to subsection (3), by adding after the word "prescribed" in line two, the passage "
, and such operation may include recourse to overdraft from time to time subject to and not exceeding such limitations as the bank may impose or the Treasurer direct"

Section 44A
added.

9. The principal Act is amended by adding after section 44 a new section, to stand as section 44A, as follows—

Effect of
State
Guarantee.

44A. (1) The due payment of money payable by the Treasurer under a guarantee given by him on behalf of the State under the authority of this Act, whether given pursuant to section twenty-eight B or to section twenty-eight C of this Act—

- (a) is hereby guaranteed by the State; and
- (b) shall be paid out of the money referred to in section four of the Audit Act, 1904, as “Public moneys”.

(2) By virtue of this subsection any sum paid by the Treasurer under any guarantee given by him on behalf of the State under section twenty-eight B or section twenty-eight C of this Act is a charge upon the State Energy Commission Account and the assets of the Commission and that account and those assets are charged with the performance and observance by the Commission of the terms and the conditions which the Treasurer may have imposed or approved in relation to that guarantee.

Section 45E
amended.

10. Section 45E of the principal Act is amended by deleting the words “friendly societies”, in the last line of subsection (1), and substituting the passage “the investment powers of persons, friendly societies, or other financial institutions”.
