

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

Circular No. 1461a

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REGULATIONS GOVERNING RIGHTS-OF-WAY OVER AND UPON

PUBLIC LANDS AND RESERVATIONS OF THE UNITED

STATES FOR ELECTRICAL PLANTS AND

TRANSMISSION LINES.

Acts of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959),

March 4, 1911 (36 Stat. 1253; 43 U. S. C. 961), and

Section 1411 Revised Statutes (5 U. S. C. 485).

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UNITED STATES
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Washington

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Sec. 245.1 Statutory authority. The act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), authorizes the Secretary of the Interior, under general regulations to be fixed by him, to permit the use of rights-of-way over and upon public lands and certain reservations of the United States for electrical plants, poles, and lines for the generation and distribution of electrical power, to the extent of the ground occupied by such electrical plants, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such electrical lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under said act.

The act of March 4, 1911 (36 Stat. 1253; 43 U. S. C. 961), authorizes the head of the department having jurisdiction over the lands, under such regulations as may be fixed by him to grant an easement for rights-of-way for a period not exceeding fifty years, over and across public lands and reservations of the United States, for electrical poles and lines for the transmission and distribution of electrical power, to the extent of twenty feet on each side of the center line of such electrical lines and poles, to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under said act.

245.2 Effect of Federal Power Act. The acts of February 15, 1901, and March 4, 1911, with respect to rights-of-way for power purposes over public lands, were repealed and superseded by the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by sections 201 to 213 inclusive of the act of August 26, 1935 (49 Stat. 847; 16 U. S. C. 791-825r and Sup.), as to power projects for the generation and transmission of hydroelectric power, defined in section 3(11) of the act, excepting distribution lines and rights-of-way over allotted Indian lands. All applications for rights-of-way for power plants or transmission lines, other than hydroelectric plants and main or primary hydroelectric power transmission lines should be made under the act of February 15, 1901, or the act of March 4, 1911, and sections 245.1-245.28 of these regulations. Applications for hydroelectric power plant

sites or rights-of-way for main or primary hydroelectric power transmission lines, excepting where the lands affected are allotted Indian lands, must be made to the Federal Power Commission, Washington, D. C., under the act of June 10, 1920, as amended.

245.3 National parks and monuments; effect of Act of March 3, 1921 (41 Stat. 1353). The act of March 3, 1921, provides, inter alia;

"That hereafter no permit, license, lease or authorization for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission or utilization of power within the limits as now constituted of any national park or national monument, shall be granted or made without specific authority of Congress, etc."

245.4 Jurisdiction over land. Section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472), vested jurisdiction in the Department of Agriculture to pass upon all applications under the act of February 15, 1901, for permission to occupy and use lands in national forests. For the purpose of the act of March 4, 1911, national parks, Indian reservations, grazing districts, wildlife refuges, and reservations for water power sites, irrigation, classification of lands, or other purposes, created under the withdrawal act of June 25, 1910 (36 Stat. 847), are considered to be under the jurisdiction of the Department of the Interior; military reservations under the jurisdiction of the War Department; and reservations created for the special occupancy, use, or control of other departments under the jurisdiction of such departments, respectively. Therefore, when it is desired to obtain permission to use rights-of-way over lands under the jurisdiction or control of Federal Agencies other than the Interior Department, an application should be prepared in accordance with the regulations issued by such Agency or Department and the same submitted to the proper officer thereof.

245.5 Nature of rights-of-way authorized by statutes. The Act of February 15, 1901, does not make a grant in the nature of an easement, but authorizes permission to use and occupy the land for the purpose permitted only, revocable at any time. The act of March 4, 1911, authorizes the granting of easements for transmission lines for periods not to exceed 50 years, and follows closely in the accomplishment of its purpose the act of February 15, 1901. Neither of the acts gives any rights whatever to take from the public lands or reservations any material, earth, or stone for construction or other purposes.

245.6 Unsurveyed lands. Permission may be given under the act of February 15, 1901, and the act of March 4, 1911, for rights-of-way over unsurveyed lands as well as surveyed lands.

245.7 Effect of permit. Power permits issued by this Department allow the occupancy and use of Interior Department lands for the construction, maintenance, and operation of works that involve the use of valuable power resources or that involve the development, transmission, or use of power.

245.8 Construction in advance of permit; trespass. Where construction of transmission lines or other project works is desired over and upon Interior Department lands in advance of the approval of a power permit, authority for such construction may in the discretion of the Secretary be granted by him upon a satisfactory showing of the necessity therefor, if found not incompatible with the public or Government interest, provided the applicant agrees to make full and prompt compliance with all requirements of the Department as conditions precedent to the approval of the power permit, and such construction is done at the applicant's own risk. Application for such authority should be filed with the officer of the Interior Department, having supervision of the lands affected, who will transmit the record with appropriate report and recommendation to the Secretary through the Division of Power.

