



## ANALYSIS

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1991, No. 17

An Act to constitute the Te Aponga Uira O Tumu-Te-Varovaro  
and to define its functions and powers

(8 July 1991)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title and commencement - (1) This Act may be cited as the Te Aponga Uira O Tumu-Te-Varovaro Act 1991.

(2) This Act shall come into force on a date to be appointed by the Minister and notified in the Cook Islands Gazette.

2. Interpretation - In this Act, unless the context otherwise requires, -

"Authority" means the Te Aponga Uira O Tumu-Te-Varovaro established under Section 3;

"Board" means the Board of Directors of the Authority appointed pursuant to Section 4;

"Cabinet" means the Cabinet of the Cook Islands;

"Chairman" means the Chairman of the Board of Directors of the Authority;

"Conservation Officer" means an officer appointed under the Conservation Act, 1986-87;

"Consumer" means any person who is supplied with energy by the Authority and includes any person whose premises are for the time being connected for the purpose of receiving energy with the works of the Authority;

"Director" means a Director of the Board of Directors of the Authority appointed pursuant to Section 4(3);

"electric supply line" means a wire, conductor, or other means used for conveying, transmitting, or distribution of energy, whether by overhead line or ground cable, together with any casing, covering, coating, tube, pipe, or insulator enclosing, surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, or distributing such energy and includes any support, cross-arm, stay, strut, or safety device erected or set up for that purpose;

"energy" means electrical energy -

(a) generated, transmitted, or supplied for any purpose, or

(b) used for any purpose except the transmission of a message;

"General Manager" means the General Manager and Chief Executive of the Authority appointed pursuant to Section 9(1);

"Government" means the Government of the Cook Islands;

"Minister" means the Minister of Energy;

"Outer Islands" mean all the islands of the Cook Islands other than Rarotonga;

"regulations" means regulations made under this Act;

"works" include generating plants, electric supply lines, and any building, plant, machinery, apparatus, and any other thing of whatever description required to supply energy to the public.

PART I  
TE APONGA UIRA O TUMU-TE-VAROVARO ESTABLISHED

3. Establishment of the Authority - (1) There is, hereby, established Te Aponga Uira o Tumu-Te-Varovaro.

(2) The Authority -

(a) shall be a body corporate with perpetual succession;

(b) shall have a common seal; and

(c) may sue and be sued under its corporate name.

(3) The jurisdiction of the Authority shall extend to the island of Rarotonga.

4. Board of Directors - (1) There shall be a Board of Directors of the Authority which shall have overall control of the Authority, subject to the provisions of this Act.

(2) The Board shall consist of a Chairman and two Directors, appointed by the Minister and one ex-officio Director. The Chairman shall be an eminent person of proven administrative capabilities with adequate experience of managing a large public enterprise. One of the Directors shall have experience of banking, including international banking, in a senior position. One of the Directors shall be an Electrical Engineer, preferably with experience of power house management. The Secretary, Ministry of Energy, shall be ex-officio Director of the Authority.

(3) The Chairman and the two nominated Directors shall be appointed for a term of three years and such appointment shall be capable of successive renewals.

(4) The validity of anything done by or in relation to a person purporting to act as a Director under Subsection (2) shall not be called into question on the ground that the occasion for the appointment had not arisen, that there was a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect, or that the occasion for the person to act had not arisen or had ceased.

(5) Any Director may at any time be removed from office by the Minister for incompetence, misbehaviour, physical or mental incapacity, bankruptcy or neglect of duty proved to the satisfaction of the Minister.

(6) A Director may at any time resign his or her office by writing addressed to the Minister.

(7) If any Director dies, resigns, or is removed from office, the Minister may appoint a person to fill that office for the remainder of the term for which the first mentioned Director was appointed.

(8) The powers of the Board shall not be affected by any vacancy in its membership.

5. Government Policy - (1) In the exercise of its functions and powers the Authority shall be accountable to the Minister and have due regard to the general policy of the Government in relation to energy as communicated to the Chairman of the Board of Directors of the Authority from time to time in writing by the Minister. The Authority shall comply with any policy direction given by the Minister in writing, unless it explains to the satisfaction of the Minister the reasons why the direction should not be followed.

