

AGREEMENT - STILLWATER

THIS AGREEMENT, made and entered into as of the 14th day of June 1985, is by and between STILLWATER ASSOCIATES, a New York limited partnership with offices in Albany, New York, ("SELLER"), and NIAGARA MOHAWK POWER CORPORATION, a corporation organized and existing under the laws of the State of New York, with its office and principal place of business at Syracuse, New York, ("NIAGARA"),

W I T N E S S E T H :

WHEREAS, SELLER owns and will operate a hydroelectric plant on the Beaver River in the Town of Webb, Herkimer County, New York, (the "PLANT"), which is designed to generate approximately 6,500 MWH of electric energy annually and approximately 2.5 MW of capacity (individually and together referred to as "ELECTRICITY") for delivery to the electric transmission system of NIAGARA with which the PLANT will be physically interconnected, and

WHEREAS, SELLER requires a purchaser for the ELECTRICITY generated by its PLANT, and NIAGARA, in the conduct of its business, can make use of such ELECTRICITY.

NOW, THEREFORE, in consideration of the premises and covenants hereinafter set forth, the parties hereto agree as follows:

FIRST: SELLER shall deliver to NIAGARA and NIAGARA will accept all of the ELECTRICITY produced at the PLANT, subject to the terms and conditions of this AGREEMENT.

SECOND: NIAGARA's acceptance of and obligation to pay for ELECTRICITY produced shall be suspended for any periods of time during which, for reasons of repair, service, system emergency, safety or actions pursuant to Paragraph SIXTH, NIAGARA's transmission system is physically unable to accept such ELECTRICITY. If necessary, and solely for the reasons set forth above, NIAGARA may order that the PLANT's generating facility be disconnected from NIAGARA's transmission system.

NIAGARA shall give notice of the need for such disconnection to employees of SELLER designated from time to time by SELLER to receive such notice. Upon receipt of such notice, SELLER shall carry out the required action without undue delay.

During any period of disconnection, the parties shall use their best efforts to restore delivery as promptly as is reasonably possible.

NIAGARA agrees to use its best efforts to schedule any planned outages to the facilities serving the PLANT during the summer months when river flow is at its lowest and whenever possible to coordinate such planned outages with SELLER's own schedule for planned maintenance.

SELLER shall bear any extraordinary cost incurred by NIAGARA associated with any such disconnection or reconnection. An extraordinary cost is a cost that would not be incurred by NIAGARA absent the existence of the PLANT.

THIRD: SELLER shall deliver the ELECTRICITY to NIAGARA at approximately 13,200 volts, 60 Hertz, 3 Phase, over electrical connections that meet or exceed the requirements of NIAGARA's Electric System Bulletin #756-B, a copy of which is incorporated herein by reference.

FOURTH: SELLER shall have the right to shut down the operation of the PLANT or to temporarily disconnect it from NIAGARA's transmission system

whenever and for such periods of time as may be, in the sole discretion of SELLER necessary for maintenance, emergency or safety reasons. SELLER shall bear any cost associated with any such disconnection and reconnection.

FIFTH: NIAGARA shall pay SELLER at SELLER's office in Albany, New York, on or before the twenty-fifth (25th) day of each month for the ELECTRICITY delivered to NIAGARA by SELLER during the preceding calendar month, such amounts as are provided in this Paragraph FIFTH. Any amount remaining unpaid after the time it is due shall thereafter be subject to a late payment charge equal to the amount provided for in NIAGARA's then current tariff PSC No. 207 Electricity, or in such subsequent tariffs as may be in effect from time to time. This charge is currently equal to 1 1/2% per month applied to the unpaid balance.

(1) It is the intent of the parties hereto that (i) the cost to NIAGARA of ELECTRICITY purchased by it hereunder during the term of this AGREEMENT be less than NIAGARA's "Avoided Cost" (as hereinafter defined) and (ii) there be certainty with respect to the price paid by NIAGARA for such ELECTRICITY during the first fifteen (15) years following the effective date of this AGREEMENT. Accordingly, during the first one hundred eighty (180) months from commencement of full commercial operation of the PLANT (the "First Period"), NIAGARA shall pay SELLER for ELECTRICITY delivered to it by SELLER pursuant to the rate schedule contained in Attachment I to this AGREEMENT (the "Contractual Base Rate") and thereafter the price paid by NIAGARA for ELECTRICITY shall be adjusted in accordance with Paragraph FIFTH (2)-(8) in order to give effect to the mutual intent of the parties as set forth above.

