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SCHEDULE

Constitution and Proceedings of the Ancillary Rights Commission

CHAPTER 281

PETROLEUM WINNING OPERATIONS

An Act to vest in the Crown the property in petroleum and natural gas within Barbados and to make provision with respect to the searching and boring for and getting of petroleum and natural gas, and for purposes connected with the matters aforesaid.

1950-1.
1953-25.
1956-56.
1957-30.
1968-3.
1973-53.
L.N. 168/
1967.
1979-48.

[2nd July, 1951] Commence-
ment.

PART I

Preliminary

1. This Act may be cited as the *Petroleum Winning Operations Act*.

Short title.
1968-3.

2. (1) For the purposes of this Act, the expression "Ancillary Rights Commission" means the Commission constituted by and in accordance with the Schedule;

Inter-
pretation.

"drainage area" in relation to a productive well means an area of land immediately surrounding the well square in shape containing 5 acres and so laid off that the productive well is equidistant from all four sides with two sides of the square facing North and South;

Schedule.

1973-53.

"land" includes land covered by water;

"owner" means the person for the time being receiving the rack rent of the land in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if the land were let at a rack rent;

"petroleum" includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata and bitumen and asphalt but does not include tar-sand, manjak, coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

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“productive well” means a well commenced after the 2nd July, 1951¹ from which petroleum is recovered and in respect of which royalty is paid;

1968-3. “submarine area” means land underlying the sea waters surrounding the coast within the limits of the territorial waters of Barbados;

“well” includes bore-hole.

(2) Notwithstanding anything in the definition of “owner” contained in subsection (1), where the ownership of petroleum has, at the 5th January, 1950² been severed from the ownership of the land in which such petroleum is situated, the expression “owner” shall be deemed to mean the person who would, prior to that date, have been entitled, whether on his own account or as agent or trustee for any other person, to receive any royalties payable in respect of such petroleum under a petroleum mining licence or lease, or any successor in title of such person.

1968-3. (3) In this Act references to a person having a right to search for petroleum shall include the right to make a geological and geophysical examination of land or the submarine area and to bore the same, and references to the getting of petroleum shall include the working, carrying away, storing and treating of petroleum.

PART II

Licences and Leases for Search for or Getting of Petroleum

Vesting of property in petroleum in the Crown. ³
1968-3.

3. (1) Notwithstanding anything to the contrary in any enactment or in any lease or other instrument of title, the property in petroleum existing in its natural condition in strata

¹The date of commencement of this Act.

²The date of passing of this Act.

³Provision was made for compensation to be paid to persons receiving royalties from existing well. See Petroleum Act, 1950, 1951, section 8 (not reprinted)

within the submarine area and Barbados is hereby vested in the Crown.

(2) No person shall search for or get petroleum within the submarine area or Barbados except in pursuance of a licence or lease granted under this Act. 1968-3.
1979-48.

(3) Any person who contravenes the provisions of subsection (2) shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500 or to imprisonment for 6 months and in the case of a continuing offence to a fine of \$50 for each day or part of a day during which the offence is continued after the 1st day on which a conviction is obtained. 1968-3.

4. Subject to this Act and any regulations, the Minister responsible for Minerals may grant to such persons as he thinks fit licences or leases to search for and get petroleum and any such licences or leases shall be granted for such consideration (whether by way of royalty or otherwise) and upon such other terms and conditions as the Minister may determine. Minister responsible for Minerals may grant licences and leases.
L.N. 168/
1967.

5. (1) A licensee or lessee under any licence or lease of any part of the submarine area granted under section 4

(a) shall not carry on any operation authorised by such licence or lease in such a manner as to effect the closing of the marine approaches to any of the harbours of Barbados;

(b) shall cause any works or installations erected by him to be of such a nature and to be so constructed, placed, marked and buoyed as not to constitute a danger or obstruction to shipping;

(c) if required in writing so to do by the Minister responsible for Transport and Works, shall illuminate between the hours of sunset and sunrise, in a manner satisfactory to the Harbour Master, all derricks, piers, survey marks or any other works or installations erected in the area included in the licence or lease, the means of illuminating to be such as shall be approved or required by the Harbour Master; and

Duties of licensees and lessees of any part of submarine area.
1968-3.

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(d) shall adopt all practicable precautions (which shall include the provision of modern equipment) to prevent pollution of the coastal waters by oil, mud, or any other fluid or substance which might contaminate the sea water or shore line of Barbados.

(2) A licensee or lessee under subsection (1) who contravenes any of the provisions of that subsection shall be guilty of an offence and shall be liable on summary conviction to a fine of \$250 or to imprisonment for 3 months and in the case of a continuing offence to a fine of \$25 for each day or part of a day during which the offence is continued after the first day on which a conviction is obtained.