Any occupancy or use of public lands including reservations, national parks or monuments, without proper authority is trespass.

245.9 Filing of application. All applications for occupancy or use of Interior Department lands for power purposes should be submitted in duplicate on form 1, which is made a part hereof,* and filed at the local land office of the land district in which the lands are situated. If the lands are situated in more than one district, the lands in both districts shall be embraced in one set of application papers, which shall be submitted in any one of such districts at the option of the applicant, who shall submit to the local land office in each other districts a print copy of the maps submitted to the local land office of the first district. If there is no local land office, the application should be filed with the Commissioner of the General Land Office, Washington, D. C. (See also, Sec. 245.27).

An application shall not be completed until every map or paper required by sections 245.15-245.21 has been filed in the form prescribed.

245.10 Priority rights. Priority of consideration of applications for power permits shall be initiated in the order of filing complete applications as prescribed in section 245.9. Priority shall be maintained, however, only in so far as the power projects are within the limits of the project works as shown in the application.

245.11 When permit may be granted. Power permits will be issued or granted only in case it appears that the proposed development will be

* See page 18.

in general accord with the most beneficial utilization of the resources involved and consistent with the public interest. No power permit will be granted if the works to be constructed thereunder would in any way be incompatible with works operated or constructed or to be constructed by and under authority of the United States.

245.12 Termination of permit. Unless otherwise specified in the permit, and unless sooner revoked by the Department, a power permit shall terminate at the expiration of 50 years from the date thereof. If, however, at any time not less than 2 nor more than 12 years prior to the termination of the permit, the permittee shall formally notify the Commissioner of the General Land Office, that he desires a new permit to occupy and use such lands as are occupied and used under the existing permit, and will comply with all then existing laws and regulations governing the occupancy and use of lands of the United States for power purposes, the existing permit will be considered as an application for such new permit.

245.13 Words and phrases. The following terms, wherever used in sections 245.1-245.28 of these regulations, shall have the meaning hereby in this section assigned to them, respectively, viz:

"Interior Department lands" means and includes any and all public lands, reservations and patented lands acquired by purchase, donation or otherwise by the United States, under the jurisdiction and control of the Department of the Interior.

"Permit" or "Power permit" means any written authorization given by the Secretary for the use of Interior Department lands.

"Municipal purposes" means and includes all purposes within municipal powers as defined by the charter of the municipal corporation itself with the primary object of promoting the security, health, good government, or general convenience of its inhabitants.

"Power business" means the entire business of the applicant or permittee in the generation, distribution, and delivery of power by means of any one power system, together with all works and tangible property involved therein, including freeholds and leaseholds in real property.

"Power system" means all interconnected plants and works for the generation, distribution, and delivery of power.

"Power project" means a complete unit of power development, consisting of a power house, conduit, or conduits conducting water thereto, all storage or diverting or forebay reservoirs used in connection therewith, the transmission line delivering power therefrom, any other miscellaneous structures used in connection with said unit or any part thereof, and all lands the occupancy and use of which are necessary or appropriate in the development of power in said unit.

"Project works" means the physical structures of a power project.

"Construction of the project works" means the actual construction of dams, water conduits, power houses, transmission lines, or some permanent structure necessary to the operation of the complete power project, and does not include surveys or the building of roads and trails, or the clearing of reservoir sites or other lands to be occupied, or the performance of any work preliminary to the actual construction of the permanent project works.

"Operation period" means the period covered by permit subsequent to the actual beginning of operation.

"Survey-construction period" means the period covered by permit prior to the operation period.

"Nominal stream flow" means the sum of (a) the natural flow available for 90 percent of the time, and (b) the increase in such natural flow for 90 percent of the time due to artificial means other than the project works.

"Project storage flow" means the estimated increase in nominal stream flow made practicable by the project works.

"Available stream flow" means the sum of nominal stream flow and project storage flow.

"Load factor" means the ratio of average power output to maximum power output.

"Total capacity of the power site" means the power estimated to be available for transmission, and is determined as the continued product of (1) the factor 0.08*; (2) the average gross head, in feet; (3) the available stream flow at the intake (in second-feet and in amount not to exceed the maximum hydraulic capacity of the project works); and (4) a factor, not less than the average load factor of the power system, representing the degree of practicable utilization of the available stream flow, and based on the extent of practicable fore-bay storage and the load factor of the power system.

"Net capacity of the power site" means the capacity on which the calculation of the compensation hereinafter required to be paid is based, and is determined by making a deduction from the total capacity of the power site which, in percent, shall be the product of the square of the distance of primary transmission in miles and the factor 0.001, but in no case shall such deduction exceed 10 percent.

