

HUDSON RIVER-BLACK RIVER REGULATING DISTRICT

AND

NIAGARA MOHAWK POWER CORPORATION

AGREEMENT

Dated: June 17, 1980

THIS AGREEMENT, made the 17th day of June, 1980, between, NIAGARA MOHAWK POWER CORPORATION, a corporation created, organized and existing under the laws of the State of New York, with its principal place of business at 300 Erie Boulevard West, Syracuse, Onondaga County, New York, party of the first part and hereinafter referred to as NIAGARA, and the HUDSON RIVER-BLACK RIVER REGULATING DISTRICT, created, organized and existing pursuant to Title 21 of Article 15 of the Environmental Conservation Law (formerly Part IX of Article V of the Conservation Law) of the State of New York, with its principal office at 90 State Street, Albany, New York, party of the second part and hereinafter referred to as the DISTRICT.

WITNESSETH:

1. The DISTRICT was organized to construct, maintain and operate reservoirs within the Hudson River Regulating District on the Hudson River and its tributaries, including the Sacandaga River. NIAGARA is an electric and gas company organized and existing under the Transportation Corporations Law of the State of New York and provides electric and gas service to customers in Upstate New York.

2. On November 14, 1927, New York Power and Light Corporation, NIAGARA'S predecessor, entered into an Agreement with the Hudson River Regulating District, the DISTRICT'S predecessor, which agreement was from time to time thereafter

amended by the parties.

3. Under the said agreement, the DISTRICT agreed to construct a regulating reservoir on the Sacandaga River and to impound waters by a dam with total head of 71 feet near Conklingville, Saratoga County, New York. NIAGARA conveyed certain lands to the DISTRICT as the site for said dam, reserving for its own purposes 15 feet of head existing on the Sacandaga River. NIAGARA also agreed to construct a power house to generate electric energy from its 15 feet of head and from the additional 56 feet of head created by the DISTRICT'S dam. NIAGARA also agreed to annually pay to the DISTRICT certain sums of money for the use of DISTRICT'S 56 feet of head and additional sums in payment of DISTRICT'S bond issue and towards DISTRICT'S annual operating and maintenance costs.

4. The Regulating Reservoir formerly known as the Sacandaga Reservoir and now known as the Great Sacandaga Lake and the dam known as the Conklingville Dam to impound the waters in said Reservoir, referred to in said Original Agreement, have been duly constructed by the DISTRICT, and have been, and are being operated for the public purposes set forth or referred to in Title 21 of Article 15 of the Environmental Conservation Law (formerly Part IX of Article V of the Conservation Law). NIAGARA constructed the necessary generating facilities, known as the E. J. West Hydroelectric Plant, from which it has been generating electric energy. Both parties fully complied with all

the terms of the Original Agreement and all supplements thereto.

5. Under the terms of the Original Agreement, the agreement was to be binding and in full force between the parties for a period of fifty (50) years from and after the date that the water was first released from the completed dam. Water was first released on June 24, 1930.

6. Negotiations have been conducted between NIAGARA and the DISTRICT concerning the terms of a new agreement between the parties.

NOW, THEREFORE, NIAGARA MOHAWK POWER CORPORATION and the HUDSON RIVER-BLACK RIVER REGULATING DISTRICT mutually covenant and agree as follows:

DISTRICT AGREES:

1. To continue to operate and maintain said dam for the public purposes as by statute provided so that the water impounded by said dam may be taken directly (when, as and if released by the DISTRICT for the regulation of the flow of the river) into NIAGARA'S plant for the purpose of producing electric energy from NIAGARA'S 15 feet of head and DISTRICT'S 56 feet of head as an incident to the operation of the Sacandaga Reservoir for stream regulation.

2. To operate the reservoir, including the release of water therefrom, for the public purposes referred to herein, except where emergency or the due and proper carrying out of and compliance with said public purposes may otherwise require or be deemed necessary in the judgment of the DISTRICT or its Board; provided, however, that there shall be no arbitrary or capricious change in, or modification of the release of water therefrom, without the written consent of both parties. Any redress for violation of this provision shall be limited to the reduction in payment by NIAGARA as provided in paragraph 3 under "Both Parties Agree".

NIAGARA AGREES:

1. To make an annual payment to the DISTRICT for the use of DISTRICT'S 56 feet of head based upon the following formula:

Fifty percent (50%) times the average annual generation in kilowatt hours at the E. J. West Hydroelectric Plant times NIAGARA'S average system cost of hydroelectric generation.