Royalties payable by licensee and lessee.

1968-3.

6. (1) Every licensee or lessee under a licence or lease granted under this Act shall pay a royalty computed at the rate specified in the licence or lease on the selling value of all crude petroleum or natural gas recovered from the submarine area or the land comprised in the licence or lease.

(2) No royalty shall be paid in respect of any crude petroleum used by the licensee or lessee for purposes of production or for purposes incidental thereto, or in respect of natural gas which is not sold.

(3) The rate of royalty to be specified in any licence or lease shall be determined by the Minister responsible for Minerals when granting the licence or lease and shall not in any case be less than 10 percent.

(4) For the purposes of this section, the selling value of any crude petroleum or natural gas shall be such value as may be determined by mutual agreement between the Minister responsible for Minerals and the licensee or lessee or, in default of agreement, by arbitration.

Recovery of royalties and other monies.

7. (1) Any royalties or other monies payable by a licensee or lessee under a licence or lease granted under this Act shall be paid to the Accountant-General and, without restricting any other mode of recovery, may be recovered in any court by

any person authorised in that behalf by the Minister responsible for Minerals.

(2) All such royalties and monies shall be paid by the Accountant-General into the Consolidated Fund.

PART III

Petroleum Quota Payments

8. (1) Subject to the provisions of this section, every owner of land situated in a drainage area in which a productive well is located shall be entitled to receive from the Crown, in respect of the petroleum recovered from such well during his ownership of such land, payments (hereinafter referred to as "petroleum quota payments") calculated in accordance with subsection (2).

Petroleum
quota pay-
ments.
1973-53.

(2) A petroleum quota payment shall be of such an amount as shall bear the same proportion to twenty-five per cent of the royalties payable in respect of petroleum recovered from a productive well during the relevant period as the area of land owned by the person entitled to receive such payment, or who would have been so entitled if the ownership of the petroleum had not been severed from the ownership of the land, bears to the total area of land in the pooling area.

(3) For the purposes of subsection (2), the expression "relevant period" means a period of one year or, if the person entitled to receive a petroleum quota payment has owned the said land or, where the ownership of the petroleum has been severed from the ownership of the said land, has owned the petroleum situated in the said land for a shorter period than one year, such shorter period.

(4) The petroleum quota payments to be made under this section shall be paid from moneys voted by Parliament for the purpose at such times and in such manner as the Minister responsible for Finance may direct.

L.N. 168/
1967.

(5) No petroleum quota payment shall be paid to any person until he has satisfied the Minister responsible for Finance by the production of title deeds, plans and such other evidence as that Minister may require, that he is entitled to receive such payment.

9. (1) Subject to this Act, the British Union Oil Company Limited (hereinafter referred to as "the company") shall be

Company
quota
payments.
1953-25.
1957-30.

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entitled to receive from the Crown payments (hereinafter referred to as "company quota payments") calculated in accordance with this section.

(2) Subject to subsection (6), a company quota payment shall be twelve and one-half per cent of the royalties received by the Accountant-General in respect of petroleum recovered from a well located on land over which the British Union Oil Company Limited held at the 28th January, 1949 a lease which the Minister responsible for Minerals and the company agree—

- (a) was a lease granting to the company the right to mine for and extract petroleum or mineral oil from such land; and
- (b) was at that date a valid lease in respect of which no liability to forfeiture had arisen.

(3) No company quota payment shall be paid in respect of petroleum recovered from such well after the expiry of the term created by such lease.

(4) The company quota payments to be made under this section shall be paid from moneys voted by Parliament for the purpose at such times and in such manner as the Minister responsible for Finance may direct.

(5) Any question arising under paragraph (a) or paragraph (b) of subsection (2) shall, in default of agreement between the Minister responsible for Minerals and the company, be determined by arbitration.

(6) The company shall not be entitled to receive any company quota payment in respect of natural gas recovered from the wells known as "Turners Hall numbers nineteen and twenty".

1930-57.

(7) The company may at any time with the consent of the Minister responsible for Minerals transfer the rights, powers, obligations and liabilities of the company conferred or imposed under this section, and the rights, powers, obligations and liabilities so transferred shall vest in, be exercised by and attach to the person or company to whom the same are transferred in like manner and to the same extent as if such person or company had been named in this section instead of the company:

Provided that no such transfer shall have any effect or

validity unless the same is made by deed and duly recorded in the Registration Office.

