

CHAPTER 256

NATIONAL ELECTRIC POWER AUTHORITY ACT

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CHAPTER 256

NATIONAL ELECTRIC POWER AUTHORITY ACT

An Act to establish the National Electric Power Authority to develop and maintain an efficient, co-ordinated and economical system of electric supply for all parts of the Federation and other matters incidental thereto. 1972 No. 24.

[1st April, 1972] Commence-
ment.

PART I.—GENERAL

Establishment and Constitution of the Authority

1. (1) There shall be established an authority to be known as the National Electric Power Authority and it shall be the duty of that Authority as from the vesting date to develop and maintain an efficient, co-ordinated and economical system of electricity supply for all parts of the Federation or as the Authority may direct, and for this purpose—

Establish-
ment of the
National
Electric
Power
Authority.

- (a) to generate or acquire supply of electricity;
- (b) to provide bulk supply of electricity for distribution within or outside Nigeria; and
- (c) to provide supply of electricity for consumers in Nigeria and as may, from time to time, be authorised by the Authority.

(2) The Authority shall be a body corporate with perpetual succession and shall have power to hold land and all movable and immovable property vested in it by or under this Act, and may subject to the provisions of this Act or any other law, grant, demise, alienate or otherwise dispose of the same.

(3) The Authority shall also have power to sue and be sued and to enter into contracts as may be necessary and to do all other things incidental or appertaining to its powers under this Act.

(4) The Public Officers Protection Act shall apply in relation to any action, prosecution or other proceedings in respect of any act, negligence or default done or committed by any

Cap. 379

Cap. 62

officer, servant or agent of the Authority in his capacity as such officer, servant or agent as if the office of such person were an office in the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria.

Board of
Directors of
the
Authority.
Schedule.

2. (1) The affairs of the Authority shall be conducted by a board of directors of the Authority (in this Act hereafter referred to as "the Board") which shall consist of members mentioned in Part I of the Schedule to this Act.

(2) The provisions of the Schedule relating to the powers and proceedings of the Board, and other matters therein mentioned, shall have effect as provided thereunder.

General
Manager and
Secretary.

3. (1) There shall, on the recommendation of the Minister, be appointed by the National Council of Ministers, an executive officer of the Authority, who shall be known as "the General Manager", and who shall be responsible for the execution of the policy of the Authority and the day-to-day running of the affairs of the Authority.

(2) The Board may appoint such number of assistant general managers who shall be responsible for assisting the General Manager as the Board may decide.

(3) The Board may, subject to section 4 of this Act, appoint a Secretary to the Board, who shall not be a member of the Board, and who shall keep the records and conduct the correspondence of the Board and perform such other duties of a similar nature as the Board may from time to time, direct.

Staff.

4. The Board shall, subject to the provisions of this Act, have power—

- (a) to appoint such other officers and servants of the Authority as it may determine;
- (b) to pay its officers and servants such remuneration and allowances as the Board may with the approval of the Minister determine; and
- (c) as regards any officers or servants in whose case it may determine so to do, to pay to or in respect of them such pensions and gratuities or to provide and maintain for

them such superannuation schemes (whether contributory or not) as the Board may determine, and subject as aforesaid, the transitory and supplemental provisions relating to officers and servants of the Authority set out in Part III of the Schedule to this Act shall apply accordingly.

Assets of the Authority

5. (1) Subject to the provisions of this Act, all property, rights, liabilities and obligations which immediately before the vesting date were property, rights, liabilities and obligations of a body to whom this Act applies, shall on that day vest or be deemed to have vested by virtue of this Act and without further assurance in the Authority. ^{Vesting of assets.}

(2) Subject to the provisions of this section—

(a) the property, rights, liabilities and obligations mentioned in subsection (1) of this section of any such body, the dam on the river Niger in the vicinity of the village of Kainji together with its ancillary works;

(b) all generating stations, lands and ancillary works, and any property, assets, powers, rights and privileges held by the body or enjoyed in connection therewith or appertaining thereto;

(c) all property, rights, liabilities and obligations under agreements to which any body to whom this Act applies were a party immediately before the vesting date whether in writing or not and whether or not of such a nature as rights and obligations thereunder could be assigned by the body; and

(d) all investments and cash of such body and all rights and liabilities thereof,

shall vest in the Authority.

(3) Subject to the provisions of this Act, every agreement to which subsection (2)(c) of this section relates shall, unless its terms or subject-matter make it impossible that it should have effect as modified in manner provided by this subsection, have effect as from the vesting date, as if—

(a) the Authority had been a party to the agreement;

- (b) for any reference (however worded and whether express or implied) to the body there were substituted, as respects anything falling to be done on or after the vesting date, a reference to the Authority;
- (c) for any reference (however worded, and whether express or implied) to, or to any part of, or to any sum determined by reference to, any profits or receipts of the undertaking of the body or any part of that undertaking there were substituted, as respects profits or receipts arising on or after the vesting date, a reference to, or to the corresponding part of, or to a sum similarly determined by reference to, an estimate of what those profits or receipts would have been but for the vesting of the undertaking or part thereof in the Authority;
- (d) for any reference (however worded and whether express or implied) to any member of the body there were substituted, as respects anything falling to be done on or after the vesting date, a reference to such person as the Authority may direct or authorise;
- (e) for any reference (however worded and whether express or implied) to any officer of the body there were substituted, as respects anything falling to be done on or after the vesting date, a reference to such person as the Authority may appoint or, in default of appointment, to the officer of the Authority who corresponds as nearly as may be to the first mentioned officer;
- (f) in the case of an agreement for the rendering of personal services to the body, the services to which the agreement relates were, on and after the vesting date, any services under the Authority to be selected by that Authority which are reasonably equivalent services; and
- (g) save as provided by the four last foregoing paragraphs, for any reference (however worded and whether express or implied) to the undertaking of the body or any part of that undertaking or to the area of supply of the body or any part of that area there were substituted, as respects anything falling to be done on or after the vesting date, a reference to so much of the business carried on by the Authority as corresponds to the undertaking or part of the undertaking of the body or, as the case may be,

a reference to the area constituting the said area of supply or part thereof immediately before the vesting date.

