
Agreement

BETWEEN

NEW YORK POWER AND LIGHT CORPORATION

AND

HUDSON RIVER REGULATING DISTRICT

Dated: November 14, 1927

This Agreement. made this 14th day of November, 1927, between NEW YORK POWER AND LIGHT CORPORATION, a domestic corporation organized and existing under the laws of the State of New York, with a principal place of business at No. 126 State Street, in the City of Albany, Albany County, New York, party of the first part, hereinafter called POWER COMPANY, and HUDSON RIVER REGULATING DISTRICT, a public corporation created pursuant to the provisions of Article 7-a of the Conservation Law of the State of New York, party of the second part, hereinafter called DISTRICT.

WITNESSETH :

WHEREAS, 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, and has determined to construct a regulating reservoir on the said Sacandaga River and to impound the waters by a dam at or near Conklingville, Saratoga County, New York, and for the purposes thereof has purchased certain real estate from POWER COMPANY, and

WHEREAS, the POWER COMPANY has reserved the right, now owned by POWER COMPANY, to use for its own purposes fifteen (15) feet of head existing on the said Sacandaga River within the bounds of part of the property so conveyed, and the value of the use of said head has not been included in determining the price paid by DISTRICT for said real estate, and

WHEREAS, POWER COMPANY has been assessed for the said fifteen (15) feet of head in accordance with the Apportionment of Costs as issued by the said DISTRICT January 30, 1925, and approved by the Water Control Commission February 19, 1925.

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

POWER COMPANY AGREES:

1. To construct, maintain and operate at its sole cost a power house on its own land below said dam, in accordance with designs, estimates and contracts as approved by the Engineer of the DISTRICT, capable of using not only POWER COMPANY'S said 15 feet of head, but also the additional head to be created by DISTRICT'S said dam, and to so complete said power house by the time DISTRICT completes said dam.
2. To pay DISTRICT, as hereinafter provided:
 - (a) for furnishing the dam by which POWER COMPANY'S said 15 feet of head is developed, and
 - (b) for the power produced from said plant by the use of DISTRICT'S said additional head.

DISTRICT AGREES:

1. To maintain and operate said dam, as by statute provided, when constructed as has been determined, and to permit POWER COMPANY to connect to the outlet of said dam the necessary head works, flume, tunnel, pipe line or intake of said plant 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 POWER COMPANY'S said plant for the purpose of producing therein electric energy from POWER COMPANY'S said 15 feet of head, and DISTRICT'S said additional head, as an incident to the operation of Sacandaga Reservoir for stream regulation.

IT IS MUTUALLY AGREED:

1. That inasmuch as the total head at said dam will be 71 feet, of which POWER COMPANY owns the right to use 15 feet, and the estimated cost of said dam is \$1,500,000, the POWER COMPANY shall pay annually, as provided in its agreement 2-(a) above, 6% of 15/71sts of \$1,500,000, (i.e., \$19,014.08), together with 15/71sts of such expenditures as may be made from year to year by DISTRICT for operating and maintaining said dam, but not for capital purposes.

2. That the power produced in said plant by the use of DISTRICT'S said additional head, shall be taken to be 56/71sts of the total power produced by said plant, determined as hereinafter specified.

3. That whenever and as DISTRICT releases water from said reservoir POWER COMPANY will utilize the water, to produce power in said plant to the extent that POWER COMPANY is not prevented from so doing by limitations of plant capacity or by accidents beyond its control. If at any time POWER COMPANY wastes, except as above, water which then could have been used to deliver power from said plants, the power which said wasted water could have produced shall be considered, for purposes of all computations of payments hereunder, actually to have been produced.

4. That this contract is intended to secure for DISTRICT the full value of the power thus produced by said additional head after providing for the cost of development and operation thereof. Because the value of said power is affected by the continuity and regularity with which it is available during the period of each industrial day throughout the year, and because variation in quantity and pressure of water from hour to hour and from day to day will result from the releasing of said water as DISTRICT may desire for stream regulation, the quantity of power produced by said plant will vary irregularly from hour to hour and from day to day, and therefore, the following method is agreed upon for determining the power produced by the use of the DISTRICT'S said additional head:

- (a) the total capacity for each separate week day (excluding Sundays and legal holidays) shall be taken as 1/12th of the kilowatt hours generated from said plant between the hours of 7 A.M. and 7 P.M.
- (b) the average of the 10 lowest said week day capacities during a given month shall be taken as the total capacity of the plant for that month.
- (c) the average of the 12 said monthly capacities shall be taken as the annual capacity.