(2) Any direction given by the Minister under Subsection (1) shall be included in the Annual Report furnished by the Authority to the Minister.

6. Meetings of the Board of Directors - (1) The Chairman shall convene meetings of the Board at least four times in every financial year or at such more frequent intervals as he considers necessary for the efficient performance of the functions of the Authority.

(2) Any two members of the Board may at any time request the Chairman in writing to convene a special meeting of the Board, and upon receipt of such a request, the Chairman shall convene a meeting.

7. Procedure at Meetings - (1) At a meeting of the Board -

- (a) a quorum shall be constituted by a majority of the Directors for the time being holding office;
- (b) the Chairman shall preside if he is present;
- (c) in the absence of the Chairman, the Directors present shall elect one of their number to preside;
- (d) all questions shall be decided by a majority of votes of the Directors present and;
- (e) the Director presiding shall have a deliberative vote and, in the event of an equality of votes, a casting vote also.

(2) The Minister shall have the right to attend and address any meeting of the Board.

8. Minutes of Meetings - (1) The Authority shall cause minutes to be kept, in a book provided for the purpose, of all resolutions and proceedings of the meetings of its Board of Directors.

(2) Minutes shall be signed by the Chairman at the next subsequent meeting of the Board.

(3) A copy of the minutes of every meeting shall be furnished to every Director.

9. Disclosure of conflicting interest - (1) Any Director who, otherwise than as a Director, is directly or indirectly interested in any arrangement or agreement entered into or proposed to be entered into by the Authority shall as soon as possible after the relevant facts have come to his notice disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under this section shall be recorded in the minutes of the meeting of the Board and the Director shall not take part after the disclosure in any deliberation or decisions relating to the arrangement or agreement but shall be counted as present for the purpose of forming a quorum of the Board for any such deliberation or decision.

10. General Manager - (1) There shall be a General Manager of the Authority to be appointed by the Board and who shall be the Chief Executive of the Authority.

(2) The General Manager shall be, ex-officio, the Secretary of the Board of Directors of the Authority.

11. Remuneration of Chairman, Directors and General Manager - The Chairman, other Directors of the Authority, and the General

Manager shall be paid out of the funds of the Authority such remuneration and allowances, as may from time to time be fixed by Cabinet.

12. Officers and employees of the Authority - (1) The Authority may employ such officers and employees as it considers necessary for the performance of its functions on such terms and conditions as it may determine and may remove at any time any such officer or employee from his office or employment.

(2) The Authority by notification in the Cook Islands Gazette, may make rules for the duties of officers and employees of the Authority and their salaries, allowances, and conditions of service.

13. Consultants - The Authority, with the prior approval of the Minister, may employ such consultants as it considers necessary to assist the Authority in the performance of its functions.

14. Delegation - (1) The Board of Directors of the Authority, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, may delegate to the Chairman, to a Director, to the General Manager, or to an officer or employee of the Authority, all or any of its powers under this Act other than this power of delegation.

(2) A power so delegated when exercised by the delegate shall for the purposes of this Act be deemed to have been exercised by the Authority.

(3) A delegation under this section is revocable at will and shall not prevent the exercise of a power or the performance of a function by the Board.

## PART II

### OBJECTIVES, FUNCTIONS AND POWERS OF THE AUTHORITY

15. Objectives of the Authority - The principal objectives of the Authority shall be -

- (a) to provide energy to all consumers in a reliable and economical manner;
- (b) to operate its facilities in an efficient and profitable manner having due regard to the interests of the community.

16. Functions of the Authority - The principal functions of the Authority shall be to -

- (a) establish, improve, maintain, operate, and manage facilities for generation, transmission, and distribution of energy;
- (b) administer arrangements for the purchase, sale, or other disposition of energy generated by facilities directly under its control or purchased from other sources within its jurisdiction;
- (c) ensure standards of safety, efficiency, and economy of operation for all facilities for generation, transmission, and distribution of energy under its control;
- (d) plan future development of energy and towards that end consult as appropriate with other

- national or international agencies involved in such planning;
- (e) recommend to the Minister policies for development of energy and undertake such planning and research as may be required to provide the Minister with advice on matters of policy;
  - (f) perform such other functions as the Minister may assign or delegate from time to time to the Authority.