(4) Other documents, not being enactments which refer, whether specifically or generally, to any such body, shall be construed in accordance with the provisions of the last foregoing subsection, so far as applicable.

(5) Without prejudice to the generality of the foregoing provisions of this section, where, by the operation of any of the said provisions, any right, liability or obligation vests in the Authority, the Authority and all other persons shall, as from the vesting date, have the same rights, powers and remedies (and in particular the same rights as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Authority and any legal proceedings or applications to any authority pending on the vesting date by or against the body, in so far as they relate to any property, right, liability or obligation vested in the Authority by virtue of this Act, or to any agreement or document which has effect in accordance with subsection (3) or (4) of this section or any other enactment shall be continued by or against the Authority to the exclusion of the body.

(6) Notwithstanding anything in this section—

(a) where any agreement provides for the borrowing of money by any such body or the raising of money by the issue of securities of any such body and the money has not been borrowed or raised before the vesting date, no right, liability or obligation under the agreement shall be transferred to the Authority; and

(b) no right, liability or obligation under any agreement for the rendering by any person of services to any such body as a member of the body (other than a member who is charged with the management of the body whose functions are substantially those of an employee) shall be transferred to the Authority, except any liability in respect of fees earned or expenses incurred before the vesting date.

(7) If the law in force at the place where any assets vesting in the Authority under this Act is situated provides for the registration of the title of the assets of the kind in question, the law shall, so far as it provides for alterations of a register, apply with necessary modifications to the vesting of the assets in the Authority, and it shall be the duty of the Board to furnish such particulars as may be necessary to the proper officer of the authority which is charged with the duty of registering the assets, and of that officer to register the title of the Authority accordingly, without payment of any fee.

(8) Subject to the provisions of this Act, a body to whom this Act applies shall be dissolved or be deemed to have been dissolved on the vesting date.

Compensation for vesting assets.

6. (1) The Board shall determine as of the vesting date the amount invested by the Government in any body to whom this Act applies whether by way of equity stock, loans with or without interest evidenced by debentures or otherwise and, in consideration for the surrender by the Government of its rights under such loan and other agreements, the Board shall cause to be issued to the Government—

- (a) equity stock of the Authority; and
- (b) debenture stock bearing interest at $5\frac{1}{2}$ per cent and redeemable over a period of thirty years.

(2) The amount of equity stock issued shall be calculated so that when added to the undistributed earned surplus of the body on the vesting date the total will be equal to at least forty per cent of the sum of the funds provided by the Government, the long term debt outstanding on the vesting date and the undistributed earned surplus at that date.

PART II.—POWERS OF THE AUTHORITY

7. (1) Subject to the provisions of this Act, the Authority shall be charged with the general duty of—

- (a) managing, maintaining and working the electricity undertakings which are vested in the Authority under this Act and such other electricity undertakings as may be acquired by the Authority by or under the provisions of this Act;

General functions of the Authority.

- (b) establishing, managing, maintaining and working such electricity undertakings as the Authority may deem it expedient to establish in the public interest;
- (c) supplying electricity and promoting economic and efficient electricity generation, distribution and supply at reasonable prices; and
- (d) using any ancillary works for the generation of electricity, the improvement of navigation of inland waterways and the promotion of pisciculture.

(2) In connection with the discharge of its duties under subsection (1) of this section, the Authority shall have power—

- (a) to generate, transmit, transform, distribute, and sell electricity either in bulk or to individual consumers in any part of Nigeria and shall for such purposes have and be subject to all the rights, powers, obligations and duties conferred or imposed by the Electricity Act on a licensee; Cap. 106
- (b) to construct, re-construct, maintain and operate electric generating stations, transmission and distribution lines on, above or below ground, transformer stations and all other stations, buildings and works necessary for carrying out its duties under this Act, including the abstraction of water from any lake, river, stream or other natural source and the doing of all such acts as may be necessary for the purpose of utilising and returning the water so abstracted:

Provided that all water not consumed shall be returned in a condition not less pure than when it was abstracted;

- (c) with the approval of the Minister, to generate electricity in Nigeria in partnership with other person or persons or to take shares in any company incorporated for the purpose of generating electricity in Nigeria;
- (d) with the approval of, and in such manner as may be authorised by the Minister, to enter into agreements with any person, authority or government department established for the production of electrical energy in the countries bordering on and near to Nigeria for the purchase, sale or interchange of electricity;

- (e) with the approval of the Minister to make bye-laws for regulating navigation in waters on or adjoining lands under the control of the Authority; but no bye-law made in pursuance of this section shall come into force before it is confirmed by the National Council of Ministers; and
- (f) to do anything which in its opinion is calculated to facilitate the carrying on of its duties under this Act.

Particular
functions.

8. (1) In addition to the duties outlined under the foregoing provisions of this Act, the Authority may carry on all or any of the following particular functions—

- (a) the manufacture, provision, sale, letting on hire, connection, maintenance, repair, or removal of any electric lines, fittings, apparatus or appliances for lighting, heating or power or for any other purpose for which electricity can or may be used; and
- (b) the maintenance of shops and showrooms for the display, sale and hire of electrical equipment of all kinds; and
- (c) the advertisement of such electrical equipment whether by way of demonstration, exhibition or otherwise.

(2) All charges made by the Authority for the sale or letting on hire of electric lines, fittings, apparatus or appliances shall be fixed at such rates that the revenue derived by the Authority from such sale and such letting on hire shall not be less than the expenditure incurred in or about such sale and letting on hire including the cost of providing or manufacturing such electric lines, fittings, apparatus or appliances.

(3) The Authority shall not attach to the supply of electricity any condition involving the provision of, or purchase or hire from the Authority of, any electric fittings, apparatus or appliances, nor give direct or indirect preference to any consumer on condition of such provision by or purchase or hire from the Authority.

(4) All electric lines, fittings, apparatus and appliances provided or let on hire by the Authority on a consumer's premises shall be deemed to form part of the undertakings of the Authority.

