

## Environmental Conservation

### ARTICLE 15 WATER RESOURCES

#### TITLE 17 WATER POWER

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#### § 15-1701. Reservation of state control.

Where any person takes, diverts, appropriates, or otherwise uses, whether by virtue of the provisions of title 17 of this article or otherwise, the waters of the state over which the state has the proprietary ownership of the flow and to the use of which the state has the right paramount and exclusive, or concurrently with any other jurisdiction, such waters shall remain subject to the power and control of the state for the purposes of regulating, licensing, controlling, or terminating the use and disposition of the same by such person, as well as for the purpose of exacting any rentals or charges therefor.

#### § 15-1703. Definitions.

When used in title 17 of this article unless otherwise expressly

stated or unless the context or subject matter otherwise requires:

1. "Licensee" means a person or public corporation holding a license issued pursuant to title 17 of this article, his successor in interest or assign;

2. "Stream" means a river or other stream and its tributaries;

3. "Water power site" means the real property including rights appurtenant thereto or which may become appurtenant thereto which, when a water power is developed, is necessary or useful for the construction, maintenance and operation of a plant for the use of a fall of water for the generation of power;

4. "Developed water power site" is a "water power site" where the development is used or usable in its present condition for the generation of power or where the works of such development are being constructed or are in course of repair;

5. "Surplus canal waters" means such waters flowing in canal feeders, artificial canals or the canalized streams of the state, as in the judgment of the Commissioner of Transportation, are not necessary for any canal uses or purposes;

6. "Project" means a complete unit of improvements or development, consisting of a power plant, all water conduits, or dams and appurtenant works and structures which are a part of such unit, and all storage, diverting or forebay reservoirs connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system, all miscellaneous structures used and useful in connection with such unit or part thereof, and all water rights, rights of ways, ditches, dams, reservoirs, lands or interest in lands, the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;

7. "Project works" means physical structures of a "project;"

8. "Reconstruction cost" of a project or of any part thereof means the actual and reasonable original cost to the licensee of the lands or interests in the lands of such project or such part, less depreciation, if any, plus the cost of reproducing the ways, means and works thereon less the depreciation of such ways, means or works, including in such costs a reasonable allowance for organization and development expenses, but excluding therefrom any allowance for the value of the license or any contract, lease or franchise, or value as a going concern, or future profits in pending or existing contracts or prospective profits, revenues, dividends or any other intangible element;

9. "Real property", without words of limitation, includes all uplands, lands under water, waters of any lake, pond or stream, all water and riparian rights or privileges, all dams, races, sluiceways, and machinery connected therewith, and all land, water and rights necessary to carry out any project or development provided for by title 17 of this article, including the right to divert running water of any stream or streams, and lands necessary for such diversion, and all easements and incorporeal hereditaments, and every estate, interest and right, legal or equitable in land and water, including terms for years and liens on real property as above defined and all real property as above defined, acquired and used for railroad, highway and other public purposes in any county containing a part of the forest preserve as now constituted.

10. For other definitions, also applicable in this title, see section 15-0107.

§ 15-1705. Licenses; approval by the Governor.

1. The department, subject to the provisions of title 17 of this article, may upon application issue to any person or public corporation heretofore or hereafter authorized to develop, use, furnish or sell power in this state or to a municipality of the state having such authority, a license authorizing the diversion and use for power or other purposes of any of the waters of the state in which the state has a proprietary right or interest, or the bed of which, or the real property required for use of such waters or the right to develop water power, is vested in the state; or of boundary waters of the state where the state has jurisdiction over the diversion or interference with the flow of the same solely or concurrently with any other jurisdiction or owner of a proprietary right; or to any such applicant when the owner of any water power site or sites which it uses or proposes to use for the production, sale and distribution of heat, light or power to the public; and subject to the property right of others including riparian rights, authorizing the construction, maintenance and operation in, across or along any of such lands and waters of such dams, reservoirs, diverting canals or races, water conduits, power houses, transmission lines and other project works as are deemed necessary or convenient for the development, transmission and utilization of the developable power and authorizing in connection therewith the use of dams or other structures or contiguous or adjacent lands belonging to the state. When any water power site or property necessary to the full development of such a site is owned by the state, or water, the use of which is dependent upon the consent of the state, is not, in the opinion of the department suitable or necessary for the development of power for public use, a license may be issued to a person or public corporation for private use under like conditions and with the same restrictions.

2. Whenever the use of water or the erection of structures under a license may affect the navigable waters over which the United States shall have lawfully assumed jurisdiction for purposes of navigation, such license shall not be issued until the plans for such use and structures have been submitted to and approved by the federal authorities as required by law and any licenses shall be at all times subject to the lawful exercise of such jurisdiction over the waters affected by the license for the purposes of navigation.

