c 492 Water Powers Regulation Act

Ontario

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CHAPTER 492

The Water Powers Regulation Act

1. In this Act,
   (a) "inspector" means a commission, public body or person designated by the Lieutenant Governor in Council to act as inspector under this Act, and includes the officers, agents and servants of the inspector employed and acting under the authority and direction of such inspector;
   (b) "owner of a water power" means every municipal corporation, company, firm or individual being or claiming to be the owner, lessee, licensee, occupant, tenant or assignee of a right to use any of the waters of Ontario for the purpose of generating hydraulic, electrical or pneumatic power or energy under any grant, lease or licence from the Crown, or any person, or under contract with, or franchise from any public body representing the Crown or the Province of Ontario or under the general law or any special Act of the Legislature or otherwise;
   (c) "power" means hydraulic, electrical or pneumatic power or energy;
   (d) "regulations" means the regulations made under this Act;
   (e) "works" means every dam, wing dam, forebay, gate, rack, canal, conduit, pipe, aqueduct, penstock, tunnel and every other work that has been or may be constructed or used for or in connection with the control or diversion of water and the conveying of it to a power house or other place at which power may be generated, and includes all buildings, structures, plant, machinery, appliances and other works and things used for or appurtenant to the production and generation of power. R.S.O. 1960, c. 426, s. 1.

2. It is the duty of every owner of a water power to ensure as far as possible the economical and efficient use of the water used by him. R.S.O. 1960, c. 426, s. 2.

3. The Lieutenant Governor in Council may appoint an inspector or inspectors who, in addition to the powers hereinafter mentioned, when required by the Lieutenant Governor in Council so to do, may,
(a) at all reasonable times enter upon any works and examine and inspect the works;
(b) take such measurements and tests as may be necessary from time to time in order to determine or to fix, as the case may be, in respect of the owner of any water power, (i) the quantity of water used, permitted to be used or available for use, (ii) operating head and head losses, (iii) electrical and hydraulic efficiency of main or auxiliary machinery or of any other portion of the works, or of the works as a whole, (iv) the amount of power developed, permitted to be developed or available for development, (v) in terms of cubic feet per second, the amount of water that it is necessary to use in order to develop or generate any amount of horsepower or to exercise any water rights for any purpose;
(c) require the production of books, records, charts, readings, maps, plans, load curves and all other documents and records pertaining to the matters to be investigated, inquired into or determined under this Act;
(d) if it appears to him that the water permitted to be used is not being utilized with a proper degree of efficiency or economy, or that the works or any part of the works are so constructed, or are of such a type, or have so depreciated that the water cannot be used with a proper degree of efficiency or economy, after giving the interested parties a reasonable opportunity to be heard, order the water to be used, or the machinery or the works or any part of them, to be replaced or removed, altered or reconstructed, as the case may be, in such manner or to such an extent as may be necessary to secure the proper degree of efficient and economical use of the water; and
(e) if any order so made is not carried out within a reasonable time, enter upon the works and, at the expense of the owner of a water power, shut off or reduce the supply of water or close the works or any part thereof in such a manner as to prevent further use until such order has been obeyed. R.S.O. 1960, c. 426, s. 3.

4.—(1) Where an order made by the inspector calls for alterations, repairs or improvements in the works, there may be an appeal from the order of the inspector to the Lieutenant Governor in Council, and the Lieutenant Governor in Council may make such order in the premises as may be considered proper, which order is final.
(2) Upon such appeal, if the Lieutenant Governor in Council is of the opinion that the additions, alterations or improvements required to be made in the works will be of material public advantage by reason of the more efficient or economical use of the water and that the owner of the water power will not presently receive a corresponding commercial advantage from such alterations or improvements, the Lieutenant Governor in Council may direct a reference to determine what compensation, if any, should be made to the owner of the water power by reason of his being compelled to make such additions, alterations or improvements; and upon such reference all the circumstances shall be taken into account and if the referee is of the opinion that the owner is entitled to compensation, the referee may fix the amount thereof at such sum as he may consider just and reasonable, and upon the owner carrying out the order of the inspector or of the Lieutenant Governor in Council, the amount so awarded is payable to the owner in the same manner as a judgment recovered against the Crown in any court in Ontario. R.S.O. 1960, c. 426, s. 4.

5. It is the duty of the owner of a water power, subject to the right of appeal hereinbefore given, to obey at all times the orders of the inspector and to afford every facility for carrying out this Act and the regulations, and every owner of a water power who neglects or refuses to carry out any such order or who obstructs or hinders or delays the inspector or refuses to furnish him with such information and records as he may require, is liable to a penalty of not less than $300 and not more than $2,000, and each and every day on which such offence is committed or continued shall be deemed to create a separate offence. R.S.O. 1960, c. 426, s. 5.