* The factor 0.08 represents the horsepower at 70 percent efficiency of a second-foot of water falling through a head of 1 foot.

245.14 Rental charges. Unless otherwise ordered by the Secretary the occupancy and use of Interior Department lands under a power permit for power sites of more than 100 horsepower total capacity will be conditioned on the payment in advance for each calendar year of compensation calculated from the "net capacity of the power site", as defined in section 245.13, at not less than the following rates per horsepower per year:

For the unexpired portion of the calendar year and for the first full calendar year of the survey-construction period, and similarly for the operation period.....	\$0.01
For the second full calendar year of each of said periods.....	.02
For the third year.....	.03
For the fourth year.....	.04
For the fifth year.....	.05
For the sixth year.....	.06
For the seventh year.....	.07
For the eighth year.....	.08
For the ninth year.....	.09
For the tenth and each succeeding year.....	.10

The rates per horsepower per year will be ten times such minimum rates, however, unless good cause for fixing other rates appears. The compensation on account of a power permit will be calculated from the net capacity of the power site as estimated by the Secretary at the time of granting said permit, provided that said estimated net capacity may be adjusted by the Secretary annually to provide for changes in length of primary transmission, for increase or decrease, by storage or otherwise, of available stream flow to an amount of 10 percent or more, or for increase or decrease of 10 percent or more in average gross head, or in degree of practicable utilization.

(a) The charge for occupancy and use of Interior Department lands under a power permit for transmission lines shall be at the rate of five dollars (\$5) per mile or fraction thereof per annum, the minimum charge to be five dollars (\$5), and the charge for the use of such lands under a power permit for plants generating power by means of coal, oil, gas or other fuel shall be five dollars (\$5) per acre or fraction, thereof per annum, the minimum charge to be five dollars (\$5).

(b) Except as to Indian lands, no rental charge will be required for the occupancy and use of Interior Department lands under a power permit authorizing such occupancy and use exclusively for Municipal purposes, for irrigation, or Rural Electrification Administration cooperative projects. As to Indian lands, the imposition of the rental charge specified in this section shall be optional and not mandatory.

(c) Except as to Indian lands, the first rental payment shall be remitted with the application and shall be the compensation for a full year computed under the rates specified in this section, but any excess of said payment over the pro rata compensation for the unexpired portion of the calendar year in which the permit is issued will be credited to the permittee as part of his payment for the first full calendar year. The permittee shall annually, on or before the first day of February next following the close of each calendar year of the period for which right-of-way is authorized, deposit with the Register of the District Land Office, in cash, post office money order, bank draft, or check payable to the Treasurer of the United States, the rental charges specified in the permit. If the permittee shall fail to pay the rental charges required, and such default shall continue for sixty days after the first day of February, the permit may be terminated. After default has occurred, no structures, buildings, or other equipment may be removed from the right-of-way except upon written permission first obtained from the Department of the Interior.

(d) At any time not less than 5 years after the issuance of a permit, or after the last revision of rates per year thereunder, the Secretary may review such rates and impose such new rates per year as he may decide to be reasonable and proper.

(e) All payments made under a power permit shall be deposited to the credit of the tribe or individual Indian entitled thereto in so far as Indian lands are affected and, except as otherwise provided by law, to the credit of the Treasurer of the United States, in so far as any other Interior Department lands are affected.

245.15 Showing required of corporations. Application by a private corporation must be accompanied with a copy of its charter or articles of incorporation, duly certified by the proper officers of the company under its corporate seal or by the secretary of the State where organized.

When a company is operating in a State other than that in which it is incorporated, it must submit the certificate of the proper officer of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

A corporation other than a private corporation should file a copy of the law under which it was formed and due proof of organization under the same.

If the company shall have filed with the Department of the Interior the papers required by this section, the requirements shall be held to be met if, in making subsequent applications, specific reference is made by date and case number of such previous filing.

245.16 Showing required of individuals or associations of individuals. Application by an individual must be accompanied with affidavit of citizenship if the the applicant is native-born. If he is not a native-born citizen he must submit the usual proofs of naturalization. If the applicant is an association of citizens, each member must make affidavit of citizenship, and a complete list of the members must be given in an affidavit by one of them. Associations must, in addition, submit their articles of association; if there be none, the fact must be stated over the signature of each member of the association.

245.17 Evidence which must accompany application. Each application for power permit must be accompanied with the following data:

(a) A map prepared on tracing linen, in duplicate, with two print copies showing the survey of the right-of-way or site properly located with respect to the public-land surveys so that said right-of-way or site may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

The scale should be 2,000 feet to the inch for canals, ditches, pipelines, and transmission lines, and 1,000 feet to the inch for reservoirs, except where a larger scale is required properly to represent the details of the proposed project, in which case the scales should be 1,000 feet to the inch and 500 feet to the inch, respectively.

