

No. 554, S.]

[Published July 17, 1907.]

CHAPTER 644.

AN ACT to authorize the Beans Eddy Power Company, its associates, successors and assigns, to build and maintain a dam and other structures in and across the Wisconsin river in section six, seven and eight, township twenty-six north, range seven east, Marathon county, Wisconsin.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Height and location of dam. SECTION 1. The Beans Eddy Power company, its associates, successors and assigns, are hereby authorized and empowered to construct and maintain a dam, not higher than a sufficient height to maintain a fifteen foot head, across the Wisconsin river upon any land they may own or have an interest in, in sections six (6), seven (7) and eight (8), township twenty-six (26) north, range seven (7) east.

Purposes; surplus power. SECTION 2. They may use such dam for the purpose of improving the navigation of said river, of creating power for milling, manufacturing and general hydraulic purposes, and for any other purposes which said company, its associates, successors and assigns may be legally empowered to do. The power is also hereby granted to lease and dispose of any surplus water which may arise in carrying out any of said purposes, and, for the purpose of so disposing of such surplus, to build race-ways, flumes and other equipment necessary and convenient for so doing.

Condemnation proceedings. SECTION 3. Said Beans Eddy Power company, its associates, successors and assigns, for the purpose of acquiring any flowage rights which they may deem necessary in carrying out any of the powers hereby granted, may exercise all of the powers of eminent domain as provided in chapter 86 of the statutes of Wisconsin.

Free passage of timber products. SECTION 4. Said dam shall be so constructed and maintained as not to hinder, impede or obstruct the free navigation of the Wisconsin river.

The said grantees shall build, maintain and keep in repair suitable slides and chutes in said dam for the running of logs and other timber products over the same, sufficient in capacity to accommodate all such logs and products as may be floated down said river, and shall maintain a sufficient unobstructed channel for the passage of all logs and other floatables through the pond created by said dam, and all logs and other floatables destined to points below the said dam shall be taken by the owners of said dam when they reach the flowage of the pond created thereby, or reach any jam that may be caused by the stopping of logs or other floatables by the works or pond of such owners and be driven free of charge, and with reasonable dispatch, through said flowage and pond and over said dam. The provisions of section 1601 of the Wisconsin statutes shall not apply to said dam.

The dam erected under the authority hereby granted shall be provided with a good and sufficient fishway to be approved by the said state board of commissioners of fisheries, and said fishway shall, at all times, be kept in good repair and open for the free and easy passage of fish up and down said dam. Provisions shall also be made, by marine slide or otherwise, for assisting all water craft in their passage up and down said river.

Repeal and amendment reserved. SECTION 5. The right is hereby reserved to the legislature to repeal or amend this act at any time.

Express conditions. SECTION 6. This act is passed in consideration of, and upon the following expressed conditions:

Time of construction. 1. The dam herein authorized shall be constructed within four years from the date of the passage of this act.

Operation. 2. If so built and constructed it must be maintained and operated continuously, and its maintenance and operation must not be discontinued or cease for any length of time exceeding two years at one time.

Law observance. 3. The water power acquired under and by virtue of this act shall not be operated or its operation suspended pursuant to any contract, agreement or understanding, expressed or implied, in violation of any law of this state or of the United States.

Rentals. 4. In case the owners thereof desire to let, lease or rent, or furnish any hydraulic power or accumulation of water, procured or created under this act, for public purposes or any lawful private purpose, they shall not charge or collect more than a reasonable rental therefor.

Should the owners of such dam and any persons desiring to use any part of said hydraulic power disagree as to the reasonable rental therefor, the said owners are hereby required to furnish such power to the persons so desiring the same, upon such persons tendering, and keeping such tender good, the amount which said owner may claim to be a reasonable charge therefor. Such payment or tender shall not be an admission of the reasonableness of the claim as specified to be made under this provision, but the person receiving said power shall be entitled to be paid back all of said amount which it has claimed was in excess of a reasonable amount, unless within thirty days after such tender or payment the said owners shall have commenced an action for the determination of what is a reasonable rental for such water power.

In case of such disagreement the owner may commence an action in the circuit court for Marathon or any other adjoining county, against such persons aforesaid, for the purpose of determining what is a reasonable rental for such water. Any dispute of fact arising in said action shall be triable by jury. The judgment in such action shall determine what is a reasonable rental therefor and shall direct the said owners to furnish the same upon the payment thereof and shall enjoin them from charging or attempting to charge any other or greater rental than the sum of the judgment. Such judgment shall be subject to revision from time to time by said court, upon petition by either party. Any issue of fact arising upon said petition for revision shall also be tried by a jury. The verdict of the jury in all such cases shall have the same effect as a verdict of the jury in actions at law.

Conditioned on acceptance. SECTION 7. This act shall take effect and be in force from and after its passage and publication, and the filing in the office of the secretary of state by the Beans Eddy Power Company of a written acceptance thereof on or before January 1st, 1908.

Approved July 15, 1907.