(2) SELLER and NIAGARA shall maintain continuous records to permit the monthly calculation during the First Period of the difference between NIAGARA's actual payment to SELLER at the Contractual Base Rate and what such payment would have been at NIAGARA's Avoided Cost. If the price paid for

ELECTRICITY at the Contractual Base Rate is higher than what it would have been at NIAGARA's Avoided Cost, the difference will constitute an advance payment by NIAGARA for the future purchase of ELECTRICITY. If the price paid for ELECTRICITY at the Contractual Base Rate is lower than it would have been at NIAGARA's Avoided Cost, the difference will constitute a present discount to NIAGARA of the purchase price paid for ELECTRICITY. Such discount will be repaid upon the future purchase of ELECTRICITY. The monthly calculations shall be summed algebraically, that is, with due regard to positive or negative differences, for each calendar year and reconciled in January of the following year. An advance payment balance shall be termed a positive balance and a discount balance shall be termed a negative balance.

NIAGARA's "Avoided Cost" shall be deemed to mean the greater of (1) the New York State statutory minimum payment to qualifying facilities in effect at the time of payment, or (2) such actual cost of electric production (including energy and capacity appropriately adjusted for losses) avoided by reason of this AGREEMENT, as defined in Service Classification No. 6 of PSC No. 207 Electricity as the same may be from time to time changed, amended and/or supplemented, the tariff duly approved by the Public Service Commission of the State of New York (COMMISSION) applicable for payments to qualifying on-site generation suppliers whose sales of capacity and energy to NIAGARA are made under the terms of such tariff. If the requirement for such a rate schedule is suspended or rescinded, NIAGARA will use the methodology referenced in Attachment II, updating the calculation annually using data submitted to and approved by the COMMISSION.

(3) In January of each year during the First Period, an "Advance Payment Account" shall be calculated. The Advance Payment Account shall include the algebraic summation of the difference in each preceding year, together with interest compounded annually, that is, the interest calculated

in January of each year on the amount of the Advance Payment Account shall be added to the Advance Payment Account. The interest for the Advance Payment Account on the monthly differences for the preceding year shall be taken on a half-year convention basis. The formula for the interest calculation for the Advance Payment Account is shown on Attachment III. The annual interest rate (hereinafter "Contract Interest Rate") to be applied shall be 1.25 times the average of the 360 day U.S. Treasury bill rate existing on the first business day of each of the previous twelve (12) months as shown in the "Federal Reserve Statistical Release".

The Advance Payment Account, if positive, shall be used to offset the amount owed by NIAGARA to SELLER for the purchase of ELECTRICITY during the Second and Third Periods, as defined in Paragraph FIFTH (5) and (6), (collectively referred to as the "Settlement Period"), or if negative, shall be paid by NIAGARA to SELLER in addition to the amount owed for the purchase of ELECTRICITY during the Settlement Period. Such offset or payment shall occur in the manner set forth in Paragraph FIFTH (7).

In the event that NIAGARA incurs Increased Tax Liability resulting from a determination by the Internal Revenue Service that payments to SELLER in excess of Avoided Cost are not deductible currently for Federal income tax purposes by NIAGARA, NIAGARA shall compute interest or a Tax Carrying Charge annually on the amount of such Increased Tax Liability resulting from such determination. The Increased Tax Liability shall be determined by multiplying the amount determined by the Internal Revenue Service to be nondeductible currently by the highest statutory income tax rate applicable to corporations for the year of disallowance.

In the event that the COMMISSION allows full recovery of any Increased Tax Liability of NIAGARA pursuant to this paragraph, through its Fuel Adjustment Clause or any other mechanism, the annual interest rate to be

applied to the Increased Tax Liability shall be the Contract Interest Rate as herein provided. Interest shall commence to run on the fifteenth day of the third month following the taxable year to which the Increased Tax Liability relates. Annually, the interest so calculated shall be added to the Advance Payment Account and shall become an obligation of SELLER to pay such interest cost as part of its obligation under the Advance Payment Account.