Courses and distances of the center line of the right-of-way or traverse line of the reservoir should be given; the courses referred to the true meridian either by deflection from a line of known bearing or by independent observation, and the distances in feet and decimals thereof. Station numbers with plus distances at deflection points on the traverse line should be shown.

The initial and terminal points of the survey should be accurately connected by course and distance to the nearest corner of the public-land surveys, unless that corner is more than six miles distant, in which case the connection will be made to some prominent natural object or permanent monument, which can be readily recognized and recovered. The station number and plus distance to the point of intersection with a line of the public-land surveys should be ascertained and noted, together with the course and distance along the section line to the nearest existing corner, at a sufficient number of points throughout the township to permit accurate platting of the relation of the right-of-way to the public-land survey.

All subdivisions of the public-land surveys within the limits of the survey should be shown in their entirety, based upon the official subsisting plats with the subdivision, section, township, and range clearly marked.

The width of the canal or ditch, at highwater line should be given and if not of uniform width, the location and amount of the change must be definitely shown. In the case of a pipe line, the diameter should be given. For reservoirs, the capacity in acre-feet, the area within the highwater line, the source of the water supply, and the location and height of the dam must be shown.

Each copy of the map should bear upon its face an affidavit of the engineer who makes the survey and the certificate of the applicant (Form 2, which is made a part hereof).*

(b) A general map of the entire power project or transmission line on tracing linen, in duplicate, with two print copies, prepared on such a scale and in such a manner that each quarter section of land affected is clearly shown. If this information is shown on the map filed under section 245.17 (a), supra, the general map may be omitted.

(c) Evidence of water right, if the project involves the storage, diversion, or conveyance of water. Control and jurisdiction over the appropriation of water is vested in the State authorities. The applicant, therefore, must file evidence, obtained from the proper State official, that he has the right to appropriate the water to be stored, diverted, or conveyed.

(d) When the application is for a permit for a power plant it must be accompanied with a statement giving a description of the proposed power plant including the number and capacity of prime movers and generators proposed to be installed, initially and ultimately, together with similar pertinent information about any substations included in the project and whether the power plant is to be interconnected with other generating facilities owned by the applicant or others. A statement as to whether the power generated is to be sold to others at wholesale or retail or used by the applicant for its own domestic, agricultural, or industrial purposes must also be furnished.

245.18 Power plants to be platted on map in main drawing and in separate drawing. When application is made for a permit for power plants, the location and extent of ground proposed to be occupied by buildings, pipe lines, or other structures necessary to be used in connection therewith

* See page 19.

must be clearly designated on the map and described by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions.

245.19 Transmission lines. Application for a permit for transmission lines must be accompanied with:

(a) A description of the plant or plants which generate or will generate the power to be transmitted over such lines (hereinafter called "the connected generating plant", which term shall include all hydraulic, hydroelectric, and electric generating works), such description to be in sufficient detail to show, to the satisfaction of the Secretary of the Interior, the character, capacity, and location of such plant.

(b) A statement in detail to the Secretary of the Interior showing whether the connected generating plant is located, in whole or in part, on land owned or controlled by the United States, or on land not so owned and controlled, and whether any part of the connected generating plant or of the system of transmission and distribution in connection with such plant affects lands in reservations other than those under the jurisdiction of the Secretary of the Interior.

(c) A description of the transmission line of which the line for which a permit is requested forms a part, giving in reasonable detail the points between which it will extend, its characteristics and purpose, including the voltage for which it is designed and at which it is intended to be operated initially, and whether the line forms a part of the general transmission system of the applicant, and a statement as to whether it is to serve a single customer, or a number of customers, or is intended to transmit power solely for the applicant's own use. If the line is to serve a single customer or for applicant's own use, the nature of such use must be given (such as airway beacon, coal mine, irrigation pump, etc.).

(d) A statement as to the distance from the nearest transmission or distribution lines of any other person, corporation, association, municipality, or other agency engaged in the sale of power, or a statement that there are no such lines existing or contemplated within 10 miles of any part of the transmission line of which the line for which a permit is requested forms a part.

245.20 Use of transmission lines. Rights-of-way granted under sections 245.1-245.28, for transmission lines shall not be used for the transmission of any power generated otherwise than by and at "the connected generating plant" as defined in section 245.19, until the Secretary of the Interior shall have given written authority for such use and then only on the terms and conditions expressed in such written authority.