17. Powers of the Authority - (1) The Authority shall have the powers reasonably necessary for the effective performance of its functions.

(2) Without limiting the generality of subsection (1), the Authority may -

- (a) sell energy and services to consumers or others, or otherwise dispose of energy, and make all arrangements for such sale or disposition, whether energy is generated by its own facilities or purchased under paragraph (b), in accordance with tariffs and schedules of rates, charges, and other services approved by it;
- (b) purchase energy from and sell energy to any other licensee licensed by the Minister for sale and purchase of energy within and in proximity to the area of operation of the Authority;
- (c) develop and publish tariffs and schedules of rates, charges, and services and other rules for providing energy; tariffs and schedules shall be developed subject to guidelines determined by the Minister and conveyed to the Authority in writing;
- (b) conduct, maintain, upgrade, and improve all facilities for the generation, transmission, and distribution of energy and all property controlled, administered, established, or acquired by it under this Act;
- (e) with prior approval of Cabinet, acquire land by purchase, lease, sublease, or otherwise, or interest in land other than by fee simple, with or without any building;
- (f) with prior approval of Cabinet, dispose of any commercial undertaking, land, interest in land by sale, lease, sublease, or otherwise;
- (g) maintain and improve diesel generating stations on outer islands on instructions from the Minister conveyed to the Authority in writing;
- (h) contract on such terms and conditions as it finds satisfactory for the procurement of supplies, equipment, materials, personal services, and construction.

18. Power of the Authority to engage in certain undertakings

(1) The Authority, in accordance with the regulations, may manufacture, purchase, sell, or lease on the execution of a hire purchase agreement or otherwise, any electrical machinery,

control gear, fittings, wires, or apparatus for lighting heating, cooling, or motive power or for any other purpose for which energy can or may be used, or any industrial or agricultural machinery operated by energy, and may install, connect, repair, maintain, or remove such fittings wires, apparatus, machinery, or control gear and in respect thereof demand and take such remuneration, rents, or charges and make such terms and conditions as it deems fit.

(2) The Authority may maintain shops and showrooms for the display, sale, or hire of fittings, wires, apparatus, and machinery as aforesaid, conduct displays, exhibitions, and demonstration thereof and generally do all things including advertising incidental to the sale and hire of such fittings, wires, apparatus, or machinery.

(3) The Authority shall show separately in its accounts moneys received and expended in connection with any undertakings under this section.

19. Power of Authority to conduct investigations - The Authority, at its own expense may conduct such investigations, experiments, and trials as it thinks fit for the improvement of methods of transmission, distribution, and supply of energy or of the utilisation of fuel or other means of generating energy and may establish and maintain laboratories for testing and standardisation of electrical instruments and equipment.

20. Authority to have powers and obligations of licensee under the Ministry of Energy Act 1991 - Subject to the provisions of this Act, the Authority shall have all powers and obligations of a licensee under the Ministry of Energy Act 1991, and this Act shall be deemed to be the licence of the Authority for the purpose of that Act.

21. Powers to Authority for entering land and placing wires, poles etc. - (1) The Authority may from time to time enter on any land for the purpose of maintaining any works and may remain on that land for such time as is necessary to execute and do all things necessary in connection with the maintenance of such works.

(2) The Authority shall have for the placing of any wires, cables poles, brackets, cross-arms, stay-apparatus, and appliances for the transmission and distribution of energy the same powers as possessed by the telegraph authority with regard to a telegraph established or maintained by the Government or to be so established and maintained.

(3) Where the Authority places any line across or along any road, it shall not place the wires so low as to interfere with the lawful traffic on the road. No interference shall be deemed to be caused if the wires are placed at a height of not less than 5.5 metres above the surface of the road where the wires cross a public road or at a height of not less than 4.25 metres elsewhere.

