

CHAPTER 258.

[H. B. 658.]

WASHINGTON STATE POWER COMMISSION.

AN ACT relating to state government and providing for the conservation and development of electric power resources; amending sections 5, 7, 12, 15, and 20, chapter 281, Laws of 1953 and RCW 43.52.300, 43.52.320, 43.52.360, 43.52.390, 43.52.260; repealing section 16, chapter 281, Laws of 1953 and RCW 43.52.400; adding twelve new sections to chapter 281, Laws of 1953 and chapter 43.52 RCW; making an appropriation, and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Amendment.

SECTION 1. Section 5, chapter 281, Laws of 1953 and RCW 43.52.300 are each amended to read as follows:

Commission authority.

The commission shall have authority:

(1) To generate, produce, transmit, deliver, exchange, purchase or sell electric energy and to enter into contracts for any or all such purposes.

Acquire, operate and regulate facilities.

(2) To construct, condemn, purchase, lease, acquire, add to, extend, maintain, improve, operate, develop and regulate plants, works and facilities for the generation and/or transmission of electric energy and to take, condemn, purchase, lease and acquire any real or personal, public or private property, franchise and property rights, including but not limited to state, county and school lands and properties, for any of the purposes herein set forth and for any facilities or works necessary or convenient for use in the construction, maintenance or operation of any such works, plants and facilities; provided that the commission shall not be authorized to acquire by condemnation any plants, works and facilities owned and operated by any city or district, or by a privately owned public utility. The commission shall be authorized to contract for and to acquire by lease or purchase from the United States or any of its agencies, any plants, works or facilities for the

Acquire real or personal public or private property.

generation and transmission of electricity and any real or personal property necessary or convenient for use in connection therewith.

(3) To negotiate and enter into contracts with the United States or any of its agencies, with any state or its agencies, with Canada or its agencies or with any district or city of this state, for the lease, purchase, construction, extension, betterment, acquisition, operation and maintenance of all or any part of any electric generating and transmission plants and reservoirs, works and facilities or rights necessary thereto, either within or without the state of Washington, and for the marketing of the energy produced therefrom. Such negotiations or contracts shall be carried on and concluded with due regard to the position and laws of the United States in respect to international agreements.

Contracts;
parties to.

Limitation.

(4) To negotiate and enter into contracts for the purchase, sale, exchange, transmission or use of electric energy or falling water with any person, firm or corporation, including political subdivisions and agencies of any state, of Canada, or of the United States, at fair and nondiscriminating rates.

(5) To apply to the appropriate agencies of the state of Washington, the United States or any state thereof, and to Canada and/or to any other proper agency for such permits, licenses or approvals as may be necessary, and to construct, maintain and operate works, plants and facilities in accordance with such licenses or permits, and to obtain, hold and use such licenses and permits in the same manner as any other person or operating unit.

Licensees,
permits or
approvals.

(6) To establish rates for electric energy sold or transmitted by the commission. When any revenue bonds or warrants are outstanding the commission shall have the power and shall be required to establish and maintain and collect rates or charges for electric energy, falling water and other services sold,

Rates
established.

furnished or supplied by the commission which shall be fair and nondiscriminatory and adequate to provide revenues sufficient for the payment of the principal and interest on such bonds or warrants and all payments which the commission is obligated to set aside in any special fund or funds created for such purposes, and for the proper operation and maintenance of the public utility owned by the commission and all necessary repairs, replacements and renewals thereof.

Agent for city or district.

(7) To act as agent for the purchase and sale at wholesale of electricity for any city or district whenever requested so to do by such city or district.

Fishways, etc.

(8) To contract for and to construct, operate and maintain fishways, fish protective devices and facilities and hatcheries as necessary to preserve or compensate for projects operated by the commission.

Navigational, reclamation, flood control and fisheries facilities.

(9) To construct, operate and maintain channels, locks, canals and other navigational, reclamation, flood control and fisheries facilities as may be necessary or incidental to the construction of any electric generating project, and to enter into agreements and contracts with any person, firm or corporation, including political subdivisions of any state, of Canada or the United States for such construction, operation and maintenance, and for the distribution and payment of the costs thereof.

