

FIRST AMENDMENT

THIS FIRST AMENDMENT, made and entered into as of the 28th day of February, 1993, by and between Stillwater Associates, (hereinafter referred to as "SELLER"), a limited partnership with its office in Albany, New York, and NIAGARA MOHAWK POWER CORPORATION, a domestic corporation (hereinafter referred to as "NIAGARA") with its office and principal place of business in Syracuse, New York.

W I T N E S S E T H

WHEREAS, the parties have previously entered into an agreement, dated June 14, 1985, which was approved by the New York Public Service Commission (hereinafter referred to as the "COMMISSION") by order dated September 25, 1985, (hereinafter referred to as the "AGREEMENT"); and

WHEREAS, the AGREEMENT provides for the purchase by NIAGARA of energy and capacity (hereinafter referred to as "ELECTRICITY") produced by a hydroelectric plant located on the Stillwater Reservoir in the Town of Webb, Herkimer County, New York, known as the Stillwater Generating Station (hereinafter referred to as the "PLANT"); and

WHEREAS, NIAGARA desires to achieve a stabilization of its purchased ELECTRICITY prices under the AGREEMENT and SELLER desires to be assured of the price it will receive in the future under the AGREEMENT for the PLANT's entire output of ELECTRICITY; and

WHEREAS, SELLER and NIAGARA are desirous of setting forth in this FIRST AMENDMENT certain revisions to the AGREEMENT and other, related financial terms that, taken together, meet the parties' interests as set forth above.

NOW, THEREFORE, in consideration of the premises and covenants hereinafter set forth, the parties hereto have agreed and do hereby mutually agree as follows:

FIRST: Effective January 1, 1992, Paragraph FIFTH and ATTACHMENTS I, II, III and V of the AGREEMENT are deleted in their entirety and replaced with the following Paragraph FIFTH and referenced attachments:

"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(1). Any amount remaining unpaid after the time it is due, pursuant to the preceding sentence or pursuant to this Paragraph FIFTH(2), 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) For the period beginning January 1, 1992 and ending upon the delivery of the last scheduled megawatt hour, the rates to be paid SELLER for ELECTRICITY will be as set forth in ATTACHMENT I hereto ("the Contract Rate").

(2) No later than February 1 of each calendar year ("Calendar Year"), commencing no later than February 1, 1993, SELLER shall provide to NIAGARA a comparison of NIAGARA's Actual Avoided Cost, as defined below, during the preceding Calendar Year ("Preceding Calendar Year") with NIAGARA's estimated avoided cost for that year as set forth in ATTACHMENT II hereto ("Estimated Avoided Cost"). In the event NIAGARA's Actual Avoided Cost exceeds the Estimated Avoided Cost for that Preceding Calendar Year, NIAGARA will pay the SELLER on or before February 25 of that Calendar Year, in addition to any other payment due under this Paragraph FIFTH, a supplemental payment equal to the product of (i) fifty percent (50%) of the difference between the Actual Avoided Cost and Estimated Avoided Cost for that Preceding Calendar Year and (ii) the kilowatt hour sales by SELLER to NIAGARA for such Preceding Calendar Year ("Supplemental Payment").

(3) NIAGARA's "Actual Avoided Cost" shall be deemed to be NIAGARA's actual cost of producing electric energy (appropriately accounting in all respects for the voltage level at which SELLER is interconnected to NIAGARA), as defined in SC-6 of the PSC No. 207 Electricity as the same may be from time to time changed, amended and/or supplemented, the tariff duly approved by the 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 III, updating the

calculation annually using data submitted to and approved by the COMMISSION.

