

NOTE: Unofficial translation - for information only

Act No. 16 of 14 December 1917 relating to acquisition of waterfalls, mines and other real property etc. (Industrial Licensing Act)

DATE: Act No. 16 of 14 December 1917
MINISTRY: Ministry of Petroleum and Energy
PUBLISHED: ISBN 82-504-1030-0
MOST RECENTLY AMENDED: Act No. 57 of 25 June 2004
AMENDS:

Act relating to acquisition of waterfalls, mines and other real property etc.

Chapter I. Waterfalls.

Section 1. Without the permission of the King (hereinafter referred to as licence) no one other than the State may with full legal effect acquire the right of ownership or of use to waterfalls (falls or rapids) that, when harnessed, can be expected to produce more than 4,000 natural horsepower either alone, or in conjunction with other waterfalls that the acquirer owns or uses when it can be appropriate to develop them jointly. The licence obligation also applies to agreements relating to acquisition of long-term disposition rights to hydropower resources.

However, a licence is not necessary when waterfalls are acquired through distribution of joint marital property or by inheritance, redemption of allodial property or transfer when the acquirer (the heir) has greater allodial rights than the transferor (the deceased), is the latter's spouse or is related to him by marriage in direct line of ascent or descent or in the first or second collateral branch. If a licence was previously granted for the waterfall in question, the conditions stipulated in the licence shall also apply to the new acquirer (cf., however, section 27).

Disputes about the amount of power shall be determined by appraisal unless the acquirer agrees having the Ministry concerned take the decision.

When special considerations exist, the Ministry concerned may in individual cases make exceptions from the licence obligation and right of pre-emption.

Should the acquired waterfall not be utilised for power production, the King may permit acquisition without the application of the basic rules in section 2, fourth paragraph.

Should the licensee subsequently apply to develop the waterfall, the King shall stipulate terms and conditions in line with the basic rules of the Act in effect at the time in question. Should development be commenced without the stipulation of terms and conditions, the provisions in sections 31 and 32 will apply accordingly.

Section 2. Norwegian citizens and citizens in other states party to the EEA Agreement, other foreign nationals and legal persons, may under special circumstances be granted a licence to acquire ownership rights to waterfalls on specified conditions stipulated by the King.

The provision also applies to legal persons described in Article 34 of the EEA Agreement, which were formed in accordance with the law of one of these states, and have their registered office, central administration or principal place of business in such a state.

Should the acquisition concern a waterfall that, when harnessed, can be expected to produce more than 20,000 natural horsepower, or there is a conflict of vital interests, the matter shall be submitted to the Storting before a licence is granted, unless the Ministry deems this unnecessary.

In granting a licence and stipulating conditions, the following basic rules shall be adhered to:

1. The licence shall be granted to a specified person, company, corporation or foundation.

Companies shall be obliged to keep a list of all participants and their citizenship,

2. The licence permits the utilisation of the waterfall as a source of power in accordance with the licence conditions and the legislation in force at any given time respecting such activities.
3. Development of the waterfall must commence within a time limit of not more than five years. The work must be completed and the installation put into operation within a further time limit of not more than five years. Operation of the plant must not be continuously interrupted for a period as long as three years or reduced for the same period to less than one-third of the capacity of the machinery installed and intended for regular operation, not including the portion reserved for the State, municipality or county pursuant to subsection 12, and such interruptions or reductions must not add up to as much as five years over the course of ten years. The time calculations do not include time impossible to make use of due to *vis major*, strikes or lockouts. When necessary, permission may be granted to develop the waterfall in stages within specified time-limits, or for its partial development. The King may grant exemptions from these provisions.
4. - - -
5. - - -
6. The licensee may be required to pay compensation for expenditure connected with stepped-up wildlife and fish monitoring during the period of construction.

The Ministry concerned may further stipulate that the licensee be required to guarantee immediate compensation to the survivors of someone who perishes in a work accident during the period of construction.
7. If the licence is expected to result in urban development or a large influx of people, the licensee may be required to cover all or part of the expenditure connected with preparing a zoning plan, and in certain cases, for the land use part of the municipal

master plan, as further stipulated by the Ministry.

If the licence entails a substantial encroachment in mountain regions, the licensee may be required to cover all or part of the expenditure connected with preparing a zoning plan and the land use part of the municipal master plan, as further stipulated by the Ministry.

8. The licensee should be required to pay compensation for all or part of the expenditure for maintaining and repairing public roads, bridges and quays, when these outlays are expected to rise considerably as a consequence of construction work and in consequence of transports to and from licensee-owned industrial works powered by the installation. Roads, bridges and quays built by the licensee shall be open to the public, unless the Ministry decides otherwise.

9. - - -

10. It may be stipulated in the licence that should the licensee utilise the hydropower for industrial production, the export of the products shall not, without the consent of the Ministry concerned, take place at prices below normal world market prices. Furthermore, it may be stipulated that importation for production may not, without the consent of the Ministry, take place at prices above normal world market prices.

It may also be stipulated that remuneration for economic, technical and commercial assistance shall be subject to Ministry approval.

11. - - -

12. It shall be stipulated in the licence that the licensee shall surrender to municipalities and counties in which the power plant is located up to 10 per cent of the average amount of power that the waterfall, when harnessed, can produce based on the expected rate of flow from one year to the next. The amount surrendered and its distribution shall be decided by the Ministry concerned on the basis of the county's or municipality's general electric power supply needs. The county or municipality may use power provided as it sees fit.