Notwithstanding the preceding paragraph, in the event that the COMMISSION fails to allow full recovery of the payment of any Increased Tax Liability of NIAGARA pursuant to this paragraph through either its Fuel Adjustment Clause or any other mechanism, a "Tax Carrying Charge Account" shall be established. Regardless of whether an Increased Tax Liability results from a determination by the Internal Revenue Service that payments to SELLER in excess of Avoided Cost are not deductible currently for Federal income tax purposes by NIAGARA or as a result of NIAGARA reflecting such position on a tax return subsequent to an Internal Revenue Service determination to such effect, a Tax Carrying Charge shall be computed and added to the Tax Carrying Charge Account. The Tax Carrying Charge for any taxable year shall be computed by multiplying the Increased Tax Liability for such year by NIAGARA's average incremental cost of capital for the year following such taxable year (grossed up for Federal income tax purposes utilizing the tax rate assumed in the second preceding paragraph). The Tax Carrying Charge shall commence to accrue on the fifteenth day of the third month following the taxable year to which the Increased Tax Liability relates and shall run for one year. The amount so computed shall then be added to the Tax Carrying Charge Account. In the event the Increased Tax Liability arises as a result of an audit adjustment made by the Internal Revenue Service, the Tax Carrying Charge for any affected taxable year shall be computed in the manner described above and be deemed to have been added to the Tax Carrying

Charge Account at the same time as it would have been added if NIAGARA had not claimed the disallowed deduction on its tax return as originally filed. The Tax Carrying Charge Account shall include the algebraic summation of the Tax Carrying Charges added thereto, together with interest thereon compounded annually at the Contract Interest Rate.

Balances in the Tax Carrying Charge Account shall be included in the Advance Payment Account and shall be subject also to the disposition provisions contained in Paragraph FIFTH (3), except that such Tax Carrying Charge Account balances shall not provide the basis for any ratepayer credit for ratemaking, Fuel Adjustment Clause, or other purposes.

Nothing herein is intended to or shall permit or entitle NIAGARA to receive any amount which constitutes interest in excess of the sum permitted by applicable law. If NIAGARA should receive or there shall be accrued in favor of NIAGARA any amount determined by a court of competent jurisdiction to be interest in excess of the maximum rate permitted by applicable law, such amount, if received, shall be rebated to the SELLER, or if accrued, shall be removed from the account to which accrued.

(4) In January of 1990 or in the January following the first five (5) years of operation, whichever occurs last, and in each January thereafter during the First Period, NIAGARA will determine, in the manner hereinafter provided, whether escalation of the Contractual Base Rate should continue, or be suspended temporarily, or be increased temporarily.

A projected Comparative Balance Account will be calculated utilizing the total balance in the Advance Payment Account, together with the cumulative net balance of the tax consequence to NIAGARA, if any, resulting from its payments to SELLER pursuant to this AGREEMENT, as of the end of the preceding year and NIAGARA's then current avoided cost projections. The

projected Comparative Balance Account will then be compared to the amount of \$3,000,000.

If the Comparative Balance Account as projected by NIAGARA to the end of the First Period is calculated to be:

- (a) a cumulative projected balance numerically equal to or less than \$3,000,000, then the Contractual Base Rate would continue to escalate as shown in the applicable Schedule of this AGREEMENT;
- (b) a cumulative projected balance numerically greater than \$3,000,000, then: (i) escalation of the Contractual Base Rate shall be temporarily suspended until such time that said projected balance is equal to or less than this number; or (ii) if temporarily suspending the escalation of the Contractual Base Rate as provided in (i) of this subparagraph is not sufficient to insure that said projected balance will not exceed this number, then the Contractual Base Rate shall be reduced as necessary, but in no event to a value that is less than one-half of NIAGARA's avoided cost, such that the said projected balance is equal to or less than this number.
- (c) a cumulative projected discount balance, then the Contractual Base Rate shall be escalated up to a maximum of 10% until such time as said discount balance is zero, and thereafter the Contractual Base Rate shall escalate as shown in Attachment I.

The actual balance in the Comparative Balance Account at the end of each year, together with the cumulative net balance of the tax consequence to NIAGARA, if any, resulting from payments to SELLER pursuant to this AGREEMENT, will be

compared to \$3,000,000. If, despite the provisions of the paragraph immediately above, the balance is numerically higher than this number, then escalation of the Contractual Base Rate shall be suspended during the following year and the Contractual Base Rate shall be reduced as necessary so that the Advance Payment Account will be numerically lower than this number by the end of said following year.

(5) During the next eighty-four (84) months of the AGREEMENT (the "Second Period"), NIAGARA will pay SELLER monthly 100% of its Avoided Cost as defined in Paragraph FIFTH (2) for ELECTRICITY received from SELLER, decreased or increased by an amount determined under Paragraph FIFTH (7).