22. Removal of undergrowth and trees causing damage to works - (1) The Authority may cut and remove on either side of any works, whether existing or proposed, for a distance of 2 meters on flat terrain and 3 meters on hilly terrain, any undergrowth, tree, or part of any tree which may interfere or may be likely to interfere with any works.

(2) Should any tree growing on any land cause or be likely to cause damage to any works, the Authority may cause notice to be given to the owner of such land to remove the said tree or any part thereof and should the owner fail to comply with the terms of such notice within the time specified therein (being not less than seven clear days after the time of service of that notice), the Authority may enter upon that land and remove the tree or any part thereof but so that no unnecessary damage is done or incurred thereby.

(3) A copy of the notice under subsection (2) shall be sent to the Conservation Officer having jurisdiction over the area relating to subsection (2).

(4) Any person suffering any damage on account of exercise of power under subsection (2) shall be entitled to compensation by the Authority. The amount of compensation shall be as agreed upon between the Authority and the person concerned or failing agreement, to be determined in accordance with the law.

### PART III FINANCIAL

23. Budget of the Authority - The budget of the Authority shall consist of -

- (a) such funds as may be appropriated by Parliament for the purposes of the Authority;
- (b) revenues received by the Authority for sale of energy;
- (c) revenues received by the Authority for performing services to the consumers;
- (d) monies received by the Authority for engaging in certain undertakings under Section 18;
- (e) grants or loans received for projects from international lending agencies, official development aid from donor countries, loans from commercial banks, and other sources in accordance with agreements approved by the Government;
- (f) any other moneys lawfully received by the Authority; and
- (g) income derived from any such monies.

24. Application of moneys - The budget of the Authority shall be applied only -

- (a) in payment or discharge of the expenses, charges, obligation, or liabilities incurred or undertaken by the Authority in or in connection with the performance of its functions or the exercise of its powers;
- (b) in payments required by law to be made out of its budget.

25. Bank Account - (1) The Authority shall open and maintain an account to be called the Te Aponga Uira O Tumu-Te-Varovaro Account with a Bank approved by the Minister.

(2) Any monies belonging to the Authority shall be paid into the Te Aponga Uira O Tumu-Te-Varovaro Account as soon as practicable after it has come into the hands of an officer or person authorised to receive monies on behalf of the Authority.

(3) Subject to subsection (4), no monies shall be withdrawn from the Te Aponga Uira O Tumu-Te-Varovaro Account

except by cheque or other negotiable instrument signed by the General Manager and countersigned by the Chairman or a member of the Board.

(4) The Board may authorise by resolution any two of its officers to sign and countersign cheques or other instruments on behalf of the Authority and it shall be lawful for any monies to be withdrawn from the Te Aponga Uira O Tumu-Te-Varovaro Account in accordance with the terms of the resolution.

26. Budget estimates - (1) The Authority shall prepare and submit to the Minister one month before the beginning of any financial year, the budget estimates for its revenues, expenditures, provisions for depreciation, and other provisions in such form as the Minister may direct. The Minister upon advice from the Minister of Finance, shall submit the estimates with his recommendation to the Cabinet. The estimates, as approved by Cabinet, shall be returned to the Authority.

(2) The Authority shall approve expenditures only in accordance with its approved budget estimates, subject to the following powers of re-allocation -

- (a) the Chairman may exercise a power of virement not exceeding twenty percent of the budgeted amount for the item to which funds are transferred;
- (b) the Minister may authorise expenditure in excess of the total provided to the extent that receipts of the Authority exceed the amount estimated.

27. Appropriations by Parliament - (1) Parliament may approve through budgetary appropriations provisions for the following support to the Authority -

- (a) capital works in progress;
- (b) capital works to be initiated during the budget year;
- (c) support for uneconomical works undertaken by the Authority to serve social objectives directed by Government;
- (d) support for operational losses.

(2) The budgetary support provided through appropriations made in accordance with subsection (1) may be partly in the form of a grant and partly in the form of a loan, as specified in the appropriations.