The licensee may be required in addition to surrender up to five per cent of the power to the State calculated as in subsection 12, first paragraph. The State may freely dispose over the allocated power.

The licence shall have provisions to notify the licensee before power is drawn on or terminated.

The Ministry shall decide how the power is to be surrendered and calculate the output and energy.

Power shall be drawn from the power station's transmission substation or the licensee's transmission lines for securing a supply of firm power and a utilisation period as low as 5,000 hours a year. The licensee may not oppose power being drawn from another party's transmission lines, and is in that case obliged to make the power available. The cost of transforming and transmitting the power when drawn from somewhere other than the power station's transmission substation shall be paid by the party drawing the power.

The price of the power shall be set on the basis of the average cost for a

representative sample of hydroelectric power stations throughout the country. Taxes calculated on the profit from power production in excess of a normal rate of return are not included in the calculation of this cost. Each year the Ministry shall set the price of power supplied at the power station's transmission substation. The provisions of the first and third sentences do not apply to licences valid prior to the entry into force of Act No. 2 of 10 April 1959.

A decision regarding the surrendering and distribution of power may be brought up for reconsideration after twenty years.

The King may issue further regulations relating to surrendering, distribution and prices.

13. The licensee shall be required to pay an annual fee to the State and an annual fee to the counties and rural and urban municipalities as determined by the King, calculated on the basis of the average amount of power that the waterfall, once its harnessing is completed, can produce, based on the expected rate of flow from one year to the next. The King shall lay down regulations regarding the maximum and minimum rates that are to apply. In laying down the regulations special allowance must be made for changes in the purchasing power of the krone. Should the waterfall be subject to annual regulation fees, the fees shall be deducted from the fees imposed under this subsection, in respect of that portion of the amount of power on which regulation fees are paid.

After five years, the stipulation of the fee may be re-examined by the licensing authorities.

Unless laid down by the King, further provisions regarding the payment of the fee and monitoring of water consumption shall be stipulated in each individual case by the Ministry concerned on the recommendation of the Norwegian Water Resources and Energy Directorate.

Payment of the fee is enforceable by attachment. Should it not be paid when due, interest shall be levied as laid down in pursuance of section 3, first paragraph, Act No. 100 of 17 December 1976 relating to interest on overdue payments, etc.

If the annual amount of the fee to the State or counties and municipalities comes to less than the minimum specified by the King, and the parties entitled to as well as subject to the fee agree, the Ministry may stipulate that the annual fee be paid in a lump sum pursuant to regulations laid down by the King. In special circumstances, the King or Storting, if the licence has been submitted to the latter, may reduce or waive the fee for a specific period of time.

The fee to the counties and municipalities shall be apportioned among them as stipulated by the King for ten years at a time. The fee shall be set aside in a separate fund for each county or municipality to be used as stipulated by the county or municipal council. This authority may be delegated to another municipal or county body. In accordance with statutes subject to the approval of the Ministry concerned, the monies in the fund shall preferably be used for local industrial development. The Ministry may delegate the authority to approve the statutes to the county governor. The municipality may appeal the decision of the county governor according to rules further stipulated by the Ministry. Statutes for funds under an amount stipulated by

the King do not require approval.

14. The licensee should be required to avoid the destruction of natural resources and areas when such avoidance is desirable on scientific or historical grounds or for reasons of the area's natural beauty or uniqueness. If such destruction cannot be avoided, the nature conservation authorities must be notified well in advance.

The licensee shall be required to ensure that the installations disfigure the countryside as little as possible, in accordance with further provisions from the Ministry concerned. The licensee is obliged to obtain a permanent right to use disposal sites and other areas necessary for carrying out orders issued pursuant to this paragraph. The licensee shall undertake a proper cleanup of the construction areas and the cleanup must be completed no later than two years after the installation in question has gone into operation.

The licensee should be required to the extent possible to plan temporary auxiliary installations so that they may be of permanent use to the public.

15. - - -

16. The licensee shall be required to submit to the verification of his compliance with a list of conditions that the Ministry concerned deems necessary. The licensee may be required to cover expenses connected therewith.

17. The licence shall be granted for a specified period of time of up to sixty years reckoned from the date the licence is granted. When the licence period expires, the waterfall and all the facilities through which the course and bed of the water have been altered, such as dams, canals, tunnels, reservoirs, pipelines etc., the parcels of land and the rights acquired for the development and power plant, the power stations and appurtenant machinery and other equipment, as well as the housing built for workers and other buildings that belong to the power plant, shall revert to the State with full ownership rights and without any compensation. The State may redeem whatever property does not revert to it at a price appraised at its expense or order its removal within a time limit set by the Ministry.

When the licence period expires, the installation including buildings and installed machinery shall be in full working order. Disputes in this regard shall be resolved by appraisalment. The licensee is obliged to comply with the decision of the court of appraisalment. The court shall decide which party shall pay the costs of appraisalment.

18. - - -

19. - - -

20. - - -

21. A licence should be granted only if older mortgages, easements of considerable importance, leasing rights and similar encumbrances are removed or yield in priority to the obligations imposed in the licence, including coercive fines pursuant to section 26. When a waterfall is sold, the fact that the seller reserves, after the licence period, ownership rights to power from the plant that utilises the waterfall for his private domestic use, farming needs and any trades and small-scale manufacturing that can be carried out in natural connection with the farm, shall, however, pose no obstacle to the granting of the licence.