9. (1) Whenever there is any hindrance to the acquisition by the Authority of any land required for any purpose of the Authority under this Act by agreement or negotiation (including any failure by the Authority to reach agreement as to the amount to be paid in respect of the acquisition), the Minister, on the application of the Authority and after such enquiry as he may think necessary, may declare that the land is required for the service of the Authority.

Power to
acquire land
compulsorily.

(2) Where a declaration is made under subsection (1) of this section, the land to which the declaration relates shall be deemed to be land required for a public purpose of the Federation within the meaning of the Land Use Act, and the President—

Cap. 202

- (a) may cause action to be taken under that Act for acquiring the land for the Federal Government; or
- (b) if the land is customary land, may issue a requisition under the appropriate law for the revocation of any rights relating to the land.

(3) Where a declaration has been made under subsection (1) of this section in respect of any land other than customary land and—

- (a) the land has been acquired pursuant to subsection (2)(a) of this section; or
- (b) the President is satisfied that there are no rights subsisting in respect of the land,

the President may vest the land in the Authority by means of a certificate under the hand and seal of the Chief Federal Lands Officer.

(4) Where a declaration has been made under subsection (1) of this section in respect of any customary land and—

- (a) the rights relating thereto have been revoked pursuant to subsection (2)(b) of this section; or
- (b) the Governor of the State in which the land is situated is satisfied that there are no rights subsisting in respect of the land,

the Governor in question may grant to the Authority right of occupancy of the land on such terms and conditions as he thinks fit.

Cap. 202

(5) The compensation, if any, payable under the Land Use Act for the acquisition of any land under this section or payable under the appropriate law for the revocation of any rights relating to the land, as the case may be, shall in the first instance be paid by the Federal Government, but the Authority shall refund to that Government any compensation so paid and all incidental expenses incurred by that Government.

(6) A plan of any land referred to in subsection (1) of this section—

- (a) containing measurements of the boundaries of the land;
- (b) showing the relationship of the land to any sufficient identifying mark; and

(c) signed by the General Manager of the Authority, shall be a sufficient description of the land for the purposes of an application under that subsection.

Exclusion of power to acquire Authority's lands compulsorily.

10. (1) Land vested in the Authority by virtue of this Act or otherwise shall not be liable to be acquired compulsorily under any enactment, and notwithstanding anything in any other enactment, no mining operations shall be carried on, in or under any land vested in the Authority or any land over which the Authority is entitled to rights of support for the benefit of lands so vested, except with the prior consent in writing of the Minister.

(2) Any person who suffers loss by reason of the provisions of subsection (1) of this section, relating to mining operations shall—

- (a) be paid an adequate compensation by the Authority in respect of the loss; and
- (b) be entitled to refer any question as to his interest in the subject-matter of the loss and as to the amount of any compensation payable in pursuance of this subsection for determination by the High Court having jurisdiction in the area in which the subject-matter is situated.

Cap. 192

(3) This section binds the State for the purpose of section 9 of the Interpretation Act and for the purposes of this subsection "the State" means the Government of the Federation or the Government of any State in the Federation.

11. (1) Notwithstanding anything to the contrary, the Authority may distribute or supply electricity in bulk or otherwise to any person whether or not such person is within an area of supply covered by licence issued under the Electricity Act.

Supply to persons within area covered by licence issued under the Electricity Act.
Cap. 106

(2) Where the Board decides to distribute or supply electricity in accordance with subsection (1) of this section, a notice of such decision shall be given by the Board to any person within the area of supply covered by licence issued under the Electricity Act within such period as may be specified by the Board.

(3) Where necessary, compensation shall be paid by the Board in respect of any installations and on such terms as the Board may in its discretion determine:

Provided that where a dispute arises as to the timing of any action which the Board intends to take or as respects any term upon which any act may be undertaken by the Board in accordance with the provisions of this section, such dispute shall be referred to the Minister who shall determine the matter and whose decision thereon shall be final and binding.

12. (1) The Authority shall maintain the continuity of supply of electricity as required by the Electricity Act, and any regulations made thereunder:

Continuity of supply.
Cap. 106

Provided that the Authority shall have the right to suspend the supply of electricity for such periods as may be necessary for carrying out inspection, tests, or repairs and for the making of new connections.

(2) The Authority shall in no case be under any obligation to pay damages or compensation for loss, damage or inconvenience caused to any consumer through any suspension, failure, discontinuance or whole or partial interruption of the supply of electricity howsoever caused.

13. (1) The rates and scales of charges for electricity shall be submitted by the Authority for the approval of the Minister, notwithstanding that the rates and scales aforesaid are the subject of an agreement between the Authority and any consumer.

Rates and scales of charges for electricity.

(2) Subject to the provisions of subsection (1) of this section, all charges for electricity sold in bulk or direct to consumers and for services rendered by the Authority shall be fixed at such rates and on such scales that the revenue derived in any year from such sales and services, together with its revenue in such year from other sources, will be sufficient as nearly as may be, to pay—

- (a) all salaries, working expenses and other outgoings of the Authority properly chargeable to income in that year;
- (b) the payments falling to be made in such year by the Authority in respect of the interest on or repayment of the principal of any money borrowed by the Authority;
- (c) any sums providing for the redemption of stock issued by the Authority under this Act; and
- (d) such sums as the Authority may think proper to set aside in that year for a reserve fund, extensions, renewals, depreciation, loans and other like purposes.

(3) The charges under this section may, if the Authority thinks fit, be fixed at different rates and scales for different localities.

Relation of
charges to
dividends.

Cap. 106

14. Where any authorised undertaker receives a supply of electricity in bulk from the Authority, the Minister may, having regard to any change in the cost of electricity to the authorised undertaker attributable to this Act, by regulation made under the Electricity Act, make provisions as to the relation between the charges to be made for electricity supplied to consumers and the dividends to be paid or profits earned by the authorised undertaker and such provisions shall have effect as if they were in substitution for any provisions as to the relation of charges to dividends or profits contained in the licence or agreement relating to the undertaking of the authorised undertaker.

Power to
discharge
purchase
price by
issue of
stock, etc.