PART IV

Ancillary Rights

10. (1) Where any facility, right or privilege is required in order that petroleum may be properly and conveniently searched for and got by any person to whom a licence or lease under section 4 has been granted, and the proper and efficient searching for and getting of the petroleum is unduly hampered by the inability or failure of the licensee or lessee to obtain such facility, right or privilege (hereinafter referred to as an "ancillary right"), such ancillary right may be conferred on the licensee or lessee in the manner and subject to the provisions hereinafter appearing.

Power to grant ancillary rights for facilitating the search for and getting of petroleum.

(2) In particular, but without prejudice to the generality of subsection (1), such ancillary rights shall include—

- (a) a right to enter upon land and to search for and get petroleum;
- (b) a right to use and occupy land for the erection of such buildings and tanks, the laying and maintenance of such pipes and the construction of such other works as may be required for the purpose of searching for and getting petroleum;
- (c) a right to obtain a supply of water or other substances in connection with the search for or getting of petroleum;
- (d) a right to dispose of water or other liquid matter obtained while searching for or getting petroleum.

(3) An ancillary right may be granted to a licensee or lessee either at the time when a licence or lease is granted or at any subsequent time.

11. An ancillary right shall not be granted under this Act unless it is shown to the satisfaction of the Ancillary Rights Commission that it is not reasonably practicable to obtain the right in question by private arrangement for any of the following reasons—

Limitation on power to grant ancillary rights.

- (a) that the persons with power to grant the right are numerous or have conflicting interests;

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- (b) that the persons with power to grant the right, or any of them, are residing out of Barbados or cannot be ascertained or found;
- (c) that the persons from whom the right must be obtained, or any of them, have not the necessary powers of disposition, whether by reason of defect of title, legal disability or otherwise;
- (d) that the person with power to grant the right unreasonably refuses to grant it or, after reasonable consideration has been offered, demands terms which, having regard to the circumstances, are unreasonable.

Application
for ancillary
rights.

12. (1) Any licensee or lessee who is desirous of obtaining an ancillary right may make application in writing to the Ancillary Rights Commission for the grant of such a right.

(2) An application under this section shall set forth the circumstances alleged to justify the grant of the right and shall be in such form and verified in such manner as the Commission shall direct.

(3) The Commission shall, as soon as possible after the receipt of an application in pursuance of subsection (1), cause to be published in the *Official Gazette*, in one issue of a daily newspaper, in one issue of a bi-weekly newspaper, and in one issue of a weekly newspaper published in this Island, a notice setting forth the name of the applicant, the nature of the ancillary right claimed and a sufficient description of the area in which it is desired to exercise the right.

Enquiry by
Ancillary
Rights
Commission.

13. (1) The Ancillary Rights Commission shall enquire into any application for the grant of an ancillary right made in accordance with section 12.

(2) Any person whose interests are or may be prejudicially affected by the grant of an application for an ancillary right shall be entitled to be heard by himself or by counsel or solicitor and to examine and cross-examine any person giving evidence before the Commission.

Cap. 112.

(3) Sections 9, 10, 11, 12, 14 and 17 of the Commissions of Enquiry Act shall, with such modifications and adaptations as may be necessary, apply to an enquiry under this section.

14. (1) The Ancillary Rights Commission, in considering whether an ancillary right should be granted and the terms and conditions, if any, to be imposed if such a right is granted, shall have regard, among other considerations, to the effect on the amenities of the locality of the proposed use and occupation of the land in respect of which the application is made.

Grant of an ancillary right.

(2) Where the Commission is satisfied that it is expedient in the public interest that the application should be granted, the Commission shall by order in writing, grant such application subject to such terms and conditions and for such period, as the Commission shall think fit; and upon such order being made, the right specified in the order shall vest in the applicant.

(3) No ancillary right granted under this section shall confer on the person to whom it is granted any greater power than if the right had been granted by a person with power to grant such right nor relieve the grantee from any obligation or liability to which he would have been subject had the right been granted by such a person.

15. (1) Where an ancillary right is granted in accordance with section 14, the Ancillary Rights Commission shall, in default of agreement between the parties concerned, determine the amount of compensation to be paid by the applicant in respect of the grant of such right and the persons to whom it shall be paid.

Provision as to compensation for ancillary rights.

(2) The compensation to be paid in respect of the grant of any ancillary right shall be assessed by the Commission on the basis of what would be fair and reasonable between a willing grantor and a willing grantee, having regard to the terms and conditions subject to which the right is or is to be granted.

(3) The Commission may impose as a condition of the grant of any ancillary right that the compensation payable in respect thereof shall be paid or that security for the payment thereof shall be given, before the right is exercised.

16. The costs of and incident to any proceedings before the Ancillary Rights Commission shall be in the discretion of the Commission, and the Commission shall have full power to

Costs of proceeding before Ancillary Rights Commission.