Personnel employment, compensation, etc.

(10) To employ legal, engineering and other professional services and fix the compensation of a managing director and such other employees as the commission may deem necessary to carry on its business, and to delegate to such manager or other employees such authority as the commission shall determine. Such manager and employees shall be appointed for an indefinite time and be removable at the will of the commission.

Studies and reports.

(11) To study, analyze and make reports concerning the development, utilization and integration

of electric generating facilities and requirements within the state and without the state in that region which affects the electric resources of the state.

SEC. 2. Section 7, chapter 281, Laws of 1953, and RCW 43.52.320 are each amended to read as follows: Amendment.

Before the commission shall construct or acquire any hydroelectric generating facility within the state, or make application for or purchase any permit, license or other right necessary thereto, it shall give notice thereof by publishing once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which such project is located a statement of intention setting forth the general nature, extent and location of the project. Notice required prior to commission action.

If any public utility in the state or any operating agency, as hereinafter provided for, desires to construct or acquire such facility or desires to construct a hydroelectric plant or reservoir in substantially the same location, such utility or operating agency shall notify the commission thereof within ten days after the last date of publication of such notice. If the commission determines that it is in the best public interest that the commission proceed with such construction or acquisition rather than the public utility or operating agency, it shall so notify the director of conservation and development, who shall set a date for hearing thereon. Statement of intention.

If after considering the evidence introduced the director of conservation and development finds that the public utility or agency making the request intends to immediately proceed with such construction or acquisition and is financially capable of carrying out such construction or acquisition, and further finds that the plan of such utility or operating agency is equally well adapted to conserve and utilize in the public interest the water resources of this state, he shall enter an order so finding and such order shall divest the Commission decides whether it proceeds rather than public utility.

Hearing before director of conservation and development.

Commission
divested of
authority to
proceed.

commission of authority to proceed further with such construction or acquisition until such time as the other public utility or agency voluntarily causes an assignment of its right or interest in the project to the commission or fails to procure any further required governmental permit, license or authority, or having procured such, has the same revoked or withdrawn, in accordance with the laws and regulations of such governmental entity, in which event the commission shall have the same authority to proceed as though the director had originally entered an order so authorizing the commission to proceed. If, after considering the evidence introduced, the director of conservation and development finds that the public utility or agency making the request does not intend to immediately proceed with such construction or acquisition or is not financially capable of carrying out such construction or acquisition, or finds that the plan of such utility or operating agency is not equally well adapted to conserve in the public interest the water resources of this state, he shall then enter an order so finding and authorizing the commission to proceed with the construction or acquisition of the facility. Authorization to the commission under this section shall not be construed to constitute a bar to such other utility or agency proceeding according to law to procure any required governmental permits, licenses or authority, but such authorization shall establish the competency of the commission to proceed according to law to procure such other necessary governmental permits, licenses or authority. Except as to projects in which a public utility or operating agency has a prior right, the institution and prosecution of proceedings under this section, or action taken after receipt of authorization from the director of conservation and development, shall not be construed as an impairment or supersedure of

Commission
authorized
to proceed.

Authorization
not bar to legal
proceedings.

the powers or rights of any person, firm or corporation or political subdivision of the state of Washington under this or any other law. Prior rights shall be established by the filing of an application for a preliminary permit or license with the federal power commission or appropriate state agency, whichever has primary jurisdiction: *Provided*, That the rights of any municipal corporation shall date back to the date of adoption of a plan and system resolution or ordinance if the application is filed within sixty days after the adoption of such plan and system resolution or ordinance.

Prior rights established.

Proviso.

SEC. 3. Section 12, chapter 281, Laws of 1953 and RCW 43.52.360 are each amended to read as follows:

Amendment.

Any two or more cities or districts or combinations thereof may form an operating agency for the purpose of acquiring, constructing, operating and owning plants, systems and other facilities and extensions thereof for the generation and/or transmission of electric energy and power. Each such agency shall be a municipal corporation and operating agency of the state of Washington with the right to sue and be sued in its own name.