15. The Authority, with the approval of the Minister, may by agreement with the undertaker concerned, discharge the whole or any part of the purchase price to any authorised or non-statutory undertaker in respect of any undertaking or part thereof or of any other property acquired under this Act by the issue to, or the creation in favour of such undertaker of

such amount of stock or other securities as may be agreed upon to be equivalent in value to the whole or part of such purchase price in respect of which the stock or other securities are issued or created.

16. (1) Subject as otherwise provided under section 19 of this Act, the Minister may, after consultation with the Authority, give to the Authority such directions of a general character as appear to the Minister to be requisite in the national interests and in particular, directions as to—

Powers of the Minister in relation to the activities of the Authority.

- (a) the expansion of existing electricity undertakings and ancillary works;
- (b) the establishment and working of new electricity undertakings;
- (c) the rendering of services and the supply of electricity to any Government department; and
- (d) the creation and application of a general reserve notwithstanding that these directions may be of a specific character,

and the Authority shall give effect to any such directions.

(2) The Authority shall afford to the Minister every necessary facility for obtaining information with respect to the property and activities of the Authority and shall furnish him with returns, copies of any minutes, accounts and other information with respect thereto and afford him facility for the verification of information furnished in such a manner and at such time as he may require.

(3) In this section, the reference to a Government department includes the Government of a State or any department of that Government.

17. (1) The Authority may, with the approval of the Minister, borrow by way of loan from any source any monies required by the Board for meeting its obligations and discharging the functions of the Board under this Act.

Borrowing powers.

(2) Without prejudice to the generality of subsection (1) of this section, the Authority may from time to time and subject as aforesaid borrow money or raise capital by the issue of debenture stock upon such terms touching the issue, transfer,

interest and redemption as may be so approved for all or any of the following purposes—

- (a) the provision of working capital;
- (b) the fulfilling of the functions of the Authority under this Act;
- (c) the acquisition of other electricity undertakings;
- (d) the redemption of any stock which they are required or entitled to redeem;
- (e) any other expenditure properly chargeable to capital account.

(3) The Government may guarantee, in such manner and on such conditions as it may think fit, the redemption or repayment of, and the payment of any interest on, any debenture stock issued by or any temporary loan raised by the Authority.

Funds of the
Authority.

18. (1) The Authority shall keep proper accounts and proper records in relation thereto, and shall prepare in respect of each financial year a statement of accounts in such form as the Minister may direct, being a form which shall conform with the best commercial standards.

(2) The Authority shall as soon as may be after the end of the financial year to which the accounts relate cause its accounts to be audited by auditors who shall with the consent of the Minister be appointed by the Authority.

(3) The auditors shall, on the completion of the audit of the accounts of the Authority for each financial year, prepare and submit to the Authority reports setting out—

- (a) general observations and recommendations of the auditors on the financial affairs of the Authority for the year and on any important matters which the auditors desire to bring to the notice of the Authority and the National Council of Ministers; and
- (b) detailed observations and recommendations of the auditors on all aspects of the operations of the Authority for that year.

(4) The Authority shall maintain a fund which shall consist of—

- (a) such monies as may from time to time be provided by the National Council of Ministers for the purposes of this Act by way of grants or loans as the case may be or both, and
- (b) such monies as may be received by the Authority in the course of its operations or in relation to the exercise by the Authority of any of its functions under this Act, and from such fund there shall, subject to subsections (5) and (6) of this section, be defrayed all expenses incurred by the Board; and the Board shall submit to the Minister not later than three months before the end of each financial year estimates of its expenditure and income (which shall exclude payments to the Board out of monies provided by the Federal Government) relating to the next following financial year.
- (5) The funds of the Authority for any financial year shall be applied in defraying the following charges—
- (a) the remuneration, fees and allowances of the members of the Board;
- (b) the salaries, fees, remuneration, pensions, superannuation allowances and gratuities of the officers, servants, agents and other persons acting under the authority of the Authority;
- (c) working and establishment expenses and expenditure on, or provision for, the maintenance and renewal of any of the undertakings of the Authority and the discharge of the functions of the Authority properly chargeable to revenue account;
- (d) interest on any stock issued, or any temporary loan raised, by the Authority; and
- (e) sums required to be transferred to a sinking fund or otherwise set aside for the purpose of making provision for the redemption of debenture stock or the repayment of other borrowed monies.
- (6) The balance of such funds shall be applied subject as in section 19 of this Act to the creation of a general reserve, and such other reserves as may be sanctioned by the Minister.
- (7) Without prejudice to the generality of section 16(2) of this Act, it shall be the duty of the Authority to prepare and

submit to the Minister not later than four months after the end of each financial year, a report which shall be in such form as the Minister may direct and shall relate to the activities of the Authority during the immediately preceding financial year.

(8) The report shall include a copy of the audited accounts of the Authority for that year and a copy of the auditors' report on the accounts, and such report shall be presented to the National Council of Ministers by the Minister soon after the receipt thereof as may be convenient.

Investment
of surplus
funds.

19. The Minister may with the approval of the National Council of Ministers issue to the Board such directions as he may think necessary as to the disposal of any surplus funds of the Authority, and subject to any such directions, the Authority may invest its funds, and maintain a general reserve.

PART III.—SPECIAL POWERS

Authorised Undertakings, Etc.

Control of
other
electricity
undertakings.

20. (1) If so requested by the Minister, the Authority shall supervise, manage or take over any electricity undertaking under the supervision and management of any relevant Government department, subject to—

- (a) payment of compensation in appropriate cases;
- (b) payment of all expenses involved in the supervision, management or taking over of such undertaking; and
- (c) such additional charges as could be agreed upon between the parties or as may be specified by the Minister.

(2) The reference in this section to "any relevant Government department" is a reference to any department of a Government in the Federation, corporation or any other body, immediately before the coming into operation of this Act, not being a body to whom this Act applies.

Furnishing
of
information
by
authorised
undertakers

21. The Authority may require any authorised undertaker to give to the Authority and every such undertaker when so required shall give to the Authority such information relating to its undertaking as the Authority considers necessary for the

efficient discharge of the functions of the Authority under this Act, and every authorised undertaker who on being so required fails or refuses to give such information shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding one thousand naira.

