

DATED the day of 1920.

STATE ELECTRICITY COMMISSION OF
VICTORIA

with

THE MUNICIPALITIES OF BALLARAT
AND SEBASTOPOL

AGREEMENT AS TO CONDUCT OF
TRAMWAYS UNDERTAKING

Norval H. Dooley,
Solicitor,
22-32 William St.,
MELBOURNE.

THIS AGREEMENT made the 17th. day of November 1929 B e t w e e n
the STATE ELECTRICITY COMMISSION OF VICTORIA (hereinafter
referred to as "the Commission") of the one part and THE MAYOR
COUNCILLORS AND CITIZENS OF THE CITY OF BALLARAT and THE MAYOR
COUNCILLORS AND BURGESSES OF THE BOROUGH OF SEBASTOPOL (each of
which municipalities herein acts by and through its respective
municipal council and all of which are hereinafter referred to
by the expression "the Councils") of the other part WHEREAS
the ELECTRIC SUPPLY COMPANY OF VICTORIA LIMITED a company
registered in the United Kingdom and carrying on business in
Victoria whose registered office in Victoria is at Ballarat is
operating and carrying on a tramways undertaking in and in the
neighbourhood of Ballarat which undertaking is hereinafter
referred to as "the Ballarat District Tramways Undertaking"
AND WHEREAS the Company claims to be authorized to operate
and carry on the said undertakings by virtue of or under the
authority of certain orders in Council delegations assignments
and agreements AND WHEREAS the Company operates the Ballarat
District Tramways Undertaking in conjunction with an electrical
undertaking carried on by it under the Electric Light and
Power Act 1915 in and near Ballarat which undertaking is here-
inafter referred to as "the Ballarat District Supply Under-
taking" AND WHEREAS pursuant to Section 3 of the State
Electricity Commission Act 1922 (No. 3265) the Commission to
the exclusion of any municipal council or councils may by
agreement with any undertakers referred to in Section 43 and 44
of the Electric Light and Power Act 1915 purchase the whole or
any part of any undertaking of such undertakers under the
Electric Light and Power Act 1915 and any tramway undertaking
operated in conjunction therewith but may not operate any such
tramway but the Councils desire the Commission to operate the
Ballarat District Tramways Undertaking AND WHEREAS the Com-
mission and the Councils have agreed as herein appears for the
operating by the Commission of the said tramways undertaking

subject to the conditions herein set out NOW THIS AGREEMENT WITNESSETH THAT IT IS AGREED between the Commission and the Councils that if the Commission purchases the Ballarat District Tramways Undertaking and the Ballarat District Supply Undertaking and statutory authority to operate the said tramways undertaking is conferred upon the Commission, then:

1. The Commission shall on and after the date when the control of the Ballarat District Tramways Undertaking is vested in the Commission and statutory authority as aforesaid is conferred on the Commission and if the Company during any period after the 1st. July, 1931 carries on for the Commission the said undertaking the Company during such period shall carry on and operate the said undertaking and the tramways comprised therein subject to and in accordance with the provisions of the Schedule hereto and shall perform and observe all and singular the conditions covenants stipulations provises and agreements therein contained expressed or implied relating to the said undertaking and the said tramways and by and on the part of the Commission to be performed and observed.

2. The Councils and each of them shall on and after the 1st. day of July, 1931 perform and observe the conditions covenants stipulations provises and agreements which are contained expressed or implied in the schedule hereto relating to the said undertaking and the said tramways and by and on the part of the Councils or any of them to be performed and observed.

AS WITNESS the COMMON SEALS of the Commission and of each of the councils hereto affixed at some time between the 17th. day of November 1929 and the 9th. day of December 1929.

THE SCHEDULE ABOVE REFERRED TO.

1. The provisions of this Schedule relate to the Ballarat District Tramways Undertaking and the mutual obligations of the Commission and the Councils in respect thereto.

2. The Commission shall operate tramways and omnibuses in the City of Ballarat, the Borough of Sebastopol and the neighbouring municipalities.

3. The routes of the said tramways shall be the routes along which tramways were laid and operated or were being constructed by the Electric Supply Company of Victoria Limited on the 1st day of June 1929 and such other routes as may be determined or pursuant to the provisions of paragraph (e) of clause 22 hereof.

4. The Commission shall keep the poles rolling stock rails and equipment of the said tramways in as good order and condition (when due allowance is made for fair wear and tear) as they are when taken over by the Commission and shall in replacing any such poles stock rails or equipment replace them with other of at least as high a standard of quality safety and appearance.

5. The Commission shall at its own expense obtain any necessary authority for extensions of existing tramways or new tramways that are to be constructed, and shall furnish each of the Councils with such information as to the new works as shall be sufficient to acquaint the Engineer of the Council with the nature extent and location of the works to be carried out in the streets in its municipal district.