The definition of the components of the formula and the time periods upon which

the components are based (including NIAGARA'S annual payment for the initial 2 years of this agreement) are as follows:

a. Fifty percent (50%) represents the mutually agreed upon and equitable division of the respective rights of each party, based upon NIAGARA'S investment in the construction, the cost of operation and maintenance of the hydroelectric station, and its ownership of 15 feet of head and the DISTRICT'S ownership of the water rights, 56 feet of head, and the construction, the cost of operation and maintenance of the dam, and its other multi-purpose responsibilities.

b. The "average annual generation in kilowatt hours" for the first 10 years of this agreement is determined to be 75,000,000 kilowatt hours. Commencing July 1, 1990 and every 10 years thereafter, the parties shall recompute the average annual generation for the next succeeding 10 year period based on the preceding 20 calendar year period.

If at any time NIAGARA fails to utilize available water or reduces the head at E. J.

West which could have been used to produce energy, then the energy which could have been produced shall be considered actually to have been produced for the purposes of all computations of payments hereunder.

c. NIAGARA'S "average system cost of hydroelectric generation" shall be computed by the following formula:

(NIAGARA'S average undepreciated book value of all of its owned hydroelectric plants times its annual charges for owned hydroelectric production) divided by the total hydroelectric generation of all such plants.

NIAGARA'S annual charges for hydroelectric production consist of the annual total of the cost of capital, federal income taxes, depreciation, other taxes, working capital, operation and maintenance expenses, and revenue taxes as applied to its hydroelectric facilities and is developed in Appendix II.

All of these components are available in the "Annual Report of Niagara Mohawk Power Corporation to the State of New York - Public Service"

Commission" which is filed with the Public Service Commission prior to April 1 of each year. The computation of NIAGARA'S "average system cost of hydroelectric generation", including the computation utilized in this agreement for the first two years thereof, is described in Appendix III attached hereto and made a part hereof.

In computing NIAGARA'S average system cost of hydroelectric generation, only NIAGARA'S owned hydroelectric generating stations in existence as of July 1, 1980 shall be utilized. These generating stations are described in Appendix I of this agreement and are derived from the annual report of Niagara Mohawk Power Corporation to the Federal Energy Regulatory Commission as shown on Form I, Schedules 433a-A and 434-A. In the biennial updating of Appendix I, the then current cost of plant, as reported annually to the Federal Energy Regulatory Commission shall be utilized. These schedules reflect facility plant retirements and additions including new investment in major reconstruction and associated change in energy production.

2. That the payment by NIAGARA to the DISTRICT shall be readjusted every 2 years as of July 1st for the succeeding 2

years with such adjustment incorporating NIAGARA'S average system cost of hydroelectric generation for the preceding calendar year. The next readjustment shall be as of July 1, 1982 and each succeeding two-year period thereafter.

3. For the period July 1, 1980 to June 30, 1982, NIAGARA'S annual payments shall be based on its average system cost of hydroelectric generation for 1979 of 13.204 mills and the heretofore agreed average annual generation of 75,000,000 kilowatt hours. NIAGARA'S annual payment for such period shall be \$495,150. Notwithstanding the provision of paragraph 2 above, NIAGARA'S annual payment for the period July 1, 1980 through June 30, 2000 shall not be less than \$495,150, subject, however, to the provisions as hereinafter set forth concerning reductions in water availability due to legislative or regulatory action.

4. To make payment on or before the 15th day of each month, representing one-twelfth (1/12) of the annual payment.

5. To maintain its facilities at the E. J. West Plant for the purpose of releasing waters during extreme emergencies or flood conditions as a supplement to the DISTRICT'S regulating facilities. If the DISTRICT, under such extreme emergencies or flood conditions, is at full discharge capacity, then NIAGARA will assist in discharging to protect the stability of all facilities.

BOTH PARTIES AGREE:

1. This agreement shall take effect as of July 1, 1980, and shall continue in full force and effect for a period of 50 years thereafter.

2. To mutually cooperate during the term of this agreement to explore re-regulating ponding and releases from the Great Sacandaga Reservoir to best harmonize conflicting interests to improved recreational uses of the Great Sacandaga Reservoir during July and August versus the stated purpose of the DISTRICT in creating the reservoir for stream regulation, flood protection and hydroelectric generation versus the rights of property owners affected by high water by changes in the generally accepted method of ponding and release of water.

3. There shall be no arbitrary or capricious change in the release of water from said reservoir without the mutual written agreement of the parties. If, by statute or action of the DISTRICT, or any other governmental body, NIAGARA'S 1960-1980 average monthly amount of water available to the E. J. West Plant is reduced by more than 20% in any month, the next year's annual payment shall be reduced in an amount to reflect the total percentage reduction times 1/12 for each such month of reduced water availability.