3. Whenever canal lands, structures or surplus canal or canal feeder waters are covered by the license, the license shall not issue unless the Commissioner of Transportation certifies to the department in writing that the same are not necessary for the navigation or operation of the canals and shall not become effective until endorsed with his approval. Any licensee in the use of such license, structures or water shall be at all times subject to such reasonable rules and regulations as the Commissioner of Transportation shall from time to time prescribe so that the use thereof by the licensee shall not impair the efficiency of the canals and such use shall at all times be subordinate to the needs of the canals.

4. Notwithstanding any provision of title 17 of this article, no license issued by the department pursuant to the provisions of title 17 of this article shall be effective unless and until it is approved in writing by the Governor and such approval is signed by him and affixed thereto; and notwithstanding any provision of title 17 of this article a modification of such license shall not be effective until approved by the Governor in like manner.

§ 15-1707. Procedure on application for license.

1. Each applicant for a license shall submit to the department a written verified application in such form as the department may prescribe and containing such data or information of the applicant's project as the department may require. It shall be accompanied by proposed plans and specifications showing the nature and extent of the applicant's proposed development and estimates of cost as may be required for a full understanding of the proposed project. Such maps, plans and specifications when approved by the department shall be made a part of the license; and thereafter no changes shall be made in such maps, plans or specifications until such changes shall have been approved and made a part of such license by the department. Applications shall be filed with the department in the order of their receipt.

2. Each license covering water power sites or lands, the title to which is vested in the state, shall require the payment by the licensee of an annual charge measured by a fair rental value thereof; in other cases, except where the state has no proprietary interest, an equitable annual charge may be made, in determining which the department shall give consideration to the cost of producing power by others in competition with the licensee; and every license shall require the payment by the licensee of an annual charge for the purpose of reimbursing the state for the cost of administration of the provisions of title 17 of this article. The department, by resolution, shall fix and determine such annual charge, and the time or stage of development from which rentals are to be computed, whereupon if one or more applicants signifies his readiness, and establishes to the satisfaction of the department his ability, to construct and maintain the proposed project, to pay the charge or rental fixed by the department, and otherwise to comply with the provisions of title 17 of this article in the use of such water and property, it shall give notice of such determination and of a time, not less than fifteen days from the date of the first publication of the notice, and of the place of a meeting of the department to take action on such application or applications.

3. A copy of such determination and notice shall be served upon each applicant for the license not less than fifteen days previous to the date set for the hearing. If the application applies to or may affect any canal or canal feeder waters, a like notice shall be given to the Commissioner of Transportation. The department shall also cause such notice to be published as provided in subdivision 1 of section 15-0903.

4. At the time and place designated in such notice, or at a time and place to which the meeting may be adjourned, the department shall determine whether the plan or plans set forth in the application or applications on file with the department, or any such plan, is or may be consistent with the proper development, conservation and utilization in the public interest of power resources of the water shed, stream or localities to be affected by the determination. If it shall determine that any of the plans is consistent with such development, conservation and utilization and that there is no reason why the water power involved should at the time be withheld in the public interest from development by private interests, it may grant the application. If there be two or more such applications it shall decide which of the plans is most suitable for the proper development, conservation and utilization in the public interest of the water power resources of the water shed, stream or locality affected.

5. The department in granting the license shall accord a preference to the applicant whose plans, being approved under the preceding subdivision, are best adapted to properly develop the water power site

or sites covered by the application, provided that it is satisfied that such applicant is reliable and responsible and capable of consummating the project; and provided further that as between two or more plans equally well adapted to such purpose, a preference may be given to the application of a municipal corporation, if an order shall have been previously made by the Public Service Commission approving the installation of a municipal power plant which it proposes to install under the license, or in default of such an application to a riparian owner, and, otherwise, to the application first filed with the department; and provided further that the department may impose as a condition of granting the license that the plan be modified to improve the development or otherwise conserve the public interest or protect private rights.

6. The department from time to time, either before or after a license is granted, may permit minor changes and corrections to be made in any map, plans or specifications filed by an applicant for the purpose of improving the same. It may also permit changes to be made therein for the purpose of better adapting the same to the development, conservation and utilization in the public interest of the water power resources of the water shed, stream or locality affected. No correction or change shall be made under this subdivision until the same has been authorized by a resolution adopted by the department.

#### § 15-1709. Preliminary permits.

1. The department may issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by section 15-1707, provided, however, that upon the filing of any application for a preliminary permit by any person or public corporation, the department before granting such application shall at once give notice of such application in writing to any municipality which, in its judgment, is likely to be interested in or affected by such application. Each such permit shall be for the sole purpose of maintaining priority of application for a license under the terms of title 17 of this article for such period or periods, not exceeding a total of three years, as in the discretion of the department may be necessary for making examinations and surveys, preparing maps, plans, specifications and estimates, and making financial arrangements.