6a. Rails of tramways shall be laid so as to conform as far as is reasonably practicable to the existing levels of the road along which they are laid. Where it is not

Condition
of
equipment
to be
maintained

City
Engineer to be
acquainted
of new works.

Rails to be
laid to
existing levels

reasonably practicable to conform to the existing levels of the road along which the rails are being laid then the cost of regrading that part of the existing road surface between any pair of rails so laid or re-laid and for eighteen inches on each outer side thereof shall be borne by the Commission, and the Council in whose municipal district the work is carried out shall on its part regrade so as to conform to the new levels the whole of the remaining width of the road and drainage. When rail levels have been determined or approved by the Engineer of the Council in whose municipal district any rails are laid the levels so determined or approved shall establish the contour of the road in which the tramways are laid. In all cases where the rails are so laid by the Commission as to interfere with the surface drainage of a road then so far as is necessary to rectify the interference the Commission shall provide track or rail drains to the reasonable satisfaction of the Engineer of the local municipal Council. All damage done to any streets roads bridges culverts water pipes or sewers by the Commission shall be made good by the Commission to the reasonable satisfaction of the Engineer of the local municipal Council.

(b) If the Commission in re-constructing any single or double tram track or portion thereof re-makes along that track or part of a track so much of the roadway as lies between lines drawn parallel to and at a distance of 18 inches beyond the outer rails of the track the Council in whose municipal district the work is carried out shall forthwith re-make the remainder of the roadway along that track or part of a track to as good a condition and in as good a manner as the Commission has re-made the other portion.

Commission
 In regards
 on grade
 between rail
 + 18" on outside

It is determined
 & approved
 establish
 contour of
 road

Where drainage
 interfered with
 Commission to
 provide

Council to
 follow Commission
 in grading
 road

7. All rails laid down for any tramway shall be steel girder rails or recognised British or Australian standard for street tramways or such other steel rails as the local council and the Commission may agree upon.

Steel rails

8. The system of traction on each of the said tramways shall be overhead electric traction unless some other system be employed on any tramway at the date when it is vested in the Commission.

Overhead feed

9. Trams used on the said tramways shall in design and pattern be at least as attractive and commodious as those used at the date when the tramways are vested in the Commission.

Tram Car

10. The Commission will be responsible to the Council in whose municipal district any part of any route runs for the maintenance to the reasonable satisfaction of the Council's engineer of the roadway to the distance of 9 inches on each side of each rail and will when laying the rails construct the said maintenance area in tar macadam or asphalt or wood blocks or stone sets or other like material in conformity with and in no worse condition than the adjacent road surface provided by the said Council at the time and to the reasonable satisfaction of the Engineer of the said Council and will as far as practicable prevent the accumulation on any public highway street or road of material used by it in effecting repairs during the day time. If the Commission at any time makes default in the performance of any of its obligations under this clause numbered 10 relating to the repairs and maintenance of the said roadways it shall be lawful for the Council or Councils in whose municipal district the default occurs by its agents, workmen or others to effect repairs at the expense of the Commission and the expense of repairs so effected shall be paid by the Commission on demand and shall bear interest at the rate of 6 per centum

Commissioner the minimum 9" on side of a rail

Specified repairs may be carried out by Council & charged to Commission

per annum from the time of demand to date of payment. No Council shall be concerned with the repairs or maintenance of any part of a route outside its own municipal district.

11. The Commission shall fulfil such obligations as may by or pursuant to any legislation be imposed upon it relating to the intervals at which trams shall run on any completed line vested in or laid by the Commission and the hours on any day at which first and last cars shall run on any such line.

12. The average rate of speed between termini including stoppages shall be not less than eight miles per hour and the maximum speed of any car at any time shall not exceed 20 miles per hour.

13. (a) The Commission shall enact or (as legislation shall require) recommend to the Governor in Council the enactment of and shall enforce suitable by-laws and/or regulations (which shall prior to enactment be referred to the Councils for comment) for the prevention of drunken and disorderly persons riding on tram cars and the regulation of smoking on tram cars and preventing the playing of musical instruments or the use of offensive language in a tram car or any other nuisance and for ensuring civility and courtesy to the public by and sobriety in all the traffic employees of the Commission and for providing and maintaining vigilance in order to prevent accidents to persons or vehicles in consequence of the tramway traffic and to protect the cars and other property of the Commission from wilful damage and generally for providing for the proper regulation of the traffic or protection of the public. Penalties shall be provided for all breaches of such by-laws and regulations.