22. The Minister may, in his discretion or at the request either of the Authority or of any authorised undertaker, conduct such an inquiry into the administration and financial position of such undertaking as he considers necessary.

Power to institute an inquiry into the administration of authorised undertaking.

23. (1) If an inquiry instituted by virtue of section 22 of this Act reports that a more efficient service could be operated if the undertaking were to be handed over to the Authority, the Minister may require such undertaker to sell the undertaking to the Authority upon payment of a fair valuation, and may by order vest such undertaking in the Authority:

Acquisition of undertakings by the Authority in certain circumstances.

Provided that where the undertaking is, at the commencement of this Act, the subject of any deed, agreement or working arrangement between the undertaker and the Minister, such order shall not vest such undertaking in the Authority until after the expiration of such deed, agreement or working arrangement, unless the Authority satisfies the Minister that it is able to operate from its own resources a service more efficient than that maintained by the undertaker.

(2) In the event of any order being made under subsection (1) of this section, any dispute as to the price shall be referred to a referee.

(3) If the decision of the referee should not be accepted by either or both parties, the dispute shall be referred to the Minister, whose decision shall be final and binding.

24. (1) Where the Authority offers to any authorised undertaker a supply of electricity in bulk at a rate of charge, including provision for any expenses necessarily incurred by such undertaker in taking such supply in bulk which is equal to or less than the cost of generation of a like supply of electricity by such undertaker, such undertaker shall take the said supply in bulk upon such terms and conditions as shall

Supply of electricity in bulk by the Authority.

be determined by agreement or in default of agreement by the Minister.

(2) In the event of any dispute arising under this section, the same shall be referred to a referee.

(3) In this section, the expression "cost of generation" means all costs incurred by the undertaker which, having regard to the items of cost included in the rate of charge offered by the Authority for a supply of electricity in bulk, ought properly to be allocated to those parts of the undertaking engaged in the production of electricity.

Purchase and resale of electricity by the Authority.

25. (1) The Authority may purchase electricity in bulk from any authorised undertaker and may resell such electricity either in bulk to any authorised undertaker or by distribution to individual consumers.

(2) Any authorised undertaker may sell electricity in bulk to the Authority or purchase electricity in bulk from the Authority.

PART IV.—GENERAL INCIDENTAL POWERS

Payments in arrears.

26. Whenever any consumer of electricity supplied by the Authority leaves the premises where such electricity has been supplied to him without paying the charges for electricity or meter rental due from him, the Authority shall be entitled to recover from the next tenant the arrears left unpaid by the former tenant, unless the incoming tenant has before consuming electricity given notice to the Authority requiring the meter to be read or has given notice of the date of commencement of his tenancy where no meter is supplied.

Authority not responsible for safety of consumers' wires, etc.
Cap. 106

27. (1) The Authority shall not by virtue of making any inspection or test of a consumer's wires, fittings, appliances and apparatus in accordance with this Act or any regulations made under the Electricity Act, whether during the progress of the work of installation at the consumer's premises or after completion, be deemed responsible for the efficiency or safety of the consumer's wires, fittings, appliances and apparatus so inspected or tested, or for the proper execution of the work of installation, or for any damage or loss arising out of the

use or misuse of such consumer's wires, fittings, appliances and apparatus by the consumer or any other person other than an employee of the Authority.

(2) The Authority shall, except on the first occasion of inspection or testing, be entitled to prescribe a reasonable fee or fees for inspections or tests of consumers' wires, fittings, appliances and apparatus.

28. Except in so far as is otherwise provided by this Act where a supply of electricity is provided by the Authority in any part of an area for private purposes, every person within that part of the area shall upon application to the Authority, be entitled to a supply on the same terms on which any other person in such part of the area is entitled under similar circumstances to a corresponding supply.

Prevention of preferential treatment.

29. (1) If any person or department of the Government of the Federation or of a State does any matter or thing which such person or department is by or under any law authorised to do and which necessitates an alteration in any part of any transmission system or of any distribution system vested in or the property of the Authority, the Authority shall on reasonable notice being given make such alteration and the expenses incurred shall be borne by such person or department.

Expenses of certain necessary alterations.

(2) In the event of any dispute arising as to the amount of such expenses the same shall at the option either of the person or department or of the Authority be referred to an arbitrator to be appointed by the Minister.

30. (1) Subject to the provisions of subsection (4) of this section, the Authority may by its officers or agents with all necessary workmen and other servants enter from time to time on any lands for all or any of the purposes following—

Power to enter land for certain purposes.

- (a) the survey and taking of levels;
- (b) the construction, placing, maintenance, examination, repair, alteration, or removal of any electric or main transmission line;
- (c) the cutting and removal underneath or near, or on each side of, any proposed or existing electric or main transmission line of all such trees and underwood as

may interfere or be likely to interfere with the construction or proper working of any such line;

(d) attaching to any wall, house or other building any bracket or other suitable fixture required for the carrying or support of an electric or main transmission line or any other electrical apparatus;

(e) any other work connected with the supply of electricity.

(2) Save as is otherwise specifically provided by section 31 of this Act, the Authority shall when practicable give notice to the occupier of any land on which it is intended to enter.

(3) For all or any of the purposes aforesaid such officers, agents, workmen or other servants may remain on any such land for such reasonable time and execute and do all such work and things as may be necessary.

(4) The Authority shall not construct, place, maintain, examine, repair, alter, or remove any electric or main transmission line under, in, upon, over, along, or across any land, road, building, embankment, dock, harbour or pier under the control of a department of Government or other public authority without the prior approval of the head of the department concerned or of such public authority.

(5) Any electric or main transmission line placed across or over any road shall be placed so as not to interfere with the passage along such road, and the Authority shall make good any road opened or broken up for the purposes referred to in subsection (1) of this section.

Notice of
intention to
enter land to
construct
new electric
or main
transmission
lines, etc.