4. It is agreed by and between the parties hereto in the event that any controversy arises between the parties with respect to the terms or conditions of the agreement or with respect to the duties or obligations of any of the parties thereto, said controversy shall be submitted to the Supreme Court of the State of New York, County of Albany, for determination pursuant to the New York Simplified Procedure for Court Determination of Disputes, as provided for by CPLR 3031 et seq.

5. The DISTRICT shall have the right, upon giving NIAGARA two (2) years written notice, to terminate this contract and to acquire said 15 feet of head and the power house project, including lands and rights and construction, upon payment of just compensation therefor as provided by law and upon payment to NIAGARA of the amount invested by NIAGARA in its power plant and works and not theretofore amortized.

6. The DISTRICT shall have the right at all times to limit and control the amount of water used by NIAGARA and, for that purpose, to enter upon the premises of NIAGARA and to operate the gates and/or valves controlling the flow of water to the power plant in such manner as in its uncontrolled discretion may seem necessary and expedient for the proper regulation of the flow of the stream.

7. The method of computing NIAGARA'S "average system cost of hydroelectric generation" (as defined in paragraph 1-c of this

agreement), shall, at the request of either party, be subject to renegotiation by the parties hereto in recomputing the biennial computation of payment by NIAGARA for the period commencing July 1, 2000 and thereafter.

8. Nothing in this contract shall be construed as in any way limiting the rights of the DISTRICT to release water impounded by the dam at whatsoever rate and whatsoever time the DISTRICT desires or as in any manner to interfere with the purpose for which the dam is built.

9. This agreement shall enure to the benefit of and bind the successors and assigns of each of the parties hereto as well as the parties themselves.

IN WITNESS WHEREOF, the parties hereto have caused their respective seals to be hereunto affixed and this agreement to be signed in duplicate by their respective officers thereunto duly authorized the day and year first above written.

NIAGARA MOHAWK POWER CORPORATION

By Richard C. Clancy
Richard C. Clancy
Senior Vice President

HUDSON RIVER-BLACK RIVER
REGULATING DISTRICT

By Samuel A. [Signature]
President / Chairman

STATE OF NEW YORK :
: ss.:
County of Onondaga :

On this 17th day of June, 1980, before me came RICHARD C. CLANCY, to me known, who being by me duly sworn, did depose and say that he resides at Two Sleepy Hollow Lane, Fayetteville, New York 13066; that he is a Senior Vice President of NIAGARA MOHAWK POWER CORPORATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that the same was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Phyllis J. Hoytko

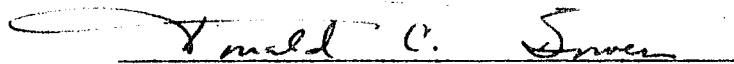
NOTARY PUBLIC IN AND FOR THE STATE OF NEW YORK
Qualified to commission expires 12/31/82
My State expires 12/31/82

STATE OF NEW YORK :
: ss.:
County of Albany :

On this 23rd day of JUNE, 1980, before me came Louis ANTHONY, Jr., to me known, who, being by me duly sworn, did depose and say that he resides at 66 North LAKE Ave., TROY, New York, 12180; that he is

President of the Board of the HUDSON RIVER-BLACK RIVER REGULATING DISTRICT, the public corporation described in and which executed

the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that the same was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto be like order.

A handwritten signature in cursive script, reading "Donald C. Bowes", written over a horizontal line.

DONALD C. BOWES
Notary Public, State of New York
Qualified in Rensselaer County
Commission Expires March 30, 1981

APPENDIX I

NIAGARA MOHAWK POWER CORPORATION
 OWNED HYDROELECTRIC GENERATING STATIONS
 AS OF JULY 1, 1980

Name	1979 Net Gen KWHR	Cost of Plant - Dollars	
		1979	1978
Large Plant - (FERC Form 1 433a-A)			
Beardslee	45,997,500	3,812,509	3,824,425
Bennetts Bridge	80,909,000	4,812,384	4,794,281
Blake	69,642,000	5,777,542	5,773,242
Browns Falls	65,746,000	5,499,293	5,499,293
Colton	206,512,000	5,745,295	5,745,295
Deferiet	65,896,000	2,764,868	2,663,537
Five Falls	109,233,000	4,946,331	4,946,331
Prospect	77,574,000	5,766,335	5,766,335
Rainbow	112,329,000	6,657,187	6,607,961
Schaghticoke	63,534,500	1,359,193	1,356,505
School Street	121,880,500	3,874,576	3,776,058
Sherman Island	152,105,000	8,899,604	8,769,789
Soft Maple	45,524,000	3,040,292	3,002,679
South Colton	84,510,000	4,207,093	4,207,093
Spier Falls	237,165,000	9,069,821	9,041,429
Stark	107,937,000	6,462,596	6,458,136
Stewarts Bridge	146,821,881	9,401,113	9,401,113
Trenton	125,311,000	3,029,664	2,940,343
E. J. West	77,657,500	1,758,042	1,738,309
 Total Large Plants	 1,996,284,681	 96,883,738	 96,312,154