2. The permit shall set forth the conditions under which priority shall be maintained and the license issued, and may prescribe any condition of issuing the license for the protection of the interests of the state. Only one preliminary permit at a time shall be issued and outstanding for the same project. The same preference shall be accorded by the department in considering applications for a preliminary permit as is accorded in considering applications for a license. Each preliminary permit shall require the permittee to proceed diligently and immediately to secure the data and to perform the acts required by section 15-1707.

3. All investigation work in connection with any operations carried on under the preliminary permit shall be subject to the inspection of the department, its agents and employees, and, from time to time upon the request of the department, the permittee shall make full reports to the department of the progress of the work carried on under the preliminary permit, but such reports shall be confidential until final application is made for the license, unless the department takes proceedings to revoke the preliminary permit.

4. Permits shall not be transferable and may be cancelled by the department upon failure of the permittee to comply with the conditions thereof.

§ 15-1711. Provisions and conditions of licenses; payment to state treasury of moneys received under this title.

1. The term of the license shall not exceed fifty years from its date.

2. The licensee shall agree to accept and abide by the terms and provisions of title 17 of this article, and to pay to the state the charge or rental, if any, fixed by the department and reserved in the license, or as the same may be readjusted pursuant to law.

3. The license shall by reference to maps, plans, and specifications or otherwise clearly identify and define the improvement or development to be affected under the license.

4. If the license affects any canal or canal feeder waters, it shall contain a provision, in substance, reserving to the Commissioner of Transportation the right at any and all times to enter upon the property covered by the license, and to do and perform such acts or things, including the temporary drawing off of the water from the dam or forebay from which the licensee is drawing water and such interruption in the supply of water to the licensee, as may be deemed necessary for the repair, reconstruction or improvement of the canal or any canal works or structures and that the licensee shall be at all times subject to such reasonable rules and regulations for the management and maintenance of the canals and navigation thereof as the Commissioner of Transportation shall from time to time prescribe; also a provision in substance reserving to the department the right, on ninety days' written notice to the licensee, to retake, recapture and resume wholly or in part the use of the water and other property covered by the license, including all structures erected upon and improvements to such property, and to control and limit the manner and extent of use of such water or other property, whenever in the opinion of the Commissioner of Transportation or the Legislature, the necessary supply of water for the use of the canals of the state, or any future alterations or improvements of the canals, or the safety of the works connected therewith, may render such resumption, control or limitation necessary; also a provision in substance reserving to the state the right wholly to abandon or destroy the canal, dam or works by the erection or construction of which the surplus water covered by the license is rendered available. In either of which events, the licensee, if he promptly complies with any and all lawful directions of the department with respect to the cessation of the use of water and removal from the premises may recover from the state in the Court of Claims the damages resulting to him therefrom, but the damages for improvements on state lands shall not exceed the reconstruction cost. The damages for which the state shall be liable may be specified in the license. The state shall not be liable for any temporary interruption for the repair of or in the operation of the canal, and in case of a substantial change in the right or privilege granted, the department, by agreement, may readjust the charge or rental with the licensee.

5. The license shall contain a provision in substance that if there be a partial resumption of the use of the water or of the land which is covered by the license, the licensee, at his option, may continue for the remainder of the term specified in the license to use the residue of the water and land covered by the license, under the terms and

conditions of the license, or such modified terms as may be agreed upon, upon the payment to the state of a revised and readjusted charge or rental, and that if the licensee refuses to accept or continue the use of the remaining water and land at the revised and readjusted rental, the license shall terminate and the licensee shall have his claim for damages as provided by the preceding subdivision.

6. Except as otherwise provided by law, the terms and provisions of a license may be altered only by mutual agreement between the department and the licensee, after publication as provided in subdivision 1 of section 15-0903 of a notice setting forth the time and place of the meeting at which the proposal to alter the terms and provisions of the license will be considered. If by any such agreement the amount of water available for use by the licensee is curtailed or the privileges and rights under the license are materially changed, the department may revise and readjust the rental to be paid.

7. The license may contain a provision to the effect that the licensee shall furnish to the state, free of charge or upon terms to be fixed as therein provided, the hydraulic or hydro-electric power required for the operation or lighting of certain defined state structures, works or property.

8. The license may also contain a provision in substance, that the licensee shall obtain the fee simple absolute of, or any lesser interest in, all property other than that of the state used by him in the construction of the project.

9. In issuing licenses for a minor part only of a complete project, or for a complete project of not more than one hundred horsepower capacity, the department may in its discretion waive such conditions, provisions and requirements of title 17 of this article, except the license period of fifty years, as it may deem to be to the public interest to waive under the circumstances.

10. The department shall pay into the state treasury the moneys received by it in the course of administering the provisions of title 17 of this article in the manner provided by section 121 of the State Finance Law.