6.—(1) Where an inspector appointed under section 3 has been directed or required by the Lieutenant Governor in Council to exercise any of the powers or to perform any of the duties set out in clauses a to e of that section, and the owner of the water power, or any officer, agent or servant of the owner of a water power, hinders, delays or obstructs the inspector in the performance of any such duty, or refuses to permit the inspector to enter upon the premises of the owner of the water power, or to carry out or exercise any of such powers and duties, the inspector may apply to the judge of the county or district court, or to a judge of the Supreme Court, in a summary manner, for an order directing the owner of the water power, his officers, agents or servants, to afford such facilities for inspection as may be necessary for carrying out this Act and the regulations, and require him to obey the orders of the inspector on that behalf, and to admit the inspector to the premises of the owner of the water power, and to cease from such obstruction, hindrance or delay, and to furnish the inspector with such information and records as he may require in order to comply with the direction or requirements of the Lieutenant Governor in Council.
(2) Upon the application the judge may make such order as he considers requisite in order to secure compliance with this Act and the regulations and the performance by the inspector of his duties, and the order is final and is not subject to appeal.

(3) The Judges’ Orders Enforcement Act applies to every application and order made under this section. R.S.O. 1960, c. 426, s. 6.

7. Where any lease, licence, order in council or other instrument or any general or special statutory provision confers or purports to confer the right to develop or generate power measured expressly or impliedly in horsepower, or where any such instrument or provision confers or purports to confer a right of diversion or use of water defined wholly or in part by the character, location or dimensions of works, the inspector may fix in terms of cubic feet per second the amount of water that it is necessary to use in order to develop or generate such power or to exercise such right, having regard to the location of the works and to all the circumstances of the case and to the degree of efficiency that the owner of the water power should be required to maintain in the premises. R.S.O. 1960, c. 426, s. 7.

8. Every owner of a water power, before proceeding with the construction of any works or any alteration or extension of existing works or with the purchase or installation of new works, shall submit to an inspector plans and specifications showing the details of the proposed construction, alteration or extension or of the new works proposed to be purchased or installed, and he shall not proceed therewith or let contracts therefor until such plans and specifications have been approved by the inspector. R.S.O. 1960, c. 426, s. 8.

9.—(1) Where the rights of the owner of a water power to use water for the purpose of generating power do not appear to be expressly or impliedly limited by any stipulation as to the quantity of water to be used or as to the amount of horsepower that may be generated or otherwise, and the Lieutenant Governor in Council considers it desirable in the public interest that such rights should be specifically limited and defined, he may direct the inspector to inquire and report,

(a) as to the amount of power that the owner of a water power is authorized to generate under any contract, lease, licence or other instrument, or under any general or special Act of the Legislature or otherwise; and

(b) as to the quantity of water that it is necessary, having due regard to efficiency and economy in development, to use for the purpose of generating such amount of power,
and, upon such report, the Lieutenant Governor in Council may fix and determine, in horsepower, the amount of water that the owner shall generate and in terms of cubic feet per second the amount of water that it is necessary to use in order to develop or generate such power.

(2) If the owner is dissatisfied with the construction so placed upon his rights, or with such limitation and definition, the Lieutenant Governor in Council may, upon the application of the owner, direct a reference to ascertain what rights, if any, have been restricted or impaired by such limitation and definition, and if it is found that such rights exist and that they are so restricted or impaired, to ascertain the compensation that should be paid to the owner for such restriction or impairment.

(3) The amount of the compensation awarded to the owner upon such reference shall be paid to him in the same manner as the amount of a judgment recovered against the Crown. R.S.O. 1960, c. 426, s. 9.

10.—(1) Where the Lieutenant Governor in Council considers that the public interest requires that any rights conferred upon the owner of a water power should be restricted or limited in any particular, he may by order in council limit, define or restrict such rights to the construction, operation and use of such works only as may be considered expedient in the public interest.

(2) If the owner considers himself aggrieved by any such limitation, definition or restriction, the Lieutenant Governor in Council may direct a reference to determine what compensation, if any, should be paid to the owner, and the referee has the like power and shall proceed in the same manner, and the amount awarded is payable in the same way as in the case of a reference under section 9. R.S.O. 1960, c. 426, s. 10.

11.—(1) Upon any reference under this Act, the referee shall take into consideration,

(a) the conditions under which any rights to generate or develop power were originally obtained;
(b) the consideration paid or agreed to therefor;
(c) the capital invested in any works by the owner of a water power;
(d) the circumstances that render any limitation or restriction of such rights necessary and desirable in the public interest.