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NIAGARA MOHAWK POWER CORPORATION
OWNED HYDROELECTRIC GENERATING STATIONS

AS OF JULY 1, 1980

Name	1979	Cost of Plant - Dollars	
	Net Gen KWHR	1979	1978
Small Plant - (FERC Form 1 434-A)			
Allens Falls	26,471,000	917,271	914,389
Bakers Falls	-	1,079,853	1,079,853
Baldwinsville	2,326,000	293,713	296,771
Belfort	7,862,000	394,671	325,394
Black River	22,759,000	2,289,683	1,144,136
Chasm	23,632,000	383,059	383,059
Diamond Island	-	380,786	380,786
Eagle	37,044,000	1,626,526	1,624,828
East Norfolk	26,205,000	1,528,787	1,528,883
Eel Weir	9,813,000	1,859,733	1,519,071
Effley	13,987,000	537,314	540,345
Elmer	8,912,000	208,556	208,556
Ephatah	15,474,100	1,554,247	1,438,368
Flat Rock	20,403,000	1,125,859	1,125,618
Fort Edward	-	-	664,982
Franklin	9,411,000	320,570	316,247
Fulton	-	264,370	251,865
Glenwood	4,284,100	373,373	358,173
Granby	4,397,000	798,253	798,253
Green Island	17,805,600	2,553,921	2,547,780
Hannawa	52,532,000	1,260,585	1,241,842
Herrings	26,352,000	1,177,164	1,175,446
Heuvelton	4,863,000	593,455	516,170
High Falls	34,310,000	1,013,928	1,011,309
Higley	29,955,000	1,217,703	1,227,447
Hogansburg	2,189,000	515,862	300,985
Hydraulic Race	11,032,000	694,286	694,286
Inghams	27,033,000	970,562	966,483
Johnsonville	10,333,400	561,761	591,761
Kamargo	24,878,000	1,441,398	1,413,867
Lighthouse Hill	38,173,000	2,029,782	2,013,729
Macomb	5,616,000	133,247	133,247
Mechanicville	1,653,800	2,109,609	1,035,922
Middle Falls	3,747,100	192,353	193,749
Minetto	34,561,000	1,213,074	1,147,722
Moreau	10,141,700	1,301,282	1,301,282
Moshier	24,606,000	5,510,195	2,599,975
Norfolk	24,244,000	1,095,789	1,096,789
Norwood	15,708,000	613,667	613,667
Oak Orchard	-	67,481	67,481

APPENDIX I

NIAGARA MOHAWK POWER CORPORATION
OWNED HYDROELECTRIC GENERATING STATIONS
AS OF JULY 1, 1980

Name	1979 Net Gen KWHR	Cost of Plant - Dollars	
		1979	1978
Oswegatchie	3,670,000	95,297	82,665
Oswego Falls E. Side	19,993,000	641,760	616,669
Oswego Falls W. Side	1,974,000	524,851	524,318
Piercefield	16,295,000	1,269,294	1,267,754
Parishville	16,233,000	418,454	417,994
Raymondville	11,759,000	1,053,293	578,214
Schuylerville	6,450,000	217,062	217,062
Sewalls	9,387,000	3,390,669	528,325
South Edwards	18,782,000	2,099,520	2,096,111
South Glens Falls	17,927,000	1,412,721	1,433,032
Stuyvesant Falls	(7,000)	577,802	577,802
Sugar Island	32,322,000	1,307,065	1,307,065
Taylorville	28,480,000	1,100,054	936,649
Theresa	41,000	290,158	290,158
Union	-	436,449	439,559
Varick	27,871,000	2,826,258	2,826,258
Victory Mills	(1,300)	82,720	82,720
Waterport	13,118,000	1,007,648	976,509
Yaleville	3,520,000	889,828	902,761
Total Small Plants	860,527,200	61,844,631	52,892,141
Total Large Plants	1,996,284,681	96,883,738	96,312,154
TOTAL HYDRO	2,856,811,881	158,728,369	149,204,295
AVERAGE Cost of Plant		153,966,333	