Formation of an operating agency.

Municipal corporation.

Application for the formation of an operating agency shall be made to the director of conservation and development after the enactment by the legislative body of each city or district to be initial members thereof authorizing said city or district to participate. Such application shall set forth (1) the name and address of each participant, together with a certified copy of the enactment authorizing its participation; (2) a general description of the project and the principal project works, including dams, reservoirs, power houses and transmission lines; (3) the general location of the project and, if a hydroelectric project, the name of the stream on which such proposed project is to be located;

Application for formation of operating agency.

Contents.

(4) if the project is for generation of electricity, the proposed use or market for the power to be developed; (5) a general statement of the electric loads and resources of each of the participants, and of the agency if the project is not an initial project; (6) a statement of the proposed method of financing the preliminary studies and the participation therein by each of the participants.

Publication
of notice.

Objection to
application.

Within ten days after such application is filed with the director of conservation and development notice thereof shall be published once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which such project is located, setting forth the names of the participants and the general nature, extent and location of the project. Any public utility wishing to do so may object to such application by filing an objection, setting forth the reasons therefor, with the director of conservation and development not later than ten days after the date of last publication of such notice.

Application
deemed
approved.

Within ninety days after the date of last publication the director shall either make findings thereon or have instituted a hearing thereon. In event the director has neither made findings nor instituted a hearing within ninety days of the date of last publication, or if such hearing is instituted within such time but no findings issued within one hundred and twenty days of the date of last publication, the application shall be deemed to have been approved and the operating agency established. If the director shall find (a) that the statements set forth in said application are substantially correct; (b) that the contemplated project is such as is adaptable to the reasonably foreseeable requirements of the members and such other public utilities as indicate a good faith intention by contract or by letter of intent to participate in the use of such project; (c) that no

other public utility objects to the formation of such operating agency, which public utility had on file prior to the filing of the application for such operating agency, an application for, or a permit or license from an agency of the state or an agency of the United States, whichever has primary jurisdiction, pertaining to such project; (d) that adequate provision will be made for financing the preliminary engineering, legal and other costs necessary thereto; the director shall enter an order creating such operating agency, establishing the name thereof and the specific project for the construction and operation for which such operating agency is formed. Such order shall not be construed to constitute a bar to any other public utility proceeding according to law to procure any required governmental permits, licenses or authority, but such authorization shall establish the competency of the operating agency to proceed according to law to procure such permits, licenses or authority.

Order not bar to other public utility proceedings.

No operating agency shall undertake projects in addition to those for which it was formed without the approval of the legislative body of each member thereof. Application to construct such additional project shall be made to the director of conservation and development in the same manner, subject to the same requirements and with the same notice as required for an initial agency and project and shall not be constructed until a finding authorizing the same shall have been made by the director in the manner provided for such original application.

Additional projects.

Any party feeling aggrieved by any order or finding of the director shall have the right of appeal to the superior court in the manner set forth in RCW 43.52.430.

Right of appeal.

After the formation of an operating agency, any other city or district may become a member thereof upon application after the adoption of an enactment

Application for membership in existing operating agency.

of its legislative body, and with the consent of the operating agency by the affirmative vote of all its members. Any member may withdraw from an operating agency, and thereupon such member shall forfeit any and all rights or interests which it may have in such operating agency or in any of the assets thereof: *Provided*, That all contractual obligations incurred while a member shall remain in full force and effect. An operating agency may be dissolved by the unanimous agreement of the members, and the members, after making provisions for the payment of all debts and obligations, shall thereupon hold the assets thereof as tenants in common.

Withdrawal.

Proviso.

Dissolution.

Amendment.

SEC. 4. Section 15, chapter 281, Laws of 1953 and RCW 43.52.390 are each amended to read as follows:

Operating agency powers and restrictions.