(6) During the next ninety-six (96) months of the AGREEMENT (the "Third Period"), NIAGARA will pay SELLER monthly 95% of its Avoided Cost as defined in Paragraph FIFTH (2) for ELECTRICITY received from SELLER, decreased or increased by an amount determined under Paragraph FIFTH (7).

(7) During the Settlement Period, a portion of the Advance Payment Account shall be used to offset, or shall be paid in addition to (depending upon whether there is a positive or negative balance in the Account), the amount owed by NIAGARA to SELLER for the purchase of ELECTRICITY.

The amount used as an offset to the amount owed by NIAGARA, or paid to SELLER in addition to such amount otherwise owed, in each year, shall be determined in December of the prior year and shall be an amount per megawatt hour of ELECTRICITY produced in such year determined in accordance with Attachment V hereof.

Notwithstanding any provision of this AGREEMENT to the contrary, either party may refund the Advance Payment Account with accrued interest in whole or in part at any time without penalties.

(8) If, at the end of the Settlement Period, there exists a positive balance in the Advance Payment Account, such balance shall be refunded in full

to NIAGARA by SELLER. If, alternatively, there exists a negative balance in the Advance Payment Account at the end of the Settlement Period, such balance shall be paid in full by NIAGARA to SELLER.

(9) During the last one hundred twenty (120) months of the AGREEMENT (the "Fourth Period"), NIAGARA will pay SELLER monthly 90% of its avoided cost as defined in Paragraph FIFTH (2) for ELECTRICITY received from SELLER.

(10) During the full term of this AGREEMENT, SELLER agrees to keep the PLANT in good working order, capable of producing ELECTRICITY, and to keep the PLANT insured in accordance with the provisions of Attachment IV hereto.

(11) In further consideration of the pricing provisions of this AGREEMENT, SELLER hereby pledges its equity interest in the PLANT to NIAGARA to secure the refund of any positive balance in the Advance Payment Account remaining at the conclusion of the First Period and thereafter in the manner provided in Paragraph FIFTH (7). The pledge of such equity shall continue until the balance of the Advance Payment Account is zero in amount and, until such zero balance is achieved, shall constitute a lien upon all the works, plant, properties, and real and personal, constituting the PLANT in NIAGARA's favor. NIAGARA agrees that the foregoing pledge of the equity interest held by SELLER and the lien created thereby shall be subordinate to SELLER's construction financing and its said initial long-term debt but shall be equal in priority, as their interests may appear, to any limited partner's interests created prior to the date of "commercial operation" as defined in Paragraph SEVENTH and thereafter until the Advance Payment Account becomes zero in amount after the conclusion of the First Period. SELLER agrees that it shall execute such documents and make such filings as are reasonably requested by NIAGARA and agrees to pay the cost of recording this AGREEMENT and such other instruments as may be required by NIAGARA. Further, if the payments to be made by NIAGARA to SELLER during the Settlement Period, reduced by the amounts

used as offsets as determined in Paragraph FIFTH (7), are or become insufficient to permit SELLER to meet the operating and maintenance expenses, insurance premiums, interest expense, lease payment obligations and property taxes pertaining to the PLANT and SELLER fails or is unable to make up the revenue deficiency to meet such obligations, NIAGARA, upon sixty (60) days' notice to SELLER, is irrevocably authorized to assume management control of the PLANT as agent for SELLER for an interim period until the earlier of:

- (a) such time during the Second or Third Period that SELLER demonstrates to NIAGARA's satisfaction that SELLER is able to meet all of its obligations under this AGREEMENT, or
- (b) there is no positive balance in the Advance Payment Account.

During any such interim period, SELLER shall retain legal title to and ownership of the PLANT and NIAGARA shall assume management control solely as agent for SELLER.

SIXTH: SELLER shall continue to own and maintain its interconnection with NIAGARA's transmission system, including the generator output leads, the generator step-up transformer, and the 13.2 kV tap, together with associated equipment. Such interconnection shall also include the construction, to NIAGARA's specifications, of approximately 9.2 miles of 13.2 kV line and a 115/13.2 kV transformer station located at NIAGARA's Moshier Station. This construction will be done by NIAGARA at the expense of SELLER or may be done by SELLER at its own expense. Once constructed, this line and transformer station will become the property of NIAGARA.