Time interval

*Change of
Max speed*

*Commission
by
act
By-Laws*

(b) The Councils and each of them will at all times and from time to time whenever requested by the Commission so to do at the request risk and expense in all things of the Commission do all such acts and things and take all such proceedings either by way of action prosecution or otherwise as may be necessary or convenient for the making passing or adopting or the more effectually enforcing the observance of by-laws as referred to in the preceding paragraph (a) of this clause numbered 13 of this Schedule and by-laws prohibiting and penalizing the obstruction of or interference with tramway traffic or for enforcing any penalty for the breach or non-observance of any such by-law.

14. The Commission will indemnify the Councils from any responsibility or damages necessarily incurred by the Councils and caused by any injury to persons, animals, vehicles or goods or any interruption to public traffic occasioned by making or using any tramway authorized hereby or any machinery or plant in connection therewith whether such be in proper working order or otherwise.

15. The Councils or any of them or any Water Trust Sewerage Board or any Municipal Trust or Board (hereinafter in this clause referred to as "the local authority") in which the Councils or any of them are interested or which shall have jurisdiction in any part of the municipal district of any of the Councils shall not be liable to render any compensation to the Commission for any stoppage of traffic partial or complete necessarily occasioned by the lawful and proper carrying out of any of the following activities:-

- (a) Construction of or repairs to culverts drains and water channels.
- (b) Laying or repairing water mains for household services.
- (c) Laying or repairing foot crossings and water tables.

(d) Any other municipal works executed in the public thoroughfares during the execution of such works.

(e) Construction of sewerage works.

or any damage that may arise to the tramways or the plant appertaining thereto from the subsidence of the surface of the streets from any cause whatsoever or from any other cause matter or thing not occasioned by such local authority. The local council or any person acting with its authority may at any time upon giving reasonable notice to the Commission carry on or execute any municipal or other works on over or under any public highway street or road along which any tramway of the Commission has been constructed. Such work shall be carried through with all reasonable speed and at such times as will as far as practicable not inconvenience the tramway traffic and upon the completion of such works such council or person shall at its own expense and with as little delay as possible place the tramways and all apparatus poles and wires used in connection therewith and the road surface in the original state order and condition having regard to the altered condition of the public highway, street or road as the same were in at the commencement of such works. In case any of the Councils make any alteration to the level of any public highway street or road along which any of the Commission's tramways are laid the Council shall at its own expense do all acts deeds matters and things necessary to make the rails poles brackets supports conductors and other works part of such tramways safe and in proper working order and so as to conform to the requirements of this agreement having regard to such altered levels. The local authority shall not be liable for any damage for loss of profit by the Commission from any stoppage caused by such works as aforesaid.

*Council to
alter the
tramway
alterment if
they require
road level
alterment*

16. The Commission shall save harmless and keep the Councils indemnified against all actions suits proceedings costs and damages to be brought and recovered by the occupants owners or others interested in respect of any property or buildings that may be damaged by the construction or operation of any tramways by the Commission.

17. The Councils shall not nor shall any of the Councils grant or delegate to any other person firm company or corporation any authority or power to run tram-cars or other vehicles with flanged wheels on any tramway of the Commission.

18. The Commission shall pay annually to the Council of each municipal district in which any of its tramways are laid a sum equivalent to the net amount which for the financial year current on the 1st day of June 1928 was payable to the Council as rates in respect of its tramway undertaking or any portion thereof by the Electric Supply Company of Victoria Limited.

19. The Councils and each of them will assist the Commission in every lawful and reasonable way to restrict prevent and/or overcome competition by omnibus or other vehicles in the carriage of passengers for gain or reward in the areas served by the Commission and will enact and enforce such by-laws and regulations as may from time to time be within their powers to ensure the rendering of such assistance or if the same be necessary amend or revoke by-laws or regulations already made and in particular will not aid or encourage the establishment or continuance of any such competition or voluntarily grant facilities to the owners or undertakers of any undertaking which may be competitive as

aforsaid. The Councils and each of them will consult the Commission before prescribing as a route for motor omnibus traffic any route which or part of which may be so competitive.

20. Where any Council is pursuant to the provisions of clauses 6 or 15 of this Schedule responsible for the performance of any works or reinstatement of any lines apparatus or property of the Commission, and the Commission has served on that Council notice requiring it to perform such works or reinstate the said lines apparatus or property and such Council fails within seven days of such notice to commence such work or thereafter to prosecute the same diligently to completion the Commission may notify the Council in writing that it the Commission proposes to do or complete the work or cause the work to be done or completed and may thereupon proceed to have the work done or completed by its officers servants or contractors and recover the cost thereof from the Council.

21. Any controllers kiosks and waiting rooms for passengers erected by the Commission shall be so designed and located as to harmonise with the general appearance of the street wherein they are erected and as not to interfere with general traffic more than is necessary for the proper fulfilment of the purpose to be served by them.