§ 15-1713. Waters impounded by dams constructed for power purposes impressed with a public interest.

The waters impounded by any dam hereafter constructed for power purposes on any stream or waterway in the state, shall be impressed with a public interest and open to the public to fish thereon, when authorized by other applicable provisions of this chapter subject to the conditions and limitations found in section 11-1311 of this chapter.

§ 15-1715. Licenses and the protection of navigation.

Before granting any license, the department shall inquire and determine to its own satisfaction that the exercise of the privilege conferred will not impair or interfere with navigation on the waters covered by the license and, whenever, the public interest requires, shall impose such conditions in granting the license as may be required to protect and safeguard navigation.

§ 15-1717. Provisions for the revision and readjustment of rent in licenses.

1. The annual charge or rental fixed by the department shall continue for the period of the license, unless the license provides for a readjustment of the charge or rental at a specified time or times, in which case the charge or rental, as fixed by the license, may be revised and readjusted by the department according to the terms of the license. Payments on account of any such charge or rental shall be treated as a part of the operating expense.

2. The licensee shall be given ten days' notice of the time and place of the meeting of the department at which the question of the revision and readjustment of such charge or rental will be considered. The revision and readjustment shall be in the form of a resolution adopted by the department and thereafter, the revised and readjusted rental or charge, unless reviewed and reversed or modified as herein provided, shall apply to and govern the license.

3. Any such decision may be reviewed by the licensee pursuant to the provisions of section 15-0905.

4. Pending the final determination of the review proceedings, the licensee shall pay to the state the revised and readjusted rental or charge as fixed by the department; and if it shall be determined that the rental or charge shall be revised, the licensee shall be credited on later payments with any excess he may pay over the rental as finally fixed, with interest. If the credits be insufficient to satisfy such excess, the licensee may recover the balance in the Court of Claims.

§ 15-1719. Equitable rental for Niagara River water.

The department shall have the power to fix and determine, after a hearing held upon notice to the parties interested, the amount of an equitable rental, which is hereby charged pursuant to the reservations made in chapter 597 of the laws of 1918 for the diversion, as specified in such chapter, of water from the Niagara River in excess of a daily diversion at the rate of fifteen thousand one hundred cubic feet per second, and also, from July 1, 1943, the amount of an equitable rental, which is hereby charged, for the diversion of water from the Niagara River to the extent of a daily diversion at the rate of fifteen thousand one hundred cubic feet per second and not otherwise subject to the imposition of an equitable rental as specified in such chapter. Such rental shall be fixed in like manner as if application were made for a license under the provisions of title 17 of this article before the water was used, and the people of the state may sue for and collect in behalf of the state such rentals as so fixed and determined.

§ 15-1721. Reservation in the license; state control of rates and use and distribution of power.

1. Every license issued pursuant to title 17 of this article for a project shall contain a provision expressly reserving to the state the right to regulate and control the use and distribution of the power generated by any licensee, and to fix reasonable rates to be charged by the licensee under all circumstances for furnishing heat, light or power generated wholly or partly by the use of property covered by the license, and to regulate the service, capitalization and secured debt of the licensee and licensed project.

2. Jurisdiction is hereby conferred upon, and it shall be the duty of, the Public Service Commission to regulate and control the use and distribution of all power generated by any licensee under title 17 of

this article, or generated by any person or public corporation, by the use and diversion for power purposes of any waters of the state in which the state has a proprietary right or interest, and to fix reasonable rates to be charged by such licensee, or such person or public corporation, for furnishing heat, light or power generated wholly or partly by the use of water in which the state has a proprietary right or interest. In the exercise of such jurisdiction the Public Service Commission shall give preference to municipalities in the use and distribution of power generated by such licensee or by such person or public corporation. To carry out the provisions of this section, and until otherwise provided by law, complaints, inspections, investigations, hearings, rules, regulations, orders and determinations may be made or had, and rules, regulations and orders enforced, in the manner, so far as applicable, provided in the Public Service Commission Law in respect of electrical corporations and of the manufacture, sale and distribution of electricity.

3. Every license issued pursuant to this article shall contain a condition that the development of power thereunder shall be subject to the control and authority of the Public Service Commission to the extent conferred upon such Commission by this section.

§ 15-1723. Contribution to the cost of headwater improvement.

Licensees and persons exercising rights conferred by title 17 of this article shall be liable for any payments or charges resulting from the improvement of headwaters under the provisions of title 21 and title 23 of this article, according to their respective interests in the property benefited.

§ 15-1725. Prosecution of project works.

1. The licensee shall commence the construction of the project works within the time fixed therefor in the license. He shall thereafter in good faith and with due diligence continue the construction thereof, and within the time fixed in the license complete and put into operation the whole of such development work or such part or parts thereof as the license prescribes; except that when not incompatible with the public interest, the department may, from time to time, for good cause, by resolution extend the time either for the commencement of construction or for the completion thereof.