31. (1) Before constructing a new electric or main transmission line across any land or attaching any fixture to any building, the Authority shall when practicable serve on the occupier of such land or building such notice as is referred to in section 30(2) of this Act, which shall be in writing giving a description of the nature of the line or fixture and the manner in which it is intended to be constructed or attached.

(2) If within thirty days after the service of such notice the occupier fails to lodge an objection with the Authority in writing to the work specified in the notice, the Authority may proceed with that work.

(3) If within thirty days after the service of such notice the occupier lodges an objection with the Authority in writing to the work specified in the notice, such work shall not be undertaken by the Authority unless and until the Authority has obtained the approval in writing of the Minister.

(4) If the owner of any land or building across or on which an electric or main transmission line or fixture has been constructed or attached requires the position of such electric or main transmission line to be altered, the Minister, if satisfied that the requirements of such owner are such as to warrant the alteration of the position of the electric or main transmission line or fixture, may by notice in writing require the Authority to alter the position of such line or fixture subject to conditions which failing agreement between the parties, may be prescribed by the Minister, and unless the Minister decides to the contrary, the cost of such alteration shall be paid to the Authority by the person requiring the alteration and the Authority shall not be compelled to carry out the alteration until the payment of the cost thereof has been secured to it.

32. (1) The Authority shall not without first having obtained the approval of the Minister in writing, place any electric cable across any navigable river or navigable waterway whether such cable is placed above or below water or under the ground.

Cables
across
rivers, etc.

(2) Where such approval is given, the Authority shall publish a notice declaring the delineated area to be a prohibited area for anchorage in the case of a cable placed below water and restricting the height of vessels which may pass through the area in the case of a cable placed above water.

(3) If any person requires the position or height of such cable placed across such navigable river or waterway to be altered, the Minister may by notice in writing require the Authority to alter the position or height of the cable subject to conditions which, failing agreement between the parties, may be prescribed by the Minister and the cost of such alteration shall be paid to the Authority by the person or body requiring the alteration and the Authority shall not be compelled to carry out the alteration until the payment of the cost thereof has been secured to it.

PART V.—MISCELLANEOUS PROVISIONS

Compensation for damages, etc.

33. (1) In the exercise of the powers conferred by section 30 of this Act on the Authority, its officers, servants and agents shall do as little damage as may be and the Board shall pay compensation for any damage done to any buildings, crops, or economic trees.

(2) The Board shall pay compensation in respect of water abstracted in exercise of the power conferred by section 7(2)(b) of this Act to any person injuriously affected.

(3) In the case of a dispute as to the amount of compensation payable, the same shall be determined by a magistrate exercising jurisdiction in the place where the land is situate or the High Court within whose area of jurisdiction the land is situated as the case may be and such decision shall be final and binding.

Stand-by supplies.

34. (1) A person shall not be entitled to demand or continue to receive from the Authority for the purposes of stand-by supply only from the Authority, a supply of electricity for any premises having a separate supply of electricity or a supply (in use or ready for use for the purpose for which the stand-by supply of electricity is required) of gas, steam or other form of energy, unless he has agreed with the Authority to pay such minimum annual sum as will give to the Authority a reasonable return on the capital expenditure incurred in producing such stand-by supply and cover other standing charges incurred in order to meet the possible maximum demand for these premises.

(2) If any dispute or question arises between any person and the Authority as to the amount of such minimum annual sum, such dispute or question shall be determined by the commissioner or, if the Minister so thinks fit, by an arbitrator appointed by him.

Restriction on the grant of licences under the Electricity Act.
Cap. 106

35. Notwithstanding any of the provisions of the Electricity Act, no licence shall, on or after the vesting date, be granted under the provisions of the said Act to any person or a State Government agency other than the Authority unless notice of the particulars of the application for such licence has been

given to the Authority and except with the prior approval of the Minister.

36. (1) The Minister, at the request of the Authority and after such inquiry as he may think fit, may declare any lake, river or waterway to be a prescribed source of water for the purposes of this Act. Prescribed sources of water.

(2) Notwithstanding any provisions of any other enactment or law, no person shall dam up or otherwise interfere with any such prescribed source of water without first serving on the Authority a notice stating the works he proposes to undertake in the prescribed form and within the time stated in such notice the Authority may if in the opinion of the Minister such dam or works or interference will materially affect the functions of the Authority under this Act—

- (a) require such person to desist from such undertaking; or
- (b) consent to such undertaking either conditionally or otherwise:

Provided that if the Authority requires such person to desist or attaches to its consent such terms and conditions as in the opinion of the Minister are unjust, the Minister may give consent for such person to undertake the work in question.

(3) The Minister may make regulations prescribing the procedure to be followed upon an application that any lake, river or waterway be declared a prescribed source of water.

37. Electricity shall be deemed to be goods, wares or merchandise for the purposes of the exemption numbered (3) under the heading "Agreement or any Memorandum of an Agreement" contained in the Schedule to the Stamp Duties Act. Exemption of agreements for the supply of electricity from stamp duty.
Cap. 411

38. Notwithstanding anything to the contrary, the income tax payable upon the chargeable income of the Authority shall be calculated at the rate prescribed by section 28 of the Companies Income Tax Act. Provisions relating to income tax.
Cap. 60

Main transmission lines excluded from rates.

39. (1) Main transmission lines shall not be regarded as hereditaments or tenements to be valued for rating purposes.

(2) In this section, "main transmission lines" includes power generating stations, transformer sub-stations and similar installations but does not include residential buildings.

Authority not otherwise exempted.

40. Save as is provided in sections 37, 38 and 39 of this Act, nothing in this Act shall be deemed to exempt the Authority from liability for any tax, duty, rate, levy or other charge whatsoever, whether general or local.

Limitation as to award of contracts.

41. Notwithstanding anything contained in this Act or any other enactment or law to the contrary, any contract relating to any project of a value of not less than two hundred thousand naira shall be referred by the Authority to the National Council of Ministers for approval through the Minister before any award of such contract is made.

Regulation of public access to Authority's premises.