An operating agency shall, through its board, have all the powers granted to and shall be subject to all the restrictions imposed upon, the state power commission under RCW 43.52.300 (1), (2), (3), (4), (5), (6), (8), (9) and (10), and the provisions of RCW 43.52.310 and 43.52.350 shall be applicable to such agency. An operating agency shall have the right of eminent domain in the same manner as is provided in RCW 43.52.330. An operating agency through its board, in accordance with the provisions of this act, may issue and sell its revenue bonds and from time to time may refund such bonds in its own name, in the same manner, for the same purposes and to the same extent as is provided herein for the commission. All revenues received by an operating agency shall be held by and in the name of the operating agency and shall not be expended except for payment of lawful obligations of the operating agency. Any member of an operating agency may advance or contribute funds to an agency as may be agreed upon by the agency and the member, and the agency shall repay such advances or contribu-

Right of eminent domain.

Issue, sell and refund bonds.

tions from proceeds of revenue bonds, from operating revenues, or from any other funds of the agency, together with interest not to exceed four percent per annum.

SEC. 5. Section 9, chapter 281, Laws of 1953 and RCW 43.52.340 are each amended to read as follows: Amendment.

The commission shall have no right or power to impose any debt nor to suffer or create any financial obligation upon the state of Washington or its subdivisions. Restriction on debt.

No revenues received by the commission for the sale of electricity or otherwise, shall be expended except for the payment of lawful obligations of the commission and all such revenues and receipts shall be kept and maintained in a separate fund. Lawful obligations.

SEC. 6. There is added to chapter 43.52 RCW a new section reading as follows: New section.

For the purposes provided for in this act, any commission created hereunder shall have power to issue revenue bonds or warrants, payable from the revenues of the electric utility properties operated by it. When the commission deems it advisable that the commission acquire or construct an electric utility, or make additions or betterments thereto or extensions thereof, it shall provide therefor by resolution, which shall specify and adopt the system or plan proposed, and declare the estimated cost thereof, as nearly as may be, including as part of the cost, funds necessary for working capital for the operation of such electric utility and for the payment of the expenses incurred in the acquisition or construction thereof. Such resolution may specify that utility revenue bonds are to be issued to defray the cost thereof and the amount of such bonds so to be issued. Revenue bonds or warrants issued.

The commission may provide in the resolution that any additional works, plants, or facilities subsequently acquired or constructed by the commission for the same uses, whether or not physically Commission resolution to acquire or construct electric utilities, etc.

connected therewith, shall be deemed additions or betterments to or extensions of the electric utility of the agency.

New section.

SEC. 7. There is added to chapter 43.52 RCW a new section to read as follows:

Creation of special fund to defray cost of electric utility.

When the commission deems it advisable to issue revenue bonds for such purposes, it may, as a part of the plan and system, create a special fund or funds to defray the cost of the electric utility, or additions or betterments thereto or extensions thereof. It may obligate and bind the agency to set aside and pay into such fund or funds a fixed proportion of the gross revenue of the electric utility, and all additions or betterments thereto or extensions thereof, or any fixed amount out of, and not exceeding a fixed proportion of such revenue, or a fixed amount without regard to any fixed proportion, or an amount of the revenue equal to a fixed percentage of the aggregate principal amount of revenue bonds at any time issued against the special fund or funds. It may issue and sell utility revenue bonds payable as to both principal and interest only out of such fund or funds.

Revenue bonds payable as commission determines.

The revenue bonds shall be payable at such places and times, both as to principal and interest, and bear interest at such rates payable semiannually as the commission shall determine.

New section.

SEC. 8. There is added to chapter 43.52 RCW, a new section reading as follows:

Considerations in creating special fund.

In creating any such special fund the commission shall have due regard to the cost of operation and maintenance of the electric utility as acquired, constructed or added to, and to any proportion or amount of the revenue previously pledged as a fund for the payment of revenue bonds. It shall not set aside into the fund a greater amount or proportion of the revenue than in its judgment will be available over and above the cost of maintenance and

operation and any amount or proportion of the revenue so previously pledged. Revenue bonds and interest thereon issued against such fund shall be a valid claim of the holder thereof only as against the fund and the proportion or amount of the revenue pledged thereto, but shall constitute a prior charge over all other charges or claims whatsoever against the fund and the proportion or amount of the revenues pledged thereto. Each revenue bond shall state on its face that it is payable from a special fund, naming the fund and the resolution creating it.