2. The licensee shall, when required by the department and as often as once in every six months during the course of the construction, file with the department a detailed statement of the cost of the project during the period covered by the statement. Within six months after the licensee has filed its final statement after the completion of the project, the department shall file a statement of the total cost of the investment.

3. The department at such time or times as it deems proper may examine any statement of the licensee, whether partial or complete, and hold a hearing to determine whether the same correctly states the cost of the project or part thereof, as therein set forth, and shall have power to determine whether any part of the expenditure has been made wastefully, or in disregard of the terms of the license, or in bad faith, and to deduct such items improperly included as may be necessary to make such statement or statements conform to the fair and actual cost of the project or part thereof. Subject to review as provided in section

15-0905, the determination of the department shall be conclusive for all purposes as to the amount of such investment as shown by any such statement.

§ 15-1727. Maintenance of project works.

1. The licensee shall at all times maintain the project works in good repair and in efficient working order; shall promptly make all necessary renewals and replacements, including such necessary renewals or replacements as may, after a hearing, be directed by the department for this purpose, and shall establish and maintain adequate reserves therefor.

2. The department may at any time institute an investigation or hold a hearing, or both, with respect to the compliance by the licensee with the requirements of this section and the adequacy of the reserves maintained by it for the purposes herein specified. After such investigation or hearing, the department may issue such order or orders, not inconsistent with title 17 of this article, as in its judgment will insure compliance by the licensee with the provisions of title 17 of this article, in respect to all matters so investigated.

3. The licensee shall promptly conform to and comply with such directions, orders, rules or regulations as the department may make from time to time in the interests of navigation, or for the protection of life, health or property or other lawful purposes. He shall likewise promptly conform to and comply with such lawful rules and regulations as may from time to time be prescribed by the federal government, its duly authorized officers or agents relating to the navigation of the waters covered by the license.

§ 15-1729. Eminent domain.

Real property may be acquired pursuant to title 17 of this article under an exercise of the right of eminent domain in the following cases:

1. Real property which is necessary to the full development and utilization of any water power site of which the state is the owner, in whole or in part.

2. Real property which is necessary to the full development of water power sites where such water power sites on a stream, or in a given locality cannot be developed separately as efficiently and economically for the generation of power as under a plan for their development together and the owner or owners of the right to the use of the greater part of the head and volume of usable flow for power at such sites transfer the same to a corporation organized for the production, sale and distribution of heat, light and power to the public as herein provided, or such right is owned by such a corporation and the department determines by resolution that such power sites can be more efficiently and economically developed for the production of power under such a plan than singly, and the heat, light or power is necessary for public use.

3. Real property, on the application of a corporation organized for the production of heat, light or power, after a determination by the Public Service Commission that such property is necessary to the full development and utilization of a single undeveloped water power site, a major part of the head and volume of the usable flow for power at which site is owned by such corporation, for the production of heat, light or power for sale or distribution to the public and that such heat, light

or power is necessary for public use. In any county containing a part of the forest preserve as now constituted, for the purpose of establishing the right to exercise the power of eminent domain under this subdivision the ownership of wild or unoccupied land shall be presumed to be in an applicant showing a record title under which the applicant or his grantors has claimed for a period of ten years and it appears that the state and county taxes thereon have been paid by or on behalf of such applicant or his grantors for a period of five years before the proceeding in which the application is made was begun; ownership in other lands wherever located shall be presumed on showing record title in the applicant for a period of ten years and possession thereunder for a like period.

4. Such right of eminent domain shall be exercised under the provisions of the eminent domain procedure law subject to the following restrictions and limitations:

a. The acquisition of real property for the state shall be on the application of the department, and payment therefor shall be made in the manner provided for the payment of lands appropriated by the state in the Adirondack and Catskill parks under section 3-0305 of this chapter.

b. If a water power site be taken under subdivision 2 of this section, the owner of any such power site shall have the option to receive and own such a proportion of the power resulting from the common development as the head and volume of the usable flow of the water at the site bears to the product of the total head and volume of the usable flow of the waters of the common development, provided he pays a like proportion of the cost of development, maintenance and operation, and consents that his pro rata share of such power shall be pledged to secure such payment, and assents to such reasonable and equitable provisions and regulations in relation to the development and operation thereof for the common benefit and to payment therefor as the department shall prescribe. In case of the exercise of such option by the owner of a developed water power site, such owner shall also be allowed the loss, if any, resulting to him from the excess in value, if any, of the water power owned by him before such common development over the water power right owned by him after such development, after deducting from the value of such power right his proportion of the cost of such development. Such difference in value shall be deemed a part of the damages in the condemnation proceeding, and the payment thereof shall be secured as directed by the court.