If, at some future time, it becomes necessary for NIAGARA to relocate or rearrange its transmission system to which the PLANT is connected, NIAGARA shall advise SELLER one year in advance in writing. If such relocation or rearrangement is ordered or required by governmental authority, NIAGARA shall

give prior notice to SELLER equal in time to the notice given NIAGARA by such governmental authority, to the extent possible. NIAGARA will indicate the investment required for new facilities proposed to reestablish the connection. SELLER will have the option of reimbursing NIAGARA for the cost of these new facilities or of providing its own alternative interconnection to NIAGARA's transmission system.

If, at some future time, NIAGARA determines it is necessary to retire or abandon its transmission system to which the PLANT is connected, NIAGARA shall advise SELLER, at least one year in advance, in writing, indicating NIAGARA's annual cost of transmission facilities dedicated exclusively to accommodate the output of the PLANT. SELLER shall then have the option of paying NIAGARA for these annual costs or of providing alternate interconnection to NIAGARA's transmission system. Such alternate may be the purchase by SELLER of NIAGARA's existing 13.2 kV facilities, which have been retired in place, at depreciated book cost calculated using NIAGARA's depreciation ratios exclusive of salvage factors. In the event SELLER elects to pay to NIAGARA the annual charges associated with these facilities, said charges shall be recomputed as of January 1 of every year.

SEVENTH: This AGREEMENT shall become effective as of the date hereinbefore first noted. Thereafter, SELLER shall notify NIAGARA in writing, indicating the date of commencement of full commercial operation of the PLANT. This AGREEMENT shall then commence for a term of forty (40) years from such date of commercial operation or earlier upon the destruction or condemnation of the PLANT or by mutual agreement of the parties. Prior to commencement of full commercial operation, NIAGARA agrees to purchase any test ELECTRICITY produced by SELLER at its Avoided Cost as defined in FIFTH (2). Beginning on the date of commencement of full commercial operation, the pricing provisions of Paragraph FIFTH shall become effective.

EIGHTH: If SELLER proposes to sell the PLANT at any time during the term of this AGREEMENT, SELLER shall notify NIAGARA of its intention in writing. Following receipt of such notice, NIAGARA shall have, for a sixty (60) day period, the right to negotiate the purchase of the PLANT. This provision shall not apply to any transfer or assignment by SELLER for the sole purpose of financing the development. If no agreement can be reached during this sixty (60) day period, there is no obligation on the part of SELLER to sell the PLANT to NIAGARA.

NINTH: ELECTRICITY delivered by SELLER hereunder shall be measured by electric watt hour meters of a type approved by the COMMISSION. These metering facilities will be installed, owned and maintained by NIAGARA. The meter and installation costs shall be borne by SELLER. The meters shall be maintained in accordance with the rules set forth in 16 NYCRR Part 92 which are incorporated herein by reference. Each party shall have the right at all reasonable times, upon giving not less than five (5) days notice to the other party for the purpose of permitting the other party, to be present at the inspection, to inspect, and test said meters and, if found defective, NIAGARA shall adjust, repair or replace the same at the expense of SELLER. Any test or inspection requested by a party shall be at the expense of that party. SELLER may elect to install its own metering equipment in addition to NIAGARA's metering equipment. Such metering equipment shall meet the requirements of 16 NYCRR Part 92. Should any metering equipment installed by NIAGARA fail to register during the term of this AGREEMENT, the parties shall use SELLER's metering equipment, if installed, to determine the amount of ELECTRICITY delivered to NIAGARA. On a day or days on which neither NIAGARA's nor SELLER's metering equipment is in service, the quantity of ELECTRICITY delivered shall be determined in such manner as the parties shall agree.

TENTH: Duly authorized agents of NIAGARA shall have the right, during reasonable business hours, to inspect, on SELLER's premises, the records of ELECTRICITY generated and delivered to NIAGARA's transmission system.

ELEVENTH: During the term of this AGREEMENT, NIAGARA shall have the right, easement and privilege to construct, operate, repair, maintain, remove and/or replace such electric transmission lines as it may reasonably require over and across the premises of SELLER for the purposes of receiving and transmitting the ELECTRICITY to be delivered to NIAGARA, subject to the reasonable approval of SELLER.