245.21 Stipulation required as a condition precedent to the approval of permit. The applicant shall file with the application required under section 245.9 of these regulations, a duly executed stipulation expressly agreeing to accept the power permit subject to the following terms and conditions, to wit:

(a) To construct the project works on the location shown upon and in accordance with the maps and plans submitted with the application for permit, and to make no material deviation from said location unless and until maps and plans showing such deviation shall have been submitted and approved.

(b) To begin the construction of the project works, or the several parts thereof, within a specified period or periods from the date of execution of the permit, and thereafter diligently and continuously to prosecute such construction unless temporarily interrupted by climatic conditions or by some special or peculiar cause beyond the control of the permittee.

(c) To complete the construction and begin the operation of the project works, or the several parts thereof, within a specified period or periods from the date of execution of the permit. To furnish the Secretary with a statement, under oath, of the actual cost of construction of the project when completed.

(d) To operate the project works continuously for the development, transmission, and use of power, unless upon a full and satisfactory showing that such operation is prevented by unavoidable accidents or contingencies this requirement is temporarily waived by the written consent of the Secretary.

(e) To pay annually, in advance, such amounts as may be fixed and required by the Secretary under section 245.14.

(f) On demand of the Secretary to install at such places and maintain in good operating condition in such manner as shall be approved by the Secretary accurate meters, measuring weirs, gauges, or other devices approved by the Secretary and adequate for the determination of the amount of electric energy generated by the project works and of the flow of the stream or streams from which the water is to be diverted for the operation of the project works and of the amount of water used in the operation of the project works and of the amounts of water held in and drawn from storage; to keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Secretary; and to make a return during January of each year, under oath, of such of the records of measurements for the year ended on December 31, preceding, made by or in the possession of the permittee, as may be required by the Secretary.

(g) That the books and records of the permittee shall be open at all times to the inspection and examination of the Secretary, or other officer or agent of the United States duly authorized to make such inspection and examination.

(h) On demand of the Secretary to install a system of accounting for the entire power business in such form as the Secretary may prescribe, which system as far as is practicable will be uniform for all permittees, and to render annually such reports of the power business as the Secretary may direct.

(i) To protect in a workmanlike manner, at crossings of and at places in proximity to its transmission lines on the right-of-way authorized, in accordance with the rules prescribed in the National Electric Safety Code, all Government and other telephone, telegraph, and power-transmission lines from contact, and all highways and railroads from obstruction, and to maintain its transmission lines in such manner as not to menace life or property; and shall within a reasonable time following receipt of due notice from the Secretary of the Interior, modify the construction of or relocate the line covered by the permit without liability or expense to the United States, as may be necessary to allow use of the right-of-way by the United States for transmission line or other power purposes.

(j) To clear and keep clear the Interior Department lands along the transmission line for such width and in such manner as the officer of the United States having supervision of such lands may direct.

(k) To dispose of all brush, refuse, or unused timber on Interior Department lands resulting from the construction and maintenance of the project works to the satisfaction of the officer last aforesaid.

(l) To build and repair such roads and trails as may be destroyed or injured by construction work or flooding under the permit, and to build and maintain necessary and suitable crossings for all roads and trails that intersect the water conduit constructed, maintained, or operated under the permit.

(m) To do everything reasonably within the power of the permittee both independently and on request of the Secretary or other duly authorized officer or agent of the United States to prevent and suppress fires on or near the lands to be occupied under the permit.

(n) To notify promptly the officer of the United States (Regional Field Examiner, Chief Forester Oregon and California Revested Lands Administration, or other proper officer), having supervision of such lands, of the amount of merchantable timber, if any, which will be cut, removed or destroyed in the construction and operation of the project works, and to

deposit with such officer in advance of construction such sum of money as he may determine to be the full stumpage value of the timber to be so cut, removed or destroyed.

(o) To pay the United States full value for all damage to the lands or other property of the United States resulting from the breaking of or the overflowing, leaking, or seeping of water from the project works, and for all other damage to the lands or other property of the United States caused by the neglect of the permittee or of the employees, contractors, or employees of the contractors of the permittee.

(p) To indemnify the United States against any liability for damages to life or property arising from the occupancy or use of Interior Department lands by the permittee.

(q) To abide by such reasonable regulation of the service rendered and to be rendered by the permittee to consumers of power furnished or transmitted by the permittee, and of the prices to be paid therefor as may from time to time be prescribed by the State or any designated agency of the State in which the service is rendered; Provided, That for the purposes of this paragraph any such regulation shall be deemed to be suspended pending proceedings in the courts of such State, or in the Supreme Court of the United States on appeal from said State courts where such proceedings are in the nature of an appeal taken direct from the officer, commission, or board prescribing such regulation to said State courts.