SEC. 9. There is added to chapter 43.52 RCW a new section to read as follows: New section.

The resolution creating any such special fund and authorizing the issuance of revenue bonds payable therefrom shall specify the title of the bonds as determined by the commission, and may contain covenants by the commission to protect and safeguard the security and the rights of the holders thereof, including covenants as to, among other things: Resolution creating special fund and authorizing issuance of revenue bonds.

(1) The purpose or purposes to which the proceeds of the sale of the revenue bonds may be applied and the use and disposition thereof;

(2) The use and disposition of the gross revenue of the electric utility and any additions or betterments thereto or extensions thereof, the cost of which is to be defrayed with such proceeds, including the creation and maintenance of funds for working capital to be used in the operation of the electric utility and for renewals and replacements thereof;

(3) The amount, if any, of additional revenue bonds payable from such fund which may be issued and the terms and conditions on which such additional revenue bonds or warrants may be issued;

(4) The establishment and maintenance of adequate rates and charges for electric power and energy and other services, facilities and commodi-

Covenants to safeguard rights of holders.

ties, sold, furnished or supplied by the electric utility;

(5) The operation, maintenance, management, accounting and auditing of the electric utility;

(6) The terms upon which the revenue bonds, or any of them, may be redeemed at the election of the agency;

(7) Limitations upon the right to dispose of the electric utility or any part thereof without providing for the payment of the outstanding revenue bonds; and

(8) The appointment of trustees, depositaries, and paying agents to receive, hold, disburse, invest, and reinvest all or any part of the income, revenue, receipts and profits derived by the commission from the operation, ownership, and management of its electric utility.

New section.

SEC. 10. There is added to chapter 43.52 RCW a new section to read as follows:

Bond sale.

All bonds issued under or by authority of this act shall be sold to the highest and best bidder after such advertising for bids as the commission may deem proper: *Provided*, That the commission may reject any and all bids so submitted and thereafter sell such bonds so advertised under such terms and conditions as the commission may deem most advantageous to its own interests:

Bids may be rejected.

Proviso.

Provided further, That the aggregate interest cost to maturity of the money received for such an issue shall not exceed six percent per annum.

New section.

SEC. 11. There is added to chapter 43.52 RCW, a new section to read as follows:

Bonds and certified copy of resolution authorizing them, delivered to state auditor before issuance.

Prior to the issuance and delivery of any revenue bonds, such bonds and a certified copy of the resolution authorizing them shall be delivered to the state auditor together with any additional information that he may require. When the bonds have been examined they shall be registered by

the auditor in books to be kept by him for that purpose, and a certificate of registration shall be endorsed upon each bond and signed by the auditor or a deputy appointed by him for the purpose. The bonds shall then be prima facie valid and binding obligations of the commission in accordance with their terms, notwithstanding any defects or irregularities in the proceedings for the organization of the commission, or for the authorization and issuance of the bonds, or in the sale, execution or delivery thereof.

Certificate of registration endorsed on each bond.

SEC. 12. There is added to chapter 43.52 RCW, a new section to read as follows: New section.

The commission which has revenue bonds outstanding shall establish, maintain, and collect rates or charges for electric power and energy, and other services, facilities, and commodities sold or supplied by the agency, which shall be fair and nondiscriminatory and adequate to provide revenue sufficient to pay the principal of and interest on any revenue bonds outstanding, and all payments which the commission is obligated to set aside in any special fund or funds created for such purpose, and for the proper operation and maintenance of the utility and all necessary repairs, replacements and renewals thereof.

Rates for electric power and energy sold.

SEC. 13. There is added to chapter 43.52 RCW a new section to read as follows: New section.

When the commission has outstanding revenue bonds, the commission may by resolution provide for the issuance of refunding revenue bonds with which to refund the outstanding revenue bonds, or any part thereof at maturity, or before maturity if they are by their terms or by other agreement subject to call for prior redemption, with the right in the commission to combine various series and issues of the outstanding revenue bonds by a single issue of refunding revenue bonds. The refunding bonds

Resolution for issuance of refunding revenue bonds.