22.(a) Save as provided in clause 4 hereof and in paragraph (e) of this clause the Commission after consultation with the municipality concerned shall carry out such replacements improvements and extensions to the existing tramways systems plant and apparatus and shall carry on omnibus services along such routes in Ballarat, Sebastopol and suburbs and the vicinity thereof as it may in its own absolute discretion determine and at such times as it shall in its own absolute discretion decide upon.

(b) No pressure shall by or at the instance of the Councils or any of them be brought to bear on the Commission to carry out any such replacements improvements or extensions or to carry on an omnibus Service along any route if to do so would according to the estimate of the Commission's Officers cause the loss incurred by the Commission on the Ballarat District Tramways Undertaking and any such omnibus service or services in any financial year of the Commission to exceed £5,000, or if the total loss incurred by the Commission on the said undertaking and any such service or services to the date of such request is at a rate exceeding £5,000 a year.

(c) Any loss incurred by the Commission in any financial year of the Commission in carrying on the said undertaking and any such omnibus service or services and interest upon such losses incurred in past years shall be charged against the revenues for that year derived from carrying on the Ballarat District Supply Undertaking.

(d) If in any year a net profit results from the carrying on of the Ballarat District Tramways Undertaking and any such omnibus service or services as aforesaid the amount thereof shall be credited to the accounts of the Ballarat District Supply Undertaking up to the full amount of loss incurred in past years in carrying on the Ballarat District Tramways Undertaking and any such omnibus service and interest accrued thereon.

(e) Provided that if any council or councils apply to the Commission for some extension duplication or re-construction of existing lines to be carried out or for the carrying on of an omnibus service along any route the Commission shall submit to the said council or councils an estimate of the annual costs and income which will be attributable thereto and if the council or councils agree to

pay the Commission for a period of ten years the costs attributable in each year to the carrying out and operation of that extension duplication or reconstruction or as the case may be of the carrying on of an omnibus service along that route less the amount of additional revenue received from the operation thereof, the Commission shall forthwith have such work carried out or as the case may be carry on an omnibus service along that route. Provided further that any reference in this clause 22 to net profit resulting from the carrying on of the Ballarat District Tramways Undertaking and any omnibus service or to loss incurred thereon means the difference between the revenue derived from that undertaking and service in the period concerned and all revenue expenditure incurred in respect of that undertaking and service in the period concerned including inter alia any provision required by the Parliament or Government of Victoria for sinking fund on loans in respect thereof and such provision as the Commission considers proper for bad debts for depreciation of the assets for insurance against any risks (whether such insurance be in any respect conducted by the Commission or by any regular underwriters) the cost (ascertained in such manner as the Commission shall in its own discretion decide) of the supply of electricity from the Commission's supply system to the undertaking, and any other matters and amounts allowed by the Government Auditor as proper to be charged against the revenue of the said undertaking or service AND that the certificate of the Commission's Auditor as to the amount of revenue derived from the said undertaking and service in any period or as to the additional revenue received in any year from the operation of any extension duplication or reconstruction carried out as referred to in sub-clause (e) of this clause 22 or the

cost in any year attributable to the carrying out and/or the operation of any such extension duplication or reconstruction or the carrying on of any omnibus service or as to the amount expended in any period upon any object of revenue expenditure shall be final and conclusive.

23. Whenever the consent approval or expression of satisfaction of the Councils or any of them is required to any act deed matter thing or omission done or made by the Commission in relation to the tramways owned constructed operated or proposed by it the same shall be deemed to have been given or expressed if each council or if each of a majority of the Councils in whose municipal districts the act deed matter thing or omission takes place notifies the Commission in writing of its consent or approval, or expresses its satisfaction and if a decision of the Councils or any of them be required and each Council or each of a majority of the Councils concerned makes the same decision, that decision shall be conclusive and binding on all the Councils whose decision is required and any Council shall be taken to have made its decision as and when it has communicated its decision in writing to the Commission.

THE COMMON SEAL of the STATE)
ELECTRICITY COMMISSION OF)
VICTORIA was hereto affixed)
in the presence of -

(Sgd.) JOHN MONASH Commissioner.

" F. W. CLEMENTS Commissioner.

" W. J. PRICE Secretary.

THE COMMON SEAL of THE MAYOR)
COUNCILLORS AND CITIZENS OF)
THE CITY OF HALLAARAT was)
hereto affixed in the)
presence of -) (Seal)

(Sgd.) GEORGE BOLSTER Mayor.
" A. R. STEWART Councillor.
" GEO. F. MORTON Town Clerk.

THE COMMON SEAL of THE MAYOR)
COUNCILLORS AND BURGESSES OF)
THE BOROUGH OF SEBASTOPOL)
was hereto affixed in the)
presence of -) (Seal)

(Sgd.) J. E. JONES Mayor.
" M. R. BUSCH Councillor.
" A. JAMES A. JORDON. Town Clerk.