TWELFTH: Each party hereto respectively assumes full responsibility in connection with the electric service supplied hereunder on its side of the point of delivery and for the wires, apparatus, devices and appurtenances used in connection therewith. Each party shall indemnify, save harmless and defend the other against all claims, demands, judgments, costs, expenses or other liabilities due to loss, damage or injury to person or persons or property in any manner directly or indirectly arising from or connected with responsibilities thus assumed by it; provided, however, that each party shall be liable for all claims of such party's own employees arising out of any provision of the Workers' Compensation Law. Each party shall maintain Workers' Compensation and Employers' Liability Insurance covering their respective employees as required by law.

THIRTEENTH: This AGREEMENT and the payments to be made hereunder shall not be assigned or transferred by SELLER without prior written notification to NIAGARA.

FOURTEENTH: This AGREEMENT and all of its terms and conditions shall bind and inure to the benefit of the successors and assigns of the respective parties hereto. This AGREEMENT shall be governed by the Laws of the State of New York.

FIFTEENTH: This AGREEMENT is the exclusive agreement of the parties regarding the PLANT and merges all of the terms of this AGREEMENT. No change or variation in this agreement may be effective except if incorporated in express terms in a written instrument signed by the parties hereto.

SIXTEENTH: In the event of any dispute under this AGREEMENT, either party may make application to an appropriate administrative or judicial authority or body for relief.

SEVENTEENTH: Each party to this AGREEMENT acknowledges that the COMMISSION has ordered NIAGARA to submit this AGREEMENT to the COMMISSION for its review and possible modification or abrogation within sixty (60) days of submittal. If either party objects to any modification to this AGREEMENT by the COMMISSION, it may terminate this AGREEMENT within thirty (30) days from the date the COMMISSION orders such modification without any liability to the other party. In the event the COMMISSION conditions its initial approval of this AGREEMENT to provide for less than full recovery by NIAGARA, through its Fuel Adjustment Clause, of any payments made by NIAGARA to SELLER under the terms of this AGREEMENT, then this AGREEMENT shall without further notice become null and void without further liability by either party to the other. Each party to this AGREEMENT acknowledges and agrees that NIAGARA intends to request that the COMMISSION, in its review of the AGREEMENT, expressly find that NIAGARA's actions, in concluding the pricing provisions of this AGREEMENT, are acceptable to the COMMISSION and each party to this AGREEMENT understands and agrees that if the COMMISSION does not so find, this AGREEMENT is null, void and of no effect.

EIGHTEENTH: All written notifications pursuant to this AGREEMENT shall be personally delivered or mailed by first class mail, return receipt requested, as follows:

To NIAGARA:

REGIONAL GENERAL MANAGER
NIAGARA MOHAWK POWER CORP.
127 Main Avenue
Watertown, New York 13601

and

POWER CONTRACT DIRECTOR
NIAGARA MOHAWK POWER CORP.
300 Erie Boulevard West
Syracuse, New York 13202

To SELLER:

STILLWATER ASSOCIATES
330 Broadway
Albany, New York 12207

and

KEY BANK, N.A.
60 State Street
Albany, New York 12207

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

STILLWATER ASSOCIATES
MERCER COMPANIES, INC. General Partner
By: F. Michael Tucker
Title: Vice President
Date: June 11 1985

NIAGARA MOHAWK POWER CORPORATION
By: Archie D. Namy
Title: Power Contract Director
Date: June 14, 1985

AGREEMENT BETWEENNIAGARA MOHAWK POWER CORPORATION and STILLWATER ASSOCIATESPricing Provision

During the first one hundred eight (180) months from commencement of full commercial operation of the PLANT, NIAGARA will pay SELLER for ELECTRICITY delivered to it by SELLER at the rates set forth below:

<u>Effective Date</u>	<u>Cents/KWH</u>	<u>Escalation Rate</u>
January 1, 1985	8.00	-
January 1, 1986	8.24	3%
January 1, 1987	8.49	3
January 1, 1988	8.74	3
January 1, 1989	9.00	3
January 1, 1990	9.27	3
January 1, 1991	9.55	3
January 1, 1992	9.84	3
January 1, 1993	10.13	3
January 1, 1994	10.44	3
January 1, 1995	10.75	3
January 1, 1996	11.07	3
January 1, 1997	11.41	3
January 1, 1998	11.75	3
January 1, 1999	12.10	3
January 1, 2000	12.46	3