APPENDIX II

NIAGARA MOHAWK POWER CORPORATION

1979 ANNUAL CHARGES FOR OWNED HYDROELECTRIC PRODUCTIONI. Cost of Capital

	At December 31, 1979			
	\$	%	Cost	Component
Long Term Debt	\$1,508,050	48.77%	7.42%	3.62%
Preferred Stock	406,600	13.15	6.84	.90
Common Equity	1,177,724	38.08	13.30	5.06
Total	\$3,092,374	100.00%		9.58%

Levelized Cost of Capital:

$$(100) \left[\frac{(.0958)(1+.0958)^{70}}{(1+.0958)^{70} - 1} - .0143 \right] = 8.2\%$$

II. Federal Income Taxes

Preferred Stock Component	.90%
Common Equity Component	$\frac{5.06}{5.96\%}$

$$\text{FIT} = 5.96\% \frac{(46\%)}{(54\%)} = 5.1\%$$

III. Depreciation

Book Life = 70 years

$$\text{Book Depreciation} = \frac{1}{70} = 1.4\%$$

APPENDIX II

NIAGARA MOHAWK POWER CORPORATION

1979 ANNUAL CHARGES FOR OWNED HYDROELECTRIC PRODUCTIONIV. Other Taxes

A. Total Electric Taxes Charged to Operations	\$137,747,130	3	
<u>Less:</u>			
FIT	1,337,000	4	
NYS Gross Earnings	8,511,786	5	
NYS Gross Income	31,877,311	6	
Municipal Gross Income	5,315,708	7	
<u>Net</u>	\$ 90,705,325		
B. Average Electric Plant-in-Service:			
$\frac{\$2,652,808,244 + 2,830,387,288}{2} = \$2,741,597,766$		8	
C. Other Taxes = $\frac{\$ 90,705,325}{\$2,741,597,766}$			= 3.3%

V. Operation and Maintenance - Hydro

A. Operating Expense = \$3,541,371	9	
Maintenance Expense = <u>5,221,205</u>	10	
Total O & M	\$8,762,576	
B. Average Hydroelectric Plant-in-Service		
$\frac{\$154,948,046 + \$164,661,913}{2} = \$159,804,980$	11	
C. Operation & Maintenance = $\frac{\$ 8,762,576}{\$159,804,980}$		= 5.5%

VI. Working Capital

A. Hydroelectric Operation and Maintenance Expense	= \$8,762,576
B. Unlevel Return plus FIT	= 9.58% + 5.07 = 14.65%
C. Average Hydroelectric Plant-in-Service	= \$159,804,980

APPENDIX II

NIAGARA MOHAWK POWER CORPORATION

1979 ANNUAL CHARGES FOR OWNED HYDROELECTRIC PRODUCTIONVI. Working Capital - cont'd

D. Working Capital:

$$(\$8,762,576) \text{ (14.65\%)}$$

$$\frac{8}{\$159,804,980} = .1\%$$
VII. Revenue Taxes

A. New York State Gross Earnings
Tax Rate .75%

New York State Gross Income
Tax Rate 3.00
Total 3.75%

B. Revenue Tax:

$$\frac{(\text{Revenue Tax Rate})}{(1 - \text{Revenue Tax Rate})} (\text{Sum of Other Components}) =$$

$$\frac{(.0375)}{(1 - .0375)} (23.6\%) = .9\%$$
VIII. Notes:

All references are to the "Annual Report of Niagara Mohawk Power Corporation to the State of New York - Public Service Commission".

- 1 Page 11, lines 19 & 20
- 2 Page 11, line 3, less line 12
- 3 Page 57A
- 4 Page 57
- 5 Page 57
- 6 Page 57

APPENDIX II

NIAGARA MOHAWK POWER CORPORATION

1979 ANNUAL CHARGES FOR OWNED HYDROELECTRIC PRODUCTIONVIII. Notes - cont'd

- 7 Page 57
- 8 Page E-4
- 9 Page E-19
- 10 Page E-19
- 11 Page E-2

IX. Summary of 1979 Annual Charges for Hydroelectric Production

I. Cost of Capital	8.2%
II. Federal Income Taxes	5.1
III. Depreciation	1.4
IV. Other Taxes	3.3
V. Operation and Maintenance - Hydro	5.5
VI. Working Capital	.1
VII. Revenue Taxes	<u>.9</u>
TOTAL	24.5%