(2) The referee, upon any inquiry under this Act directed by the Lieutenant Governor in Council, has all the powers that may be conferred on a commissioner under The Public Inquiries Act. R.S.O. 1960, c. 426, s. 11.
12. The Lieutenant Governor in Council may make regulations respecting,
(a) the procedure to be followed by the inspector and for conferring on him the powers of a commissioner under The Public Inquiries Act;
(b) the form and term of notices to be given by the inspector and the enforcement of his orders;
(c) the appointment of officers, servants and agents by the inspector and their duties and powers;
(d) the procedure to be followed upon any appeal from an order of the inspector;
(e) any return to be made by the owner of a water power and the particulars to be stated in such returns;
(f) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

13.—(1) Where the inspector reports that the owner of a water power,
(a) is diverting or using more water than the owner is entitled to divert or use; or
(b) is developing or generating a greater amount of power in horsepower than the owner is entitled to develop or generate; or
(c) has installed works and equipment capable of developing or generating a greater amount of power in horsepower than the owner is entitled to develop or generate,
the Lieutenant Governor in Council may appoint three commissioners, who shall be judges of the Supreme Court, to hold an inquiry under The Public Inquiries Act, and report to the Lieutenant Governor in Council as to,
(d) the quantity of water in cubic feet per second that the owner is entitled to divert or use;
(e) the amount of power in horsepower that the owner is entitled to develop or generate;
(f) the extent, if any, by which the capacity of the works installed or equipped by the owner exceeds the amount of power in horsepower that the owner is entitled to develop or generate;
(g) the price and terms and conditions upon which, having regard to all the circumstances and to the rights of the owner as ascertained by the commissioners, the power to the extent of such excess should be delivered to The Hydro-Electric Power Commission of Ontario as hereinafter provided; and
(h) such matters connected with or arising out of the subject-matter of the reference as they may consider expedient.

(2) If the commissioners find that the owner is diverting or using more water than he is entitled to divert or use, or is developing or generating a greater amount of power in horsepower than he is entitled to develop or generate, or that he has installed and equipped works exceeding in capacity the amount of power that he is entitled to develop or generate, the Lieutenant Governor in Council may order the owner to deliver to The Hydro-Electric Power Commission of Ontario, upon the date named in the order, such amount of electrical power or energy as equals such excess as found by the report of the commissioners, or to operate the works of the owner to their full capacity and to deliver such excess power to The Hydro-Electric Power Commission of Ontario. R.S.O. 1960, c. 426, s. 13 (1, 2).

(3) If the owner refuses or neglects to deliver such power after notice in writing so to do, he is liable to a penalty of $1,000 for every day during which such neglect or default continues, to be recoverable by action in the Supreme Court at the suit of the Minister of Justice and Attorney General. R.S.O. 1960, c. 426, s. 13 (3), amended.

(4) Nothing in this section affects or diminishes any duty or obligation as to payment of any penalty or rental to which the owner might otherwise be liable for exceeding the amount of power that he is entitled to develop or generate, and all such penalties may be collected and all such rentals shall be due and payable and the like proceedings may be taken by the Crown or by any commission or other public body from which the rights or franchises of the owner are derived, as if this Act had not been passed. R.S.O. 1960, c. 426, s. 13 (4).

14. Where the owner is developing electrical power or energy by the diversion of the waters of the Niagara River under any contract, agreement, licence, lease or other instrument entered into by the owner or his predecessors in title with or granted to the owner or his predecessors in title by the Commissioners of the Queen Victoria Niagara Falls Park, and the owner diverts or uses more water than he is entitled to divert or use or develops or generates a greater amount of electrical energy than he is entitled to develop or generate under the contract, agreement, licence, lease or other instrument, the inspector may, with the authority of the Lieutenant Governor in Council, give to the owner notice in writing to cease diverting or using more water than he is entitled to divert or use or generating or developing a greater amount of electrical power than he is entitled to develop or generate, and if the owner, after the expiration of one month from the giving of such notice, diverts or uses more water than he is entitled to divert
or use or develops or generates a greater amount of electrical power or energy than he is entitled to develop or generate, then every franchise or right of occupancy or possession or right to develop or use any of the waters of the Niagara River or to operate or construct any works that may be enjoyed by the owner therefor, and notwithstanding anything contained in any such contract, agreement, licence, lease or other instrument or in any by-law or in any general or special Act of the Legislature ceases and is at an end. R.S.O. 1960, c. 426, s. 14.

15. The Lieutenant Governor in Council may, at any time, rescind any order made by him under subsection 2 of section 13, and thereupon all right of the owner to develop power or use water or develop or generate power in excess of the owner's rights as found by the commissioners ceases, but any such rescission does not relieve the owner from any penalties incurred by him under subsection 3 of section 13 prior to the date of such rescission. R.S.O. 1960, c. 426, s. 15.

16.—(1) The Minister of Lands and Forests in his discretion may fix the terms and conditions upon which water powers or privileges granted by the Crown and any Crown lands necessary for the development thereof may be sold or leased and developed.

(2) All agreements, leases, licences, renewals or other writings relating to water powers or privileges or any Crown lands necessary for the development thereof are binding upon the Crown when signed by the Minister of Lands and Forests or by the Deputy Minister of Lands and Forests. R.S.O. 1960, c. 426, s. 16.