c. Before any real property is taken under the provisions of subdivision 2 of this section, the owner or owners of the right to the use of the greater part of the head and volume of usable flow for power at the sites to be developed in common shall, unless such a corporation be already organized and be the owner of such rights, organize a corporation for the production, distribution and sale of heat, light and power to the public, and shall transfer to such corporation such sites. Such corporation shall file with the Public Service Commission a certified copy of its certificate of incorporation and shall also file with such department a map of the water power sites, and property connected therewith, of which it is the owner, with satisfactory proof that it is the owner thereof, and a map of the water power sites and property which it seeks to acquire for the purpose of making a common development. It shall also file with such department a plan of its proposed development of water power on the property which it owns and which it seeks to acquire. Such corporation shall file copies of such maps and plan certified by the president and engineer of the corporation, or a majority of the directors, in the office of the clerk

of the county in which such development is to be made, or if it be in more than one county, in the office of the clerk of each county; and shall give written notice to all actual occupants of lands of which it is not the owner on which such development is to be made, of the time and place such maps and plan were filed, and that such development is to be made on the lands of such occupants. The Public Service Commission shall give an opportunity to persons interested to be heard, investigate and determine whether it is in the public interest that such development be made and whether the power to be produced is necessary for the supply of the public with heat, light or power. If it shall so determine, it may issue to such corporation a certificate that public convenience and necessity require that such development be made, but in granting the certificate the department may expressly except from its certificate any part of the property proposed to be developed as unnecessary to the plan. Such certificate when issued shall be conclusive evidence as to the matters lawfully certified therein in any proceeding under the Condemnation Law to acquire the property, or any part thereof, set forth in such certificate.

5. Real property, on the application of a corporation authorized to do business in this state and engaged in the production, sale and distribution of heat, light or power to the public, which is necessary to perfect or improve water power already developed, provided that property taken does not impair or injure any developed water power or developed water power site. The corporation may apply for and in a proper case receive from the Public Service Commission a certificate of convenience and necessity for taking the property so to be acquired in the manner and with like effect as provided in paragraph c of subdivision 4 of this section. Any such corporation may also exercise the right of eminent domain to acquire real property in accordance with the provisions of subdivisions 2, 3 and 4 of this section.

6. If it appears that there is a defect of title or any outstanding interest in any of the real property occupied or to be occupied by the project when completed, the corporation making, or having the right to make, the development of the water power may exercise the right of eminent domain for the purpose of acquiring any such outstanding interest or any real property with respect to which the title appears to be or is defective.

7. In any county containing a part of the forest preserve as now constituted, real property, on the application of a corporation organized for the production of heat, light or power, necessary for the development of a water power site or sites, developed or about to be developed, and occupied by a railroad and real property necessary to and for the relocation of such railroad, upon application to and on order of the Public Service Commission authorizing the same and upon thirty days' notice to the railroad corporation. The Public Service Commission shall grant the order if in its judgment the public interest will be promoted thereby. The relocation of the railroad shall be at the expense of the applicant and in accordance with plans and specifications to be approved by such Public Service Commission. The applicant shall not take possession of any real property of the railroad necessary for its operation until such relocation of the railroad shall have been completed. The Public Service Commission upon the assent of the railroad may order the abandonment of such part of the railroad as is necessary to be taken instead of ordering a relocation thereof.

8. Real property, on the application of a corporation organized for the production of heat, light or power, which is necessary for the full development of a water power site or sites, developed or about to be

developed, and is used or occupied as burial place or cemetery, and real property necessary to locate and reinter any human remains removed therefrom. Proceedings shall be had for the taking of such real property and removal of such remains in the manner provided by section 15-2117, in so far as the provisions thereof are applicable thereto, but such exercise of the right of eminent domain shall be subject to the sound discretion of the court.

§ 15-1731. Eminent domain; transmission lines.

Any corporation authorized to do business in this state and engaged in the production, sale and distribution of heat, light or power to the public may exercise the right of eminent domain pursuant to the provisions of the eminent domain procedure law to acquire property necessary for the construction of transmission lines for such heat, light and power, when necessary for such sale and distribution to the public. If the corporation is a licensee under title 17 of this article it may apply to, and in a proper case receive from, the Public Service Commission a certificate of convenience and necessity for any property so required in the manner and with like effect as provided in paragraph c of subdivision 4 of section 15-1729. The court in such proceedings of condemnation may prescribe any reasonable limitations, restrictions or regulations for the construction and operation of such lines so as to protect life and prevent unnecessary injury to property.

§ 15-1733. Use of land occupied by a public highway.