(4) Throughout the term of this FIRST AMENDMENT, SELLER shall operate and maintain the PLANT in accordance with good engineering practice, and keep the PLANT insured in accordance with the provisions of ATTACHMENT IV of the AGREEMENT. At intervals consistent with SELLER's maintenance schedule but in no event exceeding every third year, SELLER shall cause, at its sole expense, an independent engineer, not in the employ of NIAGARA or SELLER, selected from a list approved by NIAGARA and SELLER, to perform an inspection of the PLANT, premises and every part thereof and the PLANT's maintenance records and procedures. Within thirty (30) days of the completion of such inspection, the independent engineer will file with NIAGARA and SELLER a report ("Engineer's Report") stating whether, in his opinion, such PLANT has been maintained in accordance with good engineering practice. If not so maintained, the independent engineer will identify those deficiencies in maintenance which materially effect the PLANT's ability to produce ELECTRICITY (hereafter, "Material Deficiencies" or "Material Deficiency") and actions and/or expenditures and time which, in his judgment, are reasonably necessary to remedy all such Material Deficiencies. SELLER shall provide NIAGARA a fifteen (15) working day advance notification of said inspection. NIAGARA shall have the right to accompany the independent engineer on any inspections. Upon receipt of the Engineer's Report SELLER shall, with respect to all undisputed Material Deficiencies, thereupon proceed with promptness and dispatch to remedy any Material Deficiency noted in such Engineer's Report by taking such actions and/or making the

expenditures determined by the independent engineer as reasonably necessary for such purpose in the time so specified.

Within fifteen (15) days following receipt of the Engineer's Report, SELLER shall notify NIAGARA of any disputed Material Deficiencies noted therein. SELLER shall use its best efforts to resolve promptly any dispute with the independent engineer regarding the Engineer's Report. If such dispute cannot be resolved, SELLER and NIAGARA shall use best efforts to resolve any dispute between SELLER and NIAGARA as to whether there is a Material Deficiency or whether a particular remedy is reasonably necessary to correct such a purported deficiency. In the event that such a dispute cannot be resolved between SELLER and NIAGARA within thirty (30) days, SELLER may request that a second independent engineer, selected from a list approved by NIAGARA and SELLER, review and render an opinion on the matters in dispute. SELLER shall pay the cost of the second independent engineer unless the SELLER's position on the disputed matters is adopted in all material respects by the second independent engineer, in which case, NIAGARA shall pay the cost of the second independent engineer. With respect to any matter in dispute between the first and second independent engineer, if such dispute cannot otherwise be resolved promptly by SELLER and NIAGARA, the opinion of the second independent engineer shall be binding on SELLER and NIAGARA.

If any undisputed Material Deficiencies or any Material Deficiencies determined by the above dispute resolution procedure are not remedied in the reasonable judgment of the first or second independent engineer, as the case may be, within the time so

specified or within such extended period as agreed upon by SELLER and NIAGARA, an escrow account shall be established as provided below. NIAGARA shall send to SELLER and SELLER's Lender notice of its intent to institute the escrow provisions hereinafter referred to (said notice being hereinafter referred to as the "Escrow Notice"). If within thirty (30) days after the receipt of the Escrow Notice, SELLER's Lender shall notify NIAGARA of its intent to remedy any unremedied Material Deficiencies, NIAGARA shall refrain from enforcing its escrow rights for such reasonable period of time as shall permit SELLER's Lender to obtain possession of the PLANT and remedy any such unremedied Material Deficiencies. If SELLER's Lender does not notify NIAGARA of its intent to remedy any unremedied Material Deficiencies within the time so specified, then 15% of the payments by NIAGARA to SELLER for ELECTRICITY delivered by SELLER (up to the total of the first or second independent engineer's (as the case may be) estimated cost to correct such Material Deficiencies), will thereafter be held in escrow at SELLER's expense. Such escrowed amounts, as determined by the first or second independent engineer, will be allocated and used solely for correction of such Material Deficiencies and shall be released on presentation by SELLER of bills or invoices for goods and/or services related to the correction of such deficiencies. At such time that all Material Deficiencies have been remedied, the remaining escrowed funds shall be released back to the SELLER for SELLER's unrestricted use. In the event that such Material Deficiencies are not remedied within the time so specified or within such extended period as agreed upon by SELLER and NIAGARA

and the unremedied Material Deficiencies give rise to the reasonable expectation of the first or second independent engineer that SELLER is not diligently attempting to remedy all such Material Deficiencies, NIAGARA may exercise its right to possess, control and operate the PLANT as described below. NIAGARA's right to possess, control and operate the PLANT shall be in addition to any other legal rights that NIAGARA may have in such circumstances.

NIAGARA shall give notice to SELLER and to the representative of SELLER's Lender, as designated by SELLER, at least ten (10) days in advance of the exercise of NIAGARA's right to possess, control and operate the PLANT.