(r) Upon demand in writing by the Secretary to surrender the permit to the United States or to transfer the same to such State or municipal corporation as he may designate, and to give, grant, bargain, sell, and transfer with the permit all works, equipment, structures, and property then owned or held by the permittee on lands of the United States occupied or used under the permit, and then valuable or serviceable in the generation, transmission, and distribution of power: Provided (1) That such surrender or transfer shall be demanded only in case the United States or the transferee shall have first acquired such other works, equipment, structures, property and rights of the permittee as are dependent in whole or in essential part for their usefulness upon the continuance of the permit; (2) That such surrender or transfer shall be on condition precedent that the United States shall pay or the transferee shall first pay to the permittee the reasonable value of all such works, equipment, structures, and property to be surrendered or transferred; (3) that such reasonable value shall not include any sum for any permit, right, franchise, or property granted by any public authority in excess of the sum paid to such public authority as a purchase price therefor; and (4) that such reasonable value shall be determined by mutual agreement of the parties in interest, and in case they cannot agree, by the Secretary under a rule, which, except as modified by the requirements of this paragraph, shall be the then existing rule of valuation for power properties in condemnation

proceedings in the State in which the properties to be surrendered or transferred are located. But nothing herein shall prevent the United States or any State or municipal corporation from acquiring by any other lawful means the permit or the works, equipment, structures, or property then owned or held by the permittee on lands of the United States occupied or used under the permit.

(s) That in respect to the regulation by any competent public authority of the service to be rendered by the permittee or the price to be charged therefor, and in respect to any purchase or taking over of the properties or business of the permittee or any part thereof by the United States, or by any State within which the works are situated or business carried on in whole or in part, or by any municipal corporation in such State, no value whatsoever shall at any time be assigned to or claimed for the permit or for the occupancy or use of Interior Department lands thereunder, nor shall such permit or such occupancy and use ever be estimated or considered as property upon which the permittee shall be entitled to earn or receive any return, income, price, or compensation whatsoever.

(t) That any approval of any alteration or amendment, or of any map or plan, or of any extension of time shall affect only the portions specifically covered by such approval; and that no approval of any such alteration, amendment, or extension shall operate to alter or amend, or in any way whatsoever be a waiver of any other part, condition, or provision of the permit.

(u) To perform such other specified conditions with respect to the occupancy and use of lands within any military, Indian, or other reservation as may be found by the chief officer of the department under whose supervision such reservation falls to be necessary as conditions precedent to the issuance of the permit in order to render the same compatible with the public interest.

245.22 Change in location or plans of construction. During the progress of construction, amendments to maps of location or plans of structures will be required from the permittee if there is a material deviation from the maps or plans as originally filed, but no amendment will be allowed that is incompatible with the occupancy and use of lands under existing permits or pending applications. Any approval of an amendment of a map or plan or of any extension of time shall be in the form of a supplemental agreement and permit so drawn as to become a part of the original agreement and permit and a substitute for the clauses amended. Any approval of any amendment of any map or plan shall apply only to the portions specifically covered by such approval, and no approval of any such amendment shall operate to amend or be in any way a waiver of any other part, condition, or provision of the permit.

If, after the completion of the project works, there are any deviations in location from those shown upon the original map or approved amendments thereof, additional maps prepared in the manner prescribed for original maps of location will be required to be filed within six months after the completion of the project works, showing the extent of such deviations and the final locations of such project works. Also upon the completion of the project works detailed working plans will be required of the works as constructed, except such parts as have been constructed in compliance with plans originally filed or approved amendments thereof. Such new or additional plans may be originals on tracing linen or Van Dyke negatives of the permittee's own working plans. The plans of conduits, dams, and appurtenant structures must be complete; or power houses, only general layout plans are required.

245.23 Extension of time for beginning or completing construction. An extension of time for beginning or completing construction and for beginning operation will be granted only by written approval after submission of a satisfactory showing by the permittee to the effect that the beginning or completion of the construction and beginning of operation has been prevented by engineering difficulties that could not reasonably have been foreseen, or by other special and peculiar causes beyond the control of the permittee.

245.24 Transfer of permit. A permit may be transferred to a new permittee only (1) by a court of competent jurisdiction under a decree of foreclosure to enforce a mortgage or deed of trust that shall have been given in good faith to secure capital for the power business as defined in section 245.13, embracing the works constructed or to be constructed under such permit, and without any intent to evade the restrictions upon transfers in this section hereafter set forth; or (2) upon the following conditions: The proposed transferee shall file with the Commissioner of the General Land Office, Washington, D. C., the decree, execution of judgment, will, proposed contract of sale, or other written instrument upon which the proposed transfer is based, or a properly certified copy thereof, also an application by the proposed transferee in the form of an agreement binding the proposed transferee to the performance of such new and additional conditions expressed therein as the Secretary may deem necessary; and thereupon the Secretary may, in his discretion, approve in writing the proposed transfer, and after such approval the transferee shall succeed to all the rights and obligations of the permittee, subject, however, to such new and additional conditions as shall have been embodied in such agreement and so approved.