42. (1) The Authority may, with the approval of the Minister, make bye-laws—

- (a) prohibiting or restricting the access of members of the public or of any class of members of the public to any premises vested in, occupied by or under the control of the Authority;
- (b) regulating the hours during which, the means whereby the purposes for which and the conditions subject to which members of the public or any class of members of the public may have access to or egress from any such premises or portion thereof;
- (c) for ensuring the maintenance of good order and discipline amongst members of the public at any time when upon any such premises;
- (d) prohibiting or restricting the use to which land over, underneath or near which electric or transmission lines run, and for preventing the unauthorised or improper use of or the wilful or negligent occasioning of injury to any property owned, vested in, occupied by or under the control of the Authority.

(2) Bye-laws made under the provisions of this section, shall not come into force until they have been approved by the Minister and published in such manner as he shall direct or until such later date as may be specified in the bye-laws.

(3) Bye-laws made under this section, may provide that for the contravention of such bye-laws there may be imposed on the conviction of any person for any such contravention, a fine not exceeding ten naira or in default of payment thereof imprisonment for a term not exceeding one month.

(4) For the purposes of this section, members of the Board, officers and servants of the Authority shall not be deemed to be members of the public.

(5) In this section, "premises" includes lands, plants and ancillary works.

43. The Authority, subject to the approval of the Minister, may make regulations for all or any of the purposes following— Power to make regulations.

- (a) prescribing the general conditions under which electricity shall be supplied or discontinued to consumers;
- (b) prescribing the general conditions of sale or letting on hire of electrical equipment of all kinds;
- (c) prescribing the form of and conditions to be contained in and the method of service of any notice required or authorised under this Act;
- (d) prescribing any fee or anything which is to be prescribed generally and for the better carrying out of the purposes and provisions of this Act.

44. (1) The reference in this Act to the body to whom this Act applies is a reference to— Interpretation.

- (a) the Electricity Corporation of Nigeria established under the Electricity Corporation of Nigeria Act; or Cap. 58 of the 1958 edition.
- (b) the Niger Dams Authority established under the Niger Dams Act 1962, 1962 No. 23.

and the references in any other enactment or law to those bodies or either of them shall be construed as references to the Authority and effect shall be given to the enactment or law with such modifications as may be necessary.

(2) In this Act, unless the context otherwise requires or it is otherwise expressly provided, the following expressions have the meanings respectively assigned to them—

“ancillary works” means the Kainji works or works connected therewith including reservoirs, locks, lakes, canals associated with the dam on the river Niger commonly known as “Kainji Dam”, the main transmission lines and other schemes for the provision of works in addition thereto on or in connection with the river Niger and its affluents which have been approved or are existing on the vesting date;

“authorised undertaker” means any person or body of persons empowered by the Minister to generate, transmit, distribute, supply or sell electricity within any area;

“Authority” means the National Electric Power Authority established by section 1 of this Act;

“the Board” means the board of directors of the Authority as constituted pursuant to section 2 of this Act;

“electricity lines” means any wire, conductor or other means used for conveying, transmitting or distributing electricity or electric currents and includes any earth conductor, guard, instrument, insulator, casing, tubing or standard, pole, post or other support of any electric line or anything connected therewith;

“functions” includes powers and duties;

“Government” means the Government of the Federal Republic of Nigeria;

“Minister” means the Minister for Mines, Power and Steel;

“main transmission lines” means all extra high pressure cables and overhead lines transmitting electricity from a generating station to any other generating station or to a sub-station, together with any step-up or step-down transformers and switch-gear necessary to, and used for, the control of such cables or overhead lines, and the buildings or such part thereof as may be required to accommodate such transformers and switch-gear;

“occupier” includes—

(a) in the case of land registered as freehold or leasehold under the provision of the Registration

of Title Act or land registered under any enactment replacing that Act whether in relation to its application to the former Federal territory or otherwise, the person for the time being recorded in the register as being the owner;

- (b) in relation to land or other property of a community, the chief or head of that community; and
- (c) the holder of a right of occupancy and a person or community lawfully using or occupying land in accordance with customary law; and "vesting date" means 1st June, 1972.

(3) The references in sections 23 and 24 of this Act to a "referee" are references to a referee appointed by the Minister.

45. This Act may be cited as the National Electric Power Authority Act. Short title.

SCHEDULE

Section 2

PART I.—POWERS, MEMBERSHIP AND PROCEEDINGS OF THE BOARD

Powers of the Board

1. The Board shall be responsible for the determination of the overall policy of the Authority and in particular for the financial, economic and operational programmes of the Authority, and for ensuring the implementation of such policies and programmes.

Membership

2. The Board shall consist of a Chairman to be appointed by the President and the following other members, that is—

- (a) seven persons appointed by the President being persons who by reason of any requisite ability, experience and specialised knowledge, have skills that will be useful and will enable them to make effective contributions to the work of the Authority;
- (b) the Director-General, Federal Ministry of Mines, Power and Steel and in his absence, the Director, Electric Inspectorate Services, Federal Ministry of Mines, Power and Steel and
- (c) the General Manager of the Authority.

3. In paragraph 2 of this Schedule "deputy" in relation to the Director-General to any Ministry referred to thereunder means the public officer

serving in the Ministry who is authorised in writing by the Director-General to act (either generally or on a particular occasion) as the Director-General's deputy for the purposes of the said provision.

4. Subject to this Act, a member of the Board who is not a public officer shall, unless he previously vacates his office—

- (a) hold office for three years on such terms as may be specified in his instrument of appointment; and
- (b) be eligible for re-appointment.

5. Members of the Board who are not public officers shall be paid out of monies at the disposal of the Board, such remuneration and allowances as the Minister may with the approval of the National Council of Ministers determine.

Proceedings

6. Subject to this Act and section 27 of the Interpretation Act (which provides for decisions of a statutory body to be taken by a majority of its members and for the Chairman to have a second or casting vote), the Board may make standing orders regulating the proceedings of the Board or any committee thereof, especially as regards—

- (a) the holding of meetings;
- (b) notice to be given of such meetings and proceedings thereat;
- (c) the keeping of minutes, and the custody, production and inspection of such minutes; and
- (d) the opening, keeping, closing and auditing of accounts.