28. Accounts and records - The Authority shall do all things necessary to -

- (a) cause to be kept proper accounts and records;
- (b) ensure that payments are correctly made and properly authorised;
- (c) maintain adequate control over its assets or the assets in its custody; and
- (d) maintain adequate control over its liabilities.

29. Audit - The accounts and records of the Authority shall be audited annually by auditors appointed pursuant to Article 71 of the Constitution and a report of the audit shall be supplied to the Authority and to the Minister.

30. Transfer of assets and liabilities of the Department of Electric Power Supply to the Authority - Upon the date of coming into force of this Act -

- (a) all assets and liabilities of the former Department of Electric Power Supply, as they pertain to the jurisdiction of the Authority, are hereby permanently transferred to the Authority, and the Authority shall have all powers necessary to take possession of, recover, and deal with such assets, and discharge such liabilities;
- (b) Every agreement, whether in writing or not, and every deed, bond, or other instrument to which the Department of Electric Power Supply was a party or which affected the Department of Electric Power Supply, whether or not permitting assignment of rights, obligations, or liabilities shall have effect as if the Authority were a party thereto or affected thereby instead of the Department of Electric Power Supply.

31. Annual report - (1) Not later than 31st December of each year, the Authority shall prepare and furnish to the Minister a report on its operations during the year ended on the preceding 30th June, together with financial statements in respect of that year in such form as the Minister may approve.

(2) Every annual report shall be laid before Parliament within twenty-eight days after the furnishing thereof to the Minister if Parliament is then in session and if not, shall be laid before the Parliament within twenty-eight days after the date of commencement of the next ensuing session.

#### PART IV MISCELLANEOUS

32. Offences - (1) Any person commits an offence and is liable to a fine not exceeding \$5,000 who -

- (a) fraudulently abstracts, causes to be wasted or diverted, consumes, or uses energy;
  - (b) by false pretence or representation, defrauds the Authority of any charge, rental, or fee properly payable to the Authority for service rendered by the Authority;
  - (c) manipulates, tampers, or interferes with any works belonging to the Authority in such a manner as to hinder the normal operation of supply of energy by the Authority;
  - (d) willfully assaults or obstructs an officer or employee or the Authority in the execution of his duties.
- (2) Every person who damages any works of the Authority whether or not thereby committing an offence and whether or not the damage was caused through his negligence, shall be liable for the amount of the damage.

33. Liability limits of Authority - The Authority shall use its best efforts to furnish continuous service but shall not be liable -

- (a) for any interruptions in service, or damage which the consumer may sustain by reason of the failure or the partial failure of power or failure or

- reversal of phases or variation in service characteristics whether caused by accident, repairs, or other causes;
- (b) for damage that shall be incurred by use of any service wiring, connections, instruments, service or electrical appliances installed by or for the consumer;
  - (c) for damage that might be incurred as a result of the presence of the Authority's property on the consumer's premises.

34. Re-sale of Energy - (1) The consumer shall not resell any energy received by him from the Authority except with the permission of the Authority.

(2) The owner of a standby generating set shall not sell energy to any other consumer.

(3) The violation of subsection (1) and (2) shall constitute an offence under Section 31.

35. Exemption from taxation - The Authority shall be exempt from all taxes, duties, levies and any other fee whatsoever.

36. Act to bind the Crown - This Act shall bind the Crown.

37. Government departments may provide services - The Crown, acting through any Government Department, may from time to time at the request of the Authority execute any work or enter into contracts or arrangements for the execution or provision by the Department for the Authority of any work or service or for the supply to the Authority of any goods, stores, or equipment on and subject to such terms and conditions as may be agreed upon.

38. Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council make such regulations as may be necessary or expedient for giving effect to the provision of this Act and for the due administration thereof.

(2) Regulation shall be laid before Parliament within fourteen days after the date of making thereof if Parliament is then in session and if not shall be laid before Parliament within fourteen days after the date of commencement of the next ensuing session.

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This Act is administered by the Te Aponga Uira O Tumu-Te-Varovaro