245.25 Revocation of permit. Violation by a permittee of any of the provisions of sections 245.1-245.28, or of any of the conditions of a permit issued to him thereunder, shall be sufficient ground for revocation of such permit.

No permit will be deemed to be revoked except on the issuance by the Secretary of a specific order of revocation. Change of jurisdiction over

lands from one executive department to another will not revoke but will change the administrative jurisdiction over a permit for the occupancy and use of such lands. The final disposal by the United States of any tract traversed by a right-of-way permitted shall not be construed to be a revocation of such permission in whole or in part, but such final disposition shall be deemed and taken to be subject to such right-of-way until such permission shall have been specifically revoked.

245.26 Abandonment of project. Any power project under permit, or any part thereof, whether constructed or unconstructed, may be abandoned by the permittee upon the written approval of the Secretary after a finding by the Secretary that such abandonment will not tend to prevent the subsequent development of such project or part thereof so abandoned, and after the fulfillment by the permittee of all the obligations under the permit, in respect to payment or otherwise, existing at the time of such approval. Upon such abandonment, after such approval thereof and fulfillment of existing obligations, so much of the agreement and permit as relates to the abandoned project or part of a project will be formally revoked by the Secretary.

245.27 Action on application. When an application is filed, the register will place on the papers and accompanying maps, the serial number, the name of the office, and the date of filing. Notations will be made on the local office records opposite each unpatented tract and such patented tracts as have been acquired by the United States, affected by the right-of-way or site, giving serial number, date of filing and the name of the applicant. The register will certify on each map over his written signature, that unpatented land is affected. The application will then be transmitted promptly to the General Land Office. If no unpatented land or patented land acquired by the United States is affected, the Register will return the map and duplicate to the applicant with notice of that fact.

(a) Upon receipt of the application in the General Land Office, it will be noted on the records of that office and examined as to its legal and factual sufficiency and requirements. The General Land Office will then transmit the duplicate application and two print copies of all maps to the Geological Survey for examination and report as to its relationship to plans for comprehensive development of the natural resources involved, as to the incompatibility of proposed construction and use of lands with existing or other proposed works or with other land-use projects, as to the propriety and feasibility from an engineering standpoint of construction proposed, and as to other matters of an engineering or technical nature. Requests by the General Land Office shall be made to the Bureau of Reclamation and all other interested bureaus for reports relating to payments, rentals and stipulations, if any, deemed necessary for the protection of their interests.

(b) Applications which do not conform to the law and regulations or the approval of which would be incompatible with the public or Government interests will be rejected with the right of appeal. When an application

is completed and in conformity with the law and regulations and all required reports have been obtained, the General Land Office will prepare and submit to the Secretary with recommendation for approval, a draft of a permit in triplicate, through the Division of Power.

245.28 Action on approved permit. Upon approval of the permit, the General Land Office, will note the fact of such approval on its records and the maps of location and will transmit one original permit and one copy thereof together with one tracing of all maps of location to the district land office, whereupon the register will note the approval of the permit on the records of his office and will transmit the original permit to the permittee, retaining the copy of the permit and the tracing maps for the files of his office. The General Land Office will retain one original permit and one tracing of all maps of location for its files and transmit one copy of the permit to the Geological Survey, two copies to the Office of Indian Affairs, where the right-of-way affects Indian lands, one copy to such other bureau of the Department having control and administration of the lands affected, and one original of the permit to the General Accounting Office, where payment of a rental charge for the use of public lands is required.

(a) After the issuance of the permit, the Geological Survey will make such investigations and reports to the Secretary of the Interior as may be necessary for the determination and revision of rates and capacities, the supervision of construction and operation, and of the records of the permittee as contemplated by sections 245.1-245.28, and, in general, for all engineering matters pertaining to the power development and the power resources involved.

(b) The permittee shall at all times keep the Secretary informed of his address, and in case of corporations, with the address of its principal place of business and of the names and addresses of its principal officers.

REGULATIONS SUPERSEDED

Sections 245.1 to 245.28, inclusive, supersede sections 245.1 to 245.29, inclusive, of title 43 of the Code of Federal Regulations (Circ. No. 1461, October 30, 1939).

/s/ Fred W. Johnson,

Commissioner.

Approved: December 14, 1942.

/s/ Abe Fortas,

Acting Secretary of the Interior.

These regulations are issued under authority of 31 Stat. 790 and 36 Stat. 1253; 43 U.S.C. 959, 961; and R. S. 441; 5 U. S. C. 485.

Form 1.