(d) the power produced by the use of DISTRICT's said additional head shall be taken as 56/71sts of said annual capacity.

5. That the value of said power produced by DISTRICT's said additional head is \$24.00 per year for each kilowatt of annual capacity determined as aforesaid.

6. That POWER COMPANY will pay to DISTRICT the amount so computed as the value of said power produced by the use of DISTRICT's said additional head after deducting costs (determined as hereinafter provided) incurred by POWER COMPANY for furnishing and operating, on behalf of the DISTRICT, plant and equipment to utilize DISTRICT's said additional head.

7. That the costs last aforesaid shall be taken as:

- (a) 12% of 56/71sts of the total cost of the power house project, including cost of lands and rights and construction resulting from the plans, estimates and contracts approved by the engineers of the DISTRICT, including construction overhead expenses, and
- (b) 56/71sts of expenditures made by POWER COMPANY in operating and maintaining said plant, including labor, maintenance, taxes, insurance and general expenses (but not depreciation) as defined in the uniform classification of accounts prescribed by the Public Service Commission of the State of New York.

8. That payments will be made by POWER COMPANY on or before the 15th day of each month of the total amounts accruing hereunder to the DISTRICT for the period of 12 months ended with the last preceding month, less the sum of all the payments previously made on account of that accrual.

9. That at the end of each ten year period of this contract, namely 1937, 1947, 1957 and 1967, either party to this contract may petition for a readjustment of the price to be paid for power, specified in paragraph 5 of mutual covenants, by

written notice to the other party of this Agreement, and that if the two parties to this Agreement cannot agree as to the necessity of an adjustment, or as to the adjustment itself, the matter will immediately be decided under the terms of the arbitration clause contained herein.

10. That in case of disagreement between the parties hereto as to any question arising under this Agreement, such question shall be submitted to arbitrators as herein provided. The POWER COMPANY shall choose one arbitrator and the DISTRICT shall choose one arbitrator. The persons so chosen shall appoint a third arbitrator to be associated with them. If either party shall fail to appoint an arbitrator within ten (10) days after written notice of the appointment of an arbitrator by the other party, then the arbitrator appointed shall determine the questions involved in the dispute as sole arbitrator. If the arbitrators chosen by the parties do not agree upon a third arbitrator, then upon application of either party, and upon ten (10) days notice in writing to the other party, such third arbitrator may be appointed by any Justice of the Supreme Court of the State of New York in the Fourth Judicial District. A decision concurred in by any two of the three arbitrators so appointed shall be binding and conclusive upon both of the parties hereto.

11. The DISTRICT shall have the right, upon giving POWER COMPANY 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 resulting from the plans, estimates and contracts referred to in paragraph 7, sub-division (a), upon payment of just compensation therefor as provided by law and upon payment to POWER COMPANY of the amount invested by POWER COMPANY in its power plant and works constructed pursuant to this contract, and not theretofore amortized.

12. The DISTRICT shall have the right at all times to limit and control the amount of water used by the POWER COMPANY and, for that purpose, to enter upon the premises of the

POWER COMPANY 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.

13. 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.

14. This Agreement to be binding and in full force between the parties hereto for a period of fifty (50) years from and after the date that water is first released from the completed dam. *

15. This Agreement shall inure to the benefit of and bind the successors and assigns of each of the parties hereto as well as the parties themselves.

* July 1930 was the first month that water was released on a regular basis. Small amounts were released from time to time in June.

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate 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.

NEW YORK POWER AND LIGHT CORPORATION

By *Wm. H. Stearns*
President.

Attest:

A. D. Goodhead
Asst. Secretary.

HUDSON RIVER REGULATING DISTRICT

By *Wm. H. Sage*
President of the Board.

Attest:

Edward C. ...
Secretary.