During the period that NIAGARA is in possession of or operating the PLANT, SELLER shall be obligated to reimburse NIAGARA for any labor and/or maintenance expenses reasonably incurred by NIAGARA in taking possession of and operating the PLANT. SELLER shall reimburse NIAGARA promptly on presentation by NIAGARA of a monthly statement of such expenses, itemizing the actual costs incurred by NIAGARA in operating the PLANT. In the event SELLER fails to reimburse NIAGARA within thirty (30) days following presentation of such a monthly statement, NIAGARA may reduce any sum otherwise due SELLER up to twenty-five percent (25%) as a credit against the amount due under such statement. During any period that NIAGARA is in possession of and operating the PLANT, SELLER shall retain legal title to and ownership of the PLANT and NIAGARA shall assume management control solely as agent for SELLER. SELLER hereby grants NIAGARA, its employees, contractors, and grantees, a right, license and easement which are irrevocable

during the term of this FIRST AMENDMENT to enter upon the PLANT site for purposes of taking possession of and operating the PLANT as provided herein. SELLER shall make the filings with the Federal Energy Regulatory Commission and the COMMISSION as necessary to effectuate NIAGARA's rights under this FIRST AMENDMENT.

SELLER may resume operation and NIAGARA shall relinquish its right to possess, control and operate the PLANT when SELLER reasonably demonstrates to the first or second independent engineer, as the case may be, that the previously identified Material Deficiencies have been remedied. Additionally, NIAGARA shall not relinquish its right to possess, control and operate the PLANT until any reasonable expenditures for labor or maintenance made by NIAGARA to safely and adequately operate the PLANT are recovered through a payment from SELLER to cover such expenditures.

NIAGARA's exercise of its rights hereunder to possess, control and operate the PLANT shall not be deemed an assumption by NIAGARA of any liability attributable to SELLER, and for the period during which NIAGARA is in possession of, controls or operates the PLANT, SELLER shall indemnify, save harmless and defend NIAGARA against all claims, demands, judgments and associated costs and expenses, related to property damage, bodily injuries or death suffered by third parties unless caused by NIAGARA's negligence or willful misconduct."

SECOND: Notwithstanding Paragraph FIRST of this FIRST AMENDMENT, SELLER shall indemnify and hold NIAGARA harmless in the event that NIAGARA incurs Increased Tax Liability resulting from a timely determination from the Internal Revenue Service that

payments to SELLER made pursuant to ATTACHMENT I of the AGREEMENT, as such AGREEMENT was approved by the COMMISSION, from the initial date of commercial operation of the PLANT to the effective date of this FIRST AMENDMENT were not or are not deductible currently for Federal income tax purposes by NIAGARA. 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. NIAGARA will contest such a determination in forums or courts selected by NIAGARA on SELLER's request and at SELLER's expense provided that: (1) tax counsel selected by NIAGARA has rendered an opinion to NIAGARA, at SELLER's expense, that there is a reasonable basis for such contest at the administrative level and, in the event of an adverse administrative determination, that it is more likely than not that such adverse determination at the administrative level will be reversed on an appeal; (2) in no event will an appeal to the United States Supreme Court be required; and (3) such contest shall be controlled in every respect by NIAGARA.

THIRD: The Contract Rate is net of the additional annual payments required to fully amortize the total Advance Payment Account balance of \$1,089,280, existing as of January 1, 1992 (under Paragraph FIFTH of the AGREEMENT, as such AGREEMENT was approved by the COMMISSION), with interest at 7%, over the remaining term of this FIRST AMENDMENT. No general or limited Partner of SELLER shall have any personal liability under this FIRST AMENDMENT.

FOURTH: Effective January 1, 1992, Paragraph SEVENTH of the AGREEMENT is deleted in its entirety and replaced with the following Paragraph SEVENTH:

"SEVENTH: The pricing provisions of this FIRST AMENDMENT shall apply to the entire output of SELLER's PLANT provided, however, that this AGREEMENT shall expire upon the earliest of (i) the delivery of 235,950 megawatt hours of ELECTRICITY from the PLANT commencing January 1, 1992; (ii) December 31, 2029; (iii) upon the destruction or condemnation of the PLANT; or (iv) by mutual agreement of both parties."

FIFTH: All other terms and conditions of the AGREEMENT shall remain in full force and effect.