1. Whenever, in order to complete any project as provided by title 17 of this article, it becomes necessary to use lands occupied by a public highway the licensee shall apply to the Commissioner of Transportation for permission to relocate such highway, the entire expense of such relocation to be borne entirely by the licensee including any damages to persons or property which may be caused by or result from such relocation. The new location shall be determined by the Commissioner of Transportation and the application of the licensee shall be accompanied by funds in an amount sufficient to provide for the cost of a survey, preliminary plans and all other expenses of the Commissioner of Transportation in determining a suitable relocation.

2. The licensee shall provide the necessary land for such relocated highway in accordance with land taking-maps prepared by the Commissioner of Transportation. If such relocation is on state land the fee to the land covered by the right of way shall remain in the state. If the licensee acquires private property for right of way in the relocation of a state or a county highway the fee in such right of way shall be deeded to the state or to the county in which the same is situated as the case may be. If the licensee acquires private property for right of way in the relocation of a town highway the fee in such right of way shall be deeded to the town or towns in which the same is situated.

3. Any such relocation shall be made by the licensee according to plans and specifications approved by the Commissioner of Transportation.

4. Upon the completion and acceptance of such relocated highway the original highway for which it is substituted shall be deemed abandoned as a public highway and the relocated highway shall thereafter be maintained in the same manner as was the original highway for which it was substituted.

5. The highway law shall apply to the relocation of highways as

provided in this section so far as applicable thereto and not inconsistent with title 17 of this article.

§ 15-1735. Contracts extending beyond license period.

1. Whenever the public interest requires or justifies the execution by a licensee whose license covers any state property, or who uses water that cannot be lawfully used without the consent of the state, of a contract for the sale and delivery of power for a period extending beyond the terms of the license, such a contract may be entered into with the approval of the department and the Public Service Commission, in which event the duty to perform such contract after the expiration of the license period shall devolve upon the person or corporation to whom or which a new license covering the property of the former licensee is issued, and such new license shall so provide.

2. A licensee making such a contract shall not be liable thereon after the expiration of his license, if it cover any state property or the use of water subject to state control, unless the new license is issued to him. No such licensee without the written approval of the department shall enter into any contract for the sale or delivery of power for a term or period extending beyond the time fixed for the revision of the change or rental payable under his license.

§ 15-1737. Transfer of license restricted.

No voluntary sale, assignment, or transfer of any license or of the rights thereby granted shall be made without the written approval of the department; nor become effective until the instrument of transfer be filed and recorded in the office of the clerk of each county in which property covered by the license is located. Notice thereof must be given to the department before possession is given under such transfer, and if there be a transfer by operation of law, the transferee must give notice thereof to the department before taking possession.

§ 15-1739. Revocation of license.

1. The department may by resolution terminate and revoke any license, issued pursuant to the provisions of title 17 of this article for the following reasons:

a. Failure of the licensee to commence, advance or complete construction of the project works within the time fixed therefor, unless the time be extended by the department; or

b. Failure of the licensee to pay, at the time or times provided in the license, the charge or rental provided for in the license or fixed pursuant to law; or

c. Failure of the licensee promptly to comply with any of the terms, conditions or provisions of title 17 of this article or of the license, or with any direction, order, rule or regulation given or made by the department or otherwise, pursuant to the license or provisions of law.

2. No action terminating or revoking a license shall be taken until the licensee is afforded an opportunity to appear before the department and be heard with respect thereto. Ten days' notice of the time and place of the meeting of the department at which the action will be considered shall be given to the licensee.

3. In case the department revokes a license as herein provided because of the failure of the licensee in good faith to commence actual

construction of the project works or any specified part thereof within the required time, the licensee shall not recover any damages or compensation from the state because of such revocation.

4. If the license is terminated or revoked, the state may elect to take any and all interest of the licensee in and to state property covered by the license including all works and structures thereon.

5. In such event the department may, subject to the making of adequate appropriation therefor, provide by written agreement for the payment to the licensee of the amount of the enhancement in value, if any, of the state property which is covered by the license resulting from any improvements of the same made or effected by the licensee, not exceeding, however, the reconstruction cost, which recovery in the case of termination and revocation pursuant to paragraph a of subdivision 1 of this section shall not include or be affected by any organization or other expenditures preliminary to actual construction work, and in the case of termination and revocation pursuant to paragraphs b and c of subdivision 1 of this section shall be less a deduction equal to that portion, if any, of the aggregate income from the project over and above actual and reasonable expenses of operation, including repairs, which shall exceed an amount equal to eight per centum per annum, to the time that the state property is taken over by the state, of the actual and reasonable cost to the licensee of the lands and interests in lands, the actual and reasonable cost to the licensee of the ways, means and works and the allowance made for organization and development expenses. If the amount involved does not exceed the indebtedness which may be lawfully incurred for such purposes without an appropriation, such agreement may provide for the payment thereof before an appropriation is made.