Refunding revenue bonds payable out of special fund.

shall be payable only out of a special fund created out of the gross revenue of the electric utility, and shall only be a valid claim as against such special fund and the amount or proportion of the revenue of the utility pledged to said fund. The rate of interest on refunding revenue bonds shall not exceed the rate of interest on revenue bonds refunded thereby. The commission may exchange the refunding revenue bonds for the revenue bonds which are being refunded, or it may sell them in such manner as it deems for its best interest. Except as specifically provided in this section, the refunding revenue bonds shall be issued in accordance with the provisions contained in this act with respect to revenue bonds.

New section.

SEC. 14. There is added to chapter 43.52 RCW a new section to read as follows:

Bond signature and attestation.

All revenue bonds, including refunding revenue bonds, shall be signed by the chairman of the commission and attested by the secretary. The seal of the agency shall be impressed upon each bond. The interest coupons may have printed or lithographed facsimiles of the signatures of such officers.

New section.

SEC. 15. There is added to chapter 43.52 RCW a new section to read as follows:

Act's provisions enforceable by bondholder.

The provisions of this act and any resolution providing for the issuance of revenue bonds shall constitute a contract with the holder or holders from time to time of the revenue bonds of the commission. Such provisions of this act and of any such resolution shall be enforceable by any such bondholder by appropriate action in any court of competent jurisdiction.

New section.

SEC. 16. There is added to chapter 43.52 RCW a new section to read as follows:

Bonds legal securities.

All revenue bonds issued as obligations of the commission shall be legal securities, which may

be used by a bank or trust company for deposit with the state treasurer, or by a county or city or town treasurer, as security for deposits in lieu of a surety bond under any law relating to deposits of public moneys. They shall constitute legal investments for trustees and other fiduciaries other than corporations doing a trust business in this state, and for savings and loan associations, banks and insurance companies doing business in this state. All revenue bonds and all coupons appertaining thereto shall be negotiable instruments within the meaning and for all purposes of the negotiable instruments law.

Bonds and coupons to be negotiable instruments.

SEC. 17. Section 16, chapter 281, Laws of 1953 and RCW 43.52.400 are each hereby repealed.

Repeal.

SEC. 18. Section 20, chapter 281, Laws of 1953 and RCW 43.52.260 are each amended to read as follows:

Amendment.

It is the intent of this act and this chapter that the commission shall represent the state of Washington and aid and assist the public utilities therein to the end that its water resources and other resources shall be properly developed for the best public interest insofar as they affect electric power, and to this end (1) the commission shall develop and integrate such resources as necessary whenever public utilities other than those owned by the United States and its agencies are not in a position so to do, and (2) the commission shall join with Canada, the United States, the states thereof, and their agencies to develop and integrate the water resources and other resources of the region, and particularly that area incorporated within the watershed of the Columbia river and its tributaries.

Intention of act.

The authority granted in this chapter shall apply equally to the generating of electricity by water power, by steam power, by atomic power or by any other means whatsoever.

Application of power granted.

Appropriation. **SEC. 19.** There is hereby appropriated to the Washington state power commission from the general fund the sum of two hundred fourteen thousand one hundred and forty-two dollars (\$214,142.00), for the ensuing biennium, to carry out the provisions of chapter 281, Laws of 1953 and chapter 43.52 RCW, as now or hereafter amended.

New section. **SEC. 20.** There is added to chapter 281, Laws of 1953, as amended, and to chapter 43.52 RCW a new section to read as follows:

Invalidity. If any provision of chapter 281, Laws of 1953 or of chapter 43.52 RCW, as now or hereafter amended, or its application to any person or circumstance is held invalid, the remainder of the act or chapter, or the application of the provision to other persons or circumstances is not affected.

Emergency. **SEC. 21.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 5, 1955.

Passed the Senate March 7, 1955.

Approved by the Governor March 18, 1955.