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determine by whom and to what extent the costs are to be paid; and such costs may be recovered in a summary manner before one of the magistrates of District A.

Right of appeal.
1956-56.

17. (1) An appeal shall lie from any order made by the Ancillary Rights Commission to the High Court whose decision shall be final.

(2) The procedure in or in connection with any appeal to the High Court under this Act and the scale of fees and costs to be applied in such an appeal shall be such as may be determined by rules to be made by the Judicial Advisory Council.

(3) The costs of and incident to any appeal to the High Court under this Act shall be in the discretion of the Judge, and the Judge shall have full power to determine by whom and to what extent the costs are to be paid.

PART V

Miscellaneous

Disposal of petroleum quota payments and compensation moneys in certain cases.

18. (1) Where the person entitled to be paid a petroleum quota payment or compensation in respect of the grant of an ancillary right cannot be found or ascertained or where any question arises with respect to the title of any person claiming to be paid a petroleum quota payment or compensation as aforesaid, then the amount of such petroleum quota payment or compensation shall be deposited in the Public Treasury.

(2) Any moneys deposited in the Public Treasury in accordance with subsection (1) shall, upon application being made to the Ancillary Rights Commission by any person claiming such moneys, be paid out by the Accountant-General on the written direction of the Commission to such person as shall appear to the Commission to be entitled thereto.

(3) Any moneys deposited in the Public Treasury as aforesaid remaining unclaimed at the expiration of ten years from the date on which they were deposited in the Public Treasury shall be transferred to and form part of the Consolidated Fund.

(4) All moneys paid out under subsection (2) shall be valid and effectual against any demand made upon the Commission

by any person, but any person may nevertheless recover such moneys from the person to whom they were paid if, prior to such payment, they were lawfully due to him.

19. The Minister responsible for Minerals shall, as soon as possible after a well becomes a productive well within the meaning of subsection (1) of section 2, cause a notice to that effect to be published in the *Official Gazette* and the several newspapers of the Island.

Notification
of productive
wells.

20. Any question or dispute which is required by any provision of this Act to be determined by arbitration shall be referred to the determination of two arbitrators, one to be appointed by each party to the dispute, or an umpire in case such arbitrators fail to agree, such umpire to be chosen by the arbitrators before entering upon the matters submitted to them, and the decision of such arbitrators or the umpire, shall be final and binding on the parties in difference, and every such reference shall be deemed to be an arbitration within the Arbitration Act and be subject to the provisions relating to arbitration contained in that Act.

Arbitration.

Cap. 110.

21. (1) The Minister responsible for Minerals may make regulations for giving effect to the provisions of this Act.

Regulations.

(2) Regulations made under this section may provide for—

- (a) the manner in which, and the persons by whom, applications for licences and leases shall be made;
- (b) the fees to be paid on any such application;
- (c) the conditions as to the size and shape of areas in respect of which licences or leases may be granted;
- (d) model clauses which shall, unless the Minister responsible for Minerals thinks fit to modify or exclude them in any particular case, be incorporated in any such licence or lease;
- (e) the remuneration and travelling allowance of the members and secretary of the Ancillary Rights Commission.

(3) Any regulations made under this section shall be subject to negative resolution.

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s. 2 (1).

SCHEDULE

Constitution and Proceedings of the Ancillary Rights Commission

1. There shall be a Commission, to be called the Ancillary Rights Commission, consisting of a chairman and two other persons appointed by the Governor-General.

2. The members of the Commission shall hold office for a term of three years and shall be eligible for re-appointment:

Provided that—

- (a) a member may at any time by notice in writing to the Governor-General resign his office;
- (b) the Governor-General may declare the office of any member vacant on the ground that he is unfit to continue in office.

3. In the case of illness, incapacity or absence of any member of the Commission, the Governor-General may appoint such person as he thinks fit to act as deputy to such member.

4. No member of the Commission who is a party to or beneficially interested in any application to the Commission shall enquire into such application, and the Governor-General may appoint such person as he thinks fit to act as deputy to such member for the purposes of such application.

5. The Governor-General shall appoint a secretary to the Commission.

L.N. 168/
1967.

6. There shall be paid from moneys voted by Parliament for the purpose to the members and secretary of the Commission such remuneration and travelling allowance as may be prescribed by regulations.

7. The Commission shall have power to act notwithstanding a vacancy among the members thereof.

8. At any meeting of the Commission two members shall be the quorum.

9. Subject to this Act, the procedure in or in connection with any proceedings before the Commission shall be such as may be determined by rules to be made by the Commission with the approval of a Judge.