7. Every meeting of the Board shall be presided over by the Chairman or, if the Chairman is unable to attend any particular meeting, by another member appointed by the members present at the meeting to act as Chairman for that particular meeting.

8. The quorum at a meeting of the Board shall be the Chairman (or, in an appropriate case, the person appointed to act as Chairman under paragraph 7 of this Schedule) and four other members.

9. Except as provided by paragraphs 2 and 3 of this Schedule, no member of the Board shall be entitled to appoint an alternate or deputy to represent him at a meeting.

10. Where standing orders made under paragraph 6 of this Schedule provide for the Board to co-opt persons who are not members of the Board such persons may advise the Board on any matter referred to them by the Board, but shall not be entitled to vote at a meeting of the Board.

11. With the approval of the Minister, the Board may make regulations providing for—

- (a) the grant of pensions, gratuities and other retiring allowances and benefits to its officers and servants and their dependants, and the grant of gratuities to the estates, or dependants of its deceased officers or servants, and
- (b) the establishment and maintenance of medical benefit funds, superannuation funds and provident funds and the contributions payable thereto and the benefits receivable therefrom.

12. The Authority shall have a common seal and the affixing of the seal shall be authenticated by the signatures of the Chairman or some other member of the Board authorised, either generally or specially, by the Board to act for that purpose, and if the Secretary or some other person authorised either generally or specially by the Board to act for that purpose; and every document purporting to be an order or other instrument issued by the Board and to be sealed with the seal of the Authority authenticated in the manner provided by this paragraph, or to be signed by the Secretary, shall be received in evidence and be deemed to be such order or instrument without further proof, unless the contrary is shown.

13. Any contract or instrument which, if made or executed by any person not being a body corporate would not be required to be under seal, may be made or executed on behalf of the Authority by any person generally or specially authorised to act for that purpose by the Board.

14. The validity of any proceedings of the Board shall not be affected—

- (a) by any vacancy in the membership of the Board, or
- (b) by any defect in the appointment of a member of the Board, or
- (c) by reason that a person not entitled to do so took part in the proceedings of the Board.

PART II.—DUTY OF MEMBERS—DISCLOSURE OF INTEREST Section 2

1. A member of the Board who has any interest in any company or concern with which the Board proposes to make any contract or arrangement or any interest in such contract or arrangement shall disclose to the Board the fact of such interest and the nature thereof, and such disclosure shall be recorded in the minutes of the Board, and such member shall take no part in any deliberation or decision of the Board relating to such contract or arrangement.

2. Every person appointed to be a member of the Board shall within three months after his appointment absolutely sell and dispose of all shares in any electricity undertaking which he shall at the time of his appointment own or be interested in for his own benefit, and if any shares in any electricity undertaking shall come to or vest in a member of the Board by will or succession for his own benefit, he shall within three months after the same have so come to or vested in him, absolutely sell and dispose of the same or his interest therein.

3. A member of the Board shall not, while he holds that office, purchase, take or become interested in or for his own benefit any shares in any electricity undertaking.

4. Any member of the Board who shall retain, purchase, take or become or remain interested in any shares in any electricity undertaking in contravention of this section shall be disqualified from and be deemed to have vacated his office as such member.

5. In this section, the expression "shares in any electricity undertaking" includes any stock, shares, debentures, debenture stock, bonds, or other securities of any company engaged in the generation, distribution or supply of electricity or the manufacture of or wholesale or retail dealing in electrical apparatus and includes any share or interest in any undertaking similarly engaged.

PART III.—OFFICERS AND SERVANTS OF THE AUTHORITY, ETC. Sections 2
and 4

1. Officers and servants of a body to whom this Act applies who, on the vesting date, are on the established staff of such body shall be deemed to be seconded for such period as may be specified by the Board by an instrument addressed to the said officer or servant from the service of the body in question to the service of the Authority subject to such limitation as regards periods of service as may be provided by their existing terms of service in that body.

2. The Board shall within the period specified in such instrument offer to each such officer or servant who is then in the service of the body, employment by the Authority on such terms and conditions as the Authority shall determine.

3. No such officer or servant shall be offered employment by the Authority upon terms and conditions generally less favourable than those enjoyed by the officer at the date of such offer.

4. If the Board thinks it expedient that any vacancy in the staff of the Authority should be filled by a person holding office in any of the public services of the Federation, it shall inform the Minister responsible for establishments to that effect, and thereafter the Civil Service Commission of the Federation may fill the vacancy by way of secondment or transfer.

5. Where a member of any of the public services of the Federation is seconded under paragraph 4 of this Schedule, he shall be notified of the terms and conditions of the secondment; and the secondment shall be without prejudice to any pension rights which, but for the secondment, would accrue to him.

6. A person seconded under paragraph 4 of this Schedule may elect to be transferred to the staff of the Authority, in which case any previous

service in any of the public services as aforesaid shall count as service for the purposes of any pension subsequently payable by the Authority.

7. Where a person who is a member of any of the public services of the Federation is transferred to the service of the Authority, then, if the Minister responsible for pensions so directs—

- (a) that person's former service in that civil service shall be taken into account in applying the provisions of the Pensions Act, and
- (b) that Act shall have effect as if that person's subsequent service with the Authority were service in that public service.

Cap. 346

8. Section 2 of the Statutory Corporations, etc. (Special Provisions) Act shall apply in relation to the Authority as if the Authority were a board affected by that Act, so however that in the application of that section—

Cap. 417

- (a) references to the board of an affected corporation shall be construed as references to the Authority, and
- (b) references to appointments shall be construed as excluding references to the appointment of *ex-officio* members of the Authority.

9. The Board may with the approval of the National Council of Ministers by bye-laws make provisions for matters connected with the foregoing, and also in relation to the appointment, promotion and discipline of the officers and servants of the Authority.

10672

CAP. 256]

*National Electric Power
Authority Act*

NATIONAL ELECTRIC POWER AUTHORITY ACT

CHAPTER 256

SUBSIDIARY LEGISLATION

No Subsidiary Legislation