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January 1, 1990	9.27	3
January 1, 1991	9.55	3
January 1, 1992	9.84	3
January 1, 1993	10.13	3
January 1, 1994	10.44	3
January 1, 1995	10.75	3
January 1, 1996	11.07	3
January 1, 1997	11.41	3
January 1, 1998	11.75	3
January 1, 1999	12.01	3

AGREEMENT BETWEEN

NIAGARA MOHAWK POWER CORPORATION and STILLWATER ASSOCIATES

Niagara's Avoided Cost Determination

The amount to be paid by NIAGARA pursuant to Paragraph FIFTH (2) for ELECTRICITY supplied to NIAGARA by SELLER shall be NIAGARA's AVOIDED COST which shall be computed annually and adjusted monthly as appropriate, and which shall be the sum of the following Sections (A), (B) and (C):

- (A) NIAGARA's projected avoided production cost, including all purchase transactions external to NIAGARA's system, composed of NIAGARA's projected avoided fuel cost, and related labor, supplies and maintenance, which are made possible by the installation of the PLANT and other qualifying facilities, computed in cents per KWH. The avoided production cost shall be derived for both system on-peak and system off-peak conditions. System on-peak conditions shall be defined as the hours 8 A.M. through 10 P.M., Mondays through Fridays, except for the following holidays, when such holidays fall on other than a Saturday or Sunday:

New Year's Day, Memorial Day,

Independence Day, Labor Day

Thanksgiving Day and Christmas Day.

System off-peak conditions are defined as those hours not defined as on-peak.

The projected values computed under this Section (A) shall be based upon production cost studies utilized in NIAGARA's tariffs approved by the COMMISSION and shall be adjusted monthly, to reflect actual operating costs, by use of NIAGARA's fuel adjustment calculation and procedure. This calculation currently results in a two month lag; e.g. January's actual fuel costs would be used as the basis for March payments.

The projected avoided production cost computed under this Section (A) shall be increased for transmission line energy losses avoided and decreased for transmission line energy losses created by the installation of the PLANT.

- (B) NIAGARA's projected avoided capacity costs, including capital carrying charges and fixed operation and maintenance charges, computed, expressed, and paid in cents per KWH on-peak, as occasioned by the projected deferral, elimination or retirement of NIAGARA's generating facilities and related transmission facilities or unit participations, or by the deferral or elimination of NIAGARA's firm capacity purchases which are made possible by the installation of the PLANT and other qualifying facilities.

The projected avoided capacity cost so determined shall include a deduction for NIAGARA's projected increased cost of production incurred by the deferral of NIAGARA's new generation which subsequently requires the retention and operation of existing generation having a higher operating cost. In no event shall the net projected avoided capacity cost be less than zero.

The projected avoided capacity costs computed under this Section (B) shall be increased for transmission line capacity losses avoided and decreased for transmission line capacity losses created by the installation of the PLANT.

- (C) NIAGARA's projected avoided transmission line costs, including capital carrying charges and fixed operation and maintenance charges, as occasioned by the projected deferral, elimination or retirement of NIAGARA's transmission facilities which are made possible by the installation of the PLANT and other qualifying facilities.

AGREEMENT BETWEEN

NIAGARA MOHAWK POWER CORPORATION and STILLWATER ASSOCIATES

Interest Calculation for Advance Payment Account

Interest to be added to the Advance Payment Account each year equals the Contract Interest Rate multiplied times the sum of (1) Advance Payment Account from previous years including interest, plus (2) one-half of the algebraic summation of the monthly differences in the preceding year.

Illustration:

Assume the following:

(1) the Advance Payment Account, as of December 31, 1986, amounts to \$1,500,000;

(2) the algebraic summation of the monthly differences during the period January 1, 1987 through December 31, 1987 amounts to \$100,000; and

(3) the Contract Interest Rate for the period January 1, 1987 through December 31, 1987 is 10%

The interest calculation for the Advance Payment Account as of December 31, 1987, to be made in January 1988, is the following:

$$10\% [\$1,500,000 + (1/2 \times \$100,000)] = \$155,000$$

Thus, the Advance Payment Account, as of December 31, 1987, will be:

\$1,755,000, (that is, \$1,500,000 + \$100,000 + \$155,000), which figure shall be used in the interest calculation of the following year.