Application For Power Permit.

The _____, a corporation organized and existing under and by virtue of the laws of the State _____ (_____, a citizen of the United States and resident of the State of _____,) with office and principal place of business at _____, in the State of _____, hereby makes application for a power permit for the occupancy and use of certain lands of the United States in the State of _____, by constructing, maintaining, and operating thereon for the main purpose of the development, transmission, and use of power (here add any other proposed purpose) the following works, all as approximately shown upon certain maps and as more fully described in certain papers which are filed herewith and made a part hereof:

(Omit such of the four following items (a), (b), (c), (d) as may not be applicable.)

(a) _____ dams (masonry, earth, etc., diverting or storage) approximately _____ foot in maximum height and approximately _____ foot in maximum length, to occupy approximately _____ acres, respectively, and to form _____ reservoirs to flood approximately _____ acres at extreme flood level, _____ acres at the flow line fixed by the average effective head, and approximately _____ acres at spillway level, respectively;* in section _____, township _____, range _____, _____ meridian, said dams and said reservoirs being designated, respectively, as follows: _____.

(b) _____ conduits approximately _____ miles in length, respectively,* crossing sections _____, township _____, range _____, _____ meridian, said conduits being designated, respectively, as follows: _____.

(c) _____ power houses and appurtenant structures to occupy approximately _____ acres, respectively,* in section _____, township _____, range _____, _____ meridian; said power houses being designated, respectively, as follows: _____.

(d) _____ transmission lines _____ miles in length, respectively,* crossing sections _____, township _____, range _____, _____ meridian; said transmission lines being designated as follows: _____.

This application has been prepared to be filed in accordance with the regulations of the Secretary of the Interior, in order that the undersigned applicant may obtain the benefits of the Act of Congress approved February 15, 1901 (31 Stat. 790), (or act of March 4, 1911, 36 Stat. 1253).

In witness whereof _____ has caused this instrument to be executed this _____ day of _____, 19 _____.

(SEAL OF CORPORATION)

By _____

Form 2.

Affidavit of Applicant's Engineer and Certificate of Applicant on Maps and Plans.

STATE OF _____, County of _____, ss:

_____, being duly sworn, says he is by occupation a _____ engineer, employed by the _____ company, and that this map (plan) was prepared under his supervision from actual surveys and designs; correctly represents so far as shown hereon, the location and design of the works described in the accompanying application; to the best of his knowledge and belief correctly represents all other matters shown hereon; and represents a safe, adequate, and feasible plan for the fullest economic utilization of the power resources involved.

_____, Engineer.

Subscribed and sworn to before me this _____ day of _____, 19 _____.

_____, Notary Public.

(SEAL

This to certify that _____, who subscribed the affidavit hereon is the person employed by the undersigned applicant to prepare this map (plan), which map (plan) has been adopted by the applicant as the approximate final location of the works thereby shown; and that this map (plan) is filed as a part of the complete application.

(SEAL OF CORPORATION)

By _____

* If land is unsurveyed substitute for the description by legal subdivisions in paragraphs (a), (b), (c), and (d), the following:
"Located on certain lands described and shown by the map accompanying the application."

STATUTES

The act of February 15, 1901 (31 Stat. 790), is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior, be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights-of-way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant National Parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes, and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: Provided, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: Provided, further, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights-of-way for telegraph companies over the public domain; And provided further, That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation or park.

The act of March 4, 1911 (36 Stat. 1253-1254), provides, among other things, as follows:

That the head of the department having jurisdiction over the lands be, and he hereby is, authorized and empowered, under general regulations to be fixed by him, to grant an easement for rights-of-way, for a period not exceeding fifty years from the date of the issuance of such grant, over, across, and upon the public lands, national forests, and reservations of the United States for electrical poles and lines for the

transmission and distribution of electrical power, and for poles and lines for telephone and telegraph purposes, to the extent of twenty feet on each side of the center line of such electrical, telephone, and telegraph lines and poles, to any citizen, association, or corporation of the United States, where it is intended by such to exercise the right-of-way herein granted for any one or more of the purposes herein named: Provided, That such right-of-way shall be allowed within or through any national park, national forest, military, Indian, or any other reservation only upon the approval of the chief officer of the department under whose supervision or control such reservation falls, and upon a finding by him that the same is not incompatible with the public interest: Provided, That all or any part of such right-of-way may be forfeited and annulled by declaration of the head of the department having jurisdiction over the lands for non-use for a period of two years or for abandonment.

That any citizen, association, or corporation of the United States to whom there has heretofore been issued a permit for any of the purposes specified herein under any existing law may obtain the benefit of this act upon the same terms and conditions as shall be required of citizens, associations, or corporations hereafter making application under the provisions of this statute.