SIXTH: Either party may assign or pledge this FIRST AMENDMENT and all rights and obligations hereunder under the provisions of any mortgage, deed of trust indenture, or other instrument which it has executed or may execute hereafter as security for indebtedness. The SELLER may assign the SELLER's interest in this FIRST AMENDMENT to the SELLER's Lender upon written notice to NIAGARA.


SEVENTH: It is understood by NIAGARA that this FIRST AMENDMENT is subject to the approval of Key Bank of New York, N.A., SELLER's Lender, whose approval shall be signified as provided below. Notwithstanding NIAGARA's execution of this FIRST AMENDMENT, this FIRST AMENDMENT shall be null and void in all respects unless SELLER's Lender signifies its approval of this FIRST AMENDMENT within ninety (90) days of the date on which NIAGARA executed this FIRST AMENDMENT.

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

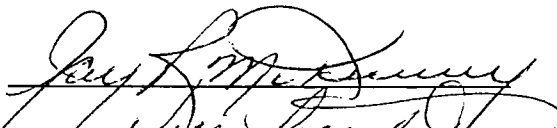
STILLWATER ASSOCIATES

NIAGARA MOHAWK POWER CORPORATION

By: MERCER COMPANIES INC GP
By F Michael Tucker
Title: Vice President
Date: March 3 1993

By: 
VICE PRESIDENT
POWER TRANSACTIONS
AND PLANNING
Title: _____
Date: 3/9/93

APPROVED:
KEY BANK OF NEW YORK, FORMERLY,
KEY BANK OF NEW YORK, N.A.

By: 
Title: Vice President
Date: 5-10-93

FIRST AMENDMENT BETWEEN
NIAGARA MOHAWK POWER CORPORATION AND
STILLWATER ASSOCIATES
Pricing Provision

During the remaining term of this FIRST AMENDMENT, NIAGARA will pay SELLER for all electricity delivered to it by SELLER at the rates set forth below:

<u>Megawatt Hour (MWH) Block</u>		<u>Mills/KWH</u>
First	35,750 MWH	84.00
Second	35,750 MWH	86.00
Third	35,750 MWH	89.00
Fourth	35,750 MWH	77.00
Fifth	35,750 MWH	79.00
Sixth	35,750 MWH	84.00
Seventh	21,450 MWH	90.00

FIRST AMENDMENT BETWEEN
NIAGARA MOHAWK POWER CORPORATION AND
STILLWATER ASSOCIATES
Estimated Avoided Cost Rate

<u>Year</u>	<u>Mills/KWH</u>
1992	60.00
1993	60.00
1994	60.00
1995	60.00
1996	60.00
1997	60.00
1998	60.00
1999	60.00
2000	60.00
2001	63.48
2002	69.57
2003	76.20
2004	92.79
2005	97.88
2006	104.96
2007	109.60
2008	114.36
2009	119.23
2010	124.43
2011	129.84
2012	135.60
2013	141.50
2014	147.66
2015	154.09
2016	160.80
2017	167.80
2018	175.12
2019	182.75
2020	190.72
2021	199.05
2022	207.73
2023	216.80
2024	226.27

FIRST AMENDMENT BETWEEN
NIAGARA MOHAWK POWER CORPORATION AND
STILLWATER ASSOCIATES
Niagara's Avoided Cost Determination

The amount to be paid by NIAGARA pursuant to Paragraph FIFTH 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.

STATE OF NEW YORK)
 :SS:
COUNTY OF ONONDAGA)

On this 9th day of March, 1993, before me personally came CLEMENT E. NADEAU, to me personally known who being by me duly sworn did depose and say that he resides in the Town of Lysander, that he is a Vice President - Power Transactions and Planning of NIAGARA MOHAWK POWER CORPORATION, the Corporation described in and which executed the within instrument; and that he signed his name thereto by authority of said Corporation.

Rose M Young
Notary Public

ROSE M. YOUNG
Notary Public in the State of New York
Qualified in Onondaga County No. 6311220
My Commission Expires December 31, 1994

RETURN TO: PAUL C. MONTGOMERY, ESC.
MERCER COMPANIES, INC.
330 BROADWAY
ALBANY, NY 12207

RECORDED
Book 13
MISCELLANEOUS RECORDS
Page 371
MAR 11 1993

67