AGREEMENT BETWEEN

NIAGARA MOHAWK POWER CORPORATION and STILLWATER ASSOCIATES

Insurance Coverage

SELLER agrees to insure or cause to be insured the PLANT against loss or damage of the kinds usually insured against by operators similarly situated, by means of policies issued by reputable insurance companies with uniform standard coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at that time in use in New York, in amounts that are not less than the full insurable value of the PLANT, and with such deductible provisions as are customarily included by operators similarly situated. The term "full insurable value," as used herein, shall mean the actual replacement value. Alternatively, SELLER may insure or cause to be insured such property under a blanket insurance policy or policies which cover not only such property but other properties in the amounts required by the previous sentence.

SELLER agrees to carry or cause to be carried public liability insurance with respect to the PLANT with one or more reputable insurance companies in minimum amounts of \$1,000,000.00 for the death of or personal injury to one person and \$1,000,000.00 for personal injury or death for each occurrence in connection with the PLANT and \$1,000,000.00 for property damage for any occurrence in connection with the PLANT.

AGREEMENT BETWEENNIAGARA MOHAWK POWER CORPORATION and STILLWATER ASSOCIATESPurchase Price Offset Calculation

The amount per megawatt hour (AMH) to be used as an offset to the amount owed by NIAGARA, or paid to SELLER in addition to such amount otherwise owed, in each year, shall be an amount equal to the outstanding balance in the Advance Payment Account (APA) as of December 31 of the prior year times one plus the Contract Interest Rate (CIR) divided by 80 percent of the average annual megawatt hour production of the PLANT determined over the first fifteen years of production (AMP) times the number of years remaining in the period over which the APA is to be refunded or paid. However, in no event shall the AMH exceed 80 percent of NIAGARA's then Avoided Costs per megawatt hour of ELECTRICITY. The above formula is illustrated as follows:

$$\text{AMH} = \frac{\text{APA} \times (1 + \text{CIR})}{80\% \text{ of } (\text{AMP} \times \text{years remaining})}$$

Illustration:

Assume the following:

- (1) The APA as of December 31, 1999 is \$4,800,000
- (2) The CIR for the period January through December of the year 2000 is 10%
- (3) The AMP for the plant is 10,000
- (4) The actual production during the year 2000 is equal to the AMP

The AMH offset or payments for the year 2000 would be:

$$\text{AMH Offset/Payment} = \frac{\$4,800,000 (1 + .10)}{.8 (12 \text{ years} \times 10,000 \text{ MWh})} = \$55$$

$$\text{Annual Offset/Payment} = \$55/\text{MWh} \times 10,000 \text{ MWh} = \$550,000$$

The interest calculation for the APA as of December 31, 2000 to be carried forward is:

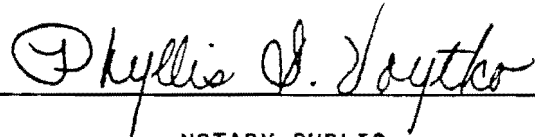
$$10\% (4,800,000 - [1/2 \times \$550,000]) = \$452,000$$

Thus, the APA as of December 31, 2000 will be: \$4,702,500

(That is, \$4,800,000 - \$550,000 + \$452,500, which figure shall be used in the following year.)

STATE OF NEW YORK)
 : ss.:
COUNTY OF ONONDAGA)

On this 14th day of JUNE, 1985, before me personally came GERALD D. GARCY, to me personally known who being by me duly sworn did depose and say that he resides in the Town of Clay, that he is the Power Contract Director of NIAGARA MOHAWK POWER CORPORATION, the Corporation described in and which executed the within instrument; that he knows the seal of said Corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto by like order.



NOTARY PUBLIC

PHYLLIS D. VOYTKO
Notary Public in the State of New York
Qualified in Onon. Co. No. 34 549853
Commission Expires March 30, 1987

STATE OF NEW YORK)
 : ss.:
COUNTY OF ALBANY)

On this 11th day of JUNE, 1985, before me personally came F. MICHAEL TUCKER, to me known, who being duly sworn, did depose and say that he resides at C127 Bethlehem Terrace, Slingerlands, New York 12159; that he is Vice President of Mercer Companies, Inc., a New York Corporation which is a general partner of Stillwater Associates, a New York limited partnership, and known to me to be the individual described in and who executed the foregoing instrument on behalf of Stillwater Associates, and he duly acknowledges to me that he executed the same by order of and on behalf of general partner of Stillwater Associates.



NOTARY PUBLIC

WAYNE H. HAFF
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN SCHENECTADY COUNTY
NO. 479692
COMMISSION EXPIRES MARCH 30, 1987