6. In the event that the licensee and the department are unable to agree upon the amount of damages payable to the licensee as above provided, and the same does not exceed the indebtedness which may be lawfully incurred, for such purpose without an appropriation being made therefor, the licensee may recover from the state in the Court of Claims the amount of enhanced value, if any, of the licensed property owned by the state, resulting from any and all existing improvements of the same made or effected by the licensee, not exceeding, however, the reconstruction cost, less depreciation thereof as limited above to proceedings pursuant to the provisions of paragraph a of subdivision 1, or less deduction as stated above for proceedings pursuant to paragraphs b and c of subdivision 1. If the amount of damages shall exceed the amount of such lawful indebtedness, the revocation shall not take effect until an adequate appropriation has been made therefor and in such case damages may be in like manner recovered in the Court of Claims.

7. The Attorney General at the request of the department may institute appropriate actions or proceedings in the Supreme Court in any judicial district of the state or in any court of competent jurisdiction to carry into effect the resolution of the department revoking any license and to remove from state property covered by the license, any licensee whose license has been revoked.

§ 15-1741. Re-entry at expiration of the license period.

1. Upon the expiration of the original license period any and all interest of the licensee in and to state property which is covered by the license, together with any and all works and structures thereon, shall vest in and become the property of the state free and clear of any and all liens and encumbrances, provided, however, that the department

may at the time the license is granted, or at any later time during its continuance, enter into an agreement with the licensee that an allowance will be made to the licensee for and on account of improvements to property of the state, or improvements the value of which is dependent on the use of state property, for which in view of the rent paid the licensee shall not have been compensated by the privilege of the license, but such agreement must be made before the improvement for which such allowance is to be made, is undertaken. If the amount of such allowance exceeds the amount of indebtedness, which may be lawfully incurred for such purposes without an appropriation, the time when such property is vested in the state shall be postponed until an adequate appropriation is made therefor. The allowance so made or to be made may be by way of an extension of the license pursuant to an agreement between the department and the licensee.

2. Any agreement with the licensee for an allowance on account of improvements to property of the state or improvements the value of which is dependent on the use of state property, shall not provide for an allowance in excess of the reconstruction cost, less a deduction equal to that portion, if any, of the aggregate income from the project, over and above actual and reasonable expenses of operation, including repairs, which shall exceed an amount equal to eight per centum per annum, to the time that the state property is taken over by the state, of the actual and reasonable cost to the licensee of the lands and interests in lands, the actual and reasonable cost to the licensee of the ways, means and works and the allowances made for organization and development expenses.

#### § 15-1743. Renewal and extension of licenses.

The department may renew an expiring license to the same licensee on the same or different terms, or may renew the privilege from year to year under such terms as may be agreed upon.

#### § 15-1745. Prohibited diversions.

1. Unless a license has been obtained therefor under this title, or the diversion of such waters is subject to the charging or imposition of an equitable rental under this title, it shall be unlawful for any person or public corporation who has been notified by the department to desist from such conduct, to willfully take, divert, draw or make use of, for power and/or other commercial or manufacturing purposes:

a. waters, or the bed or other real property required for the use of such waters, in which the state has a proprietary right or interest;

b. boundary waters of the state concerning which the state has jurisdiction over the diversion or interference with the flow of the same for power purposes, solely or concurrently with any other jurisdiction or owner of a proprietary right.

2. The use of such water, except when the right to the use thereof has been acquired by means of a written license issued pursuant to the provisions of title 17 of this article, or when the diversion of such water is subject to the charging or imposition of an equitable rental pursuant to the provisions of subdivision 1 of section 15-1719 of this article, shall be prima facie evidence of the wilfulness of the taking, drawing, diversion or use thereof and of the guilt of the person taking, diverting or making use thereof.

§ 15-1747. False entries, statements or reports.

No person shall for the purpose of deceiving, make or cause to be made any false entry in the books of accounts of a licensee, or for the purpose of deceiving, make or cause to be made any false statement or report in response to a request, order or direction from the department for statements or reports under title 17 of this article.

§ 15-1749. Previous grantees not to divert waters without a license.

A person or corporation, other than a municipal corporation, claiming or purporting to have, or to have had, by general or special act or other grant from the state, the right to divert water from Lake Erie, Niagara River or the boundary waters of the state, or to divert any waters in which the state has a proprietary interest, or the successor in interest of such a corporation, whether or not there has been or is now an actual diversion of waters or development of power therewith pursuant to such act or grant, may apply for a license under title 17 of this article to divert such waters and shall not divert such waters without having obtained such license, unless the diversion of such waters is subject to the charging or imposition of an equitable rental pursuant to the provisions of title 17 of this article, and shall otherwise be subject to the provisions of title 17 of this article.

§ 15-1751. Right to amend and repeal reserved.

The right to alter, amend or repeal title 17 of this article is expressly reserved, but substantial rights acquired pursuant to title 17 of this article shall not be lost or impaired by such repeal or amendment.