

THIS AGREEMENT made and entered into this 11th day of February, Nineteen hundred and thirteen between the THOMPSON FALLS POWER COMPANY, a corporation organized under the laws of the State of Montana, Party of the first part, hereinafter for convenience referred to as the Power Company, and the CHICAGO, MILWAUKEE & ST. PAUL RAILWAY, a corporation organized under the laws of the State of Wisconsin, for convenience hereinafter referred to as the Railway Company, party of the second part,

W I T N E S S E T H :

WHEREAS, the said Power Company proposes to engage in the business of generating electric power or energy from certain hydro-electric works within the State of Montana, and selling and disposing of said power or energy; and

WHEREAS, the said Railway Company is engaged in operating a line of railway which lies partly within the States of Montana and Idaho and said Railway Company is desirous of installing equipment and apparatus which will enable the said Railway Company to operate certain portions of its said railway, hereinafter more particularly referred to, by means of electric power:

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES HERETO:

FIRST. That the said Railway Company will, as soon as it is expedient for it so to do, begin, and that it will prior to the first day of January, 1918, complete the installation and equipment of such apparatus, machinery and motive power as may be necessary to enable the said Railway Company to operate its said line of railway from that certain station situated on said line of railway, in Powell County, known and designated as Deer Lodge, to that certain other station on said line of railway known as Avery, situated in Shoshone County, Idaho, and that the said Railway Company will, on or before the said first day of January, 1918, receive and take from the said Power Company, and that the said Power Company will, as soon as said Railway Company shall be ready to receive and use said power, and thereafter continuously during the term of this contract, sell and deliver to the said Railway Company, in such manner and quantities and upon such terms and conditions as may be hereinafter stipulated, the electric power herein contracted for.

It is agreed that the Railway Company will give the Power Company two (2) years' notice in writing of the date when the Railway Company will begin to use the power aforesaid, but it is understood and agreed that the said date when said power shall begin to be used will not in any event be later than January 1, 1918.

SECOND. Subject to the reservations and in accordance with the provisions of this agreement as hereinafter stated, the Power Company hereby sells and agrees to deliver to the Railway Company and the Railway Company hereby buys and agrees to receive from the Power Company, electric power or energy for operating its railway equal to but not at any one time exceeding, except as provided for in Articles 9, 10, 11 and 12, Ten thousand (10,000) kilowatts for the full period of this agreement.

THIRD. The said power shall be delivered by the Power Company at its own sole cost to the stations to be established and designated by the Railway Company, within the State of Montana, between Deer Lodge and Avery, not exceeding two (2) in number, in such amounts as may be required by the said Railway Company for the operation of its said line of railway during the term of this contract. Said power to be delivered in the form of three (3) phase sixty (60) cycle, alternating electric current, at a potential of approximately fifty thousand (50,000) or one hundred thousand (100,000) volts as may be jointly agreed upon, provided however, that the voltage at which said current shall be so delivered when once fixed shall not thereafter be changed during the life of this contract, except by mutual agreement of the parties hereto.

FOURTH. The Power Company agrees that it will construct, or cause to be constructed, such suitable transmission lines as may be necessary in

order to enable it to deliver, and that it will deliver, the power herein contracted for at its own cost to points not exceeding two (2) in number, which shall be located and designated by the said Railway Company between the stations aforesaid, and shall be at or near Garrison, in Powell County, Montana, and Taft in Missoula County, Montana. The said Railway Company shall receive the current at the points so designated by it at the terminals of air break, high tension line switches to be provided by the Power Company, and shall transform, (by such apparatus as it may prefer), and conduct it along its said line of railway according to its requirements, in such manner as it may see fit.

**FIFTH.** It is agreed that the power herein contracted for shall be measured at each agreed point of delivery by curve writing watt meters, operated synchronously, and integrating watt-hour meters, or by such approved instruments for the measurement of electric current as may be agreed upon by the parties hereto.

It is agreed that the measurement of the said power shall at all times be under the control and direction of the said Power Company, but that the said Railway Company, and its duly designated agents, shall at all times, possess the right to make full inspection of the methods employed and the instruments and apparatus used for recording such measurements, and to make any tests or examinations which may be necessary to enable the said Railway Company, and its agents, to determine the accuracy and reliability of such methods as may be pursued and such instruments and apparatus as may be used for the recording and measuring of the electric power furnished.

It is agreed that the Railway Company shall install in its sub-stations such transforming or converting apparatus as, in its judgment, will best meet the requirements of its railway operations, provided that such apparatus shall comprise sufficient synchronous machines or other equivalent means to secure eighty per cent (80%) lagging or eighty per cent (80%) leading power factor of the apparatus affected. The Railway Company hereby grants to the Power Company the right to install and maintain at the sole cost of the Power Company, in the sub-stations that may be established by the Railway Company, Tixrell regulators or such other equivalent device as will operate the Railway Company's synchronous apparatus at any power factor between eighty per cent. (80%) lagging and eighty per cent. (80%) leading of the apparatus affected.

**SIXTH.**

It is agreed that the Railway Company will, and it does hereby bind itself, to give the Power Company twelve (12) months notice in writing of the location of the delivery points hereinbefore referred to. The Power Company agrees that it will, upon the date so fixed in said notice by the said Railway Company, and thereafter during the term of this contract, continue to either deliver, or hold in readiness for delivery, to said Railway Company, such an amount of electric power as the said Railway Company shall be under obligation to receive and use under the terms of this contract.

**SEVENTH.**

It is agreed that the Railway Company shall, and it does hereby bind itself to pay to the Power Company, on the basis of measurements made at such points of delivery as are designated by the Railway Company, for the power or energy delivered to it under the terms and provisions of this contract at the rate of .536 (five hundred thirty-six thousandths of a cent) per kilowatt hour, as shown by the instruments provided for in the fifth clause hereof; such payments to be made not later than the 15th day of each calendar month for all power or energy either received and used by the Railway Company, or which the said Company was under obligation to receive and use during the previous calendar month.

**EIGHTH.**

It is agreed that, after a period terminating one (1) year from the date when delivery of electric power shall begin under the terms of this contract, and during the remaining term of this contract, from the expiration of said period of one (1) year, the said Railway Company, shall be obliged, and does hereby agree, to pay to the said Power Company a minimum

amount in monthly periods as aforesaid equivalent to sixty per cent. (60%) of the amount which the said Railway Company would pay to the said Power Company, provided the full amount of power which the said Railway Company is under obligation to take and which the Power Company is under obligation to deliver had been actually delivered by the said Power Company to and received and used continuously by the said Railway Company, upon the basis of the rate above provided for.

#### NINTH.

It is agreed that the Railway Company shall have the right, to be exercised at its option, such option to be exercised by it giving the Power Company written notice thereof, to receive in addition to the amount of power above provided for, an additional amount of not less than four thousand (4000) kilowatts, nor more than eight thousand (8000) kilowatts, provided that said option to take and receive such additional amount of power is exercised by the Railway Company prior to January 1, 1923. It being understood and agreed that in the event of the said Railway Company so exercising said option, that the amount of power which it will call for in addition to the original amount of ten thousand (10,000) kilowatts shall become fixed, and thereafter the said Railway Company will be under obligation to take and receive, and the Power Company will be under obligation to sell and deliver, during the remaining term of this contract, the amount of power which shall be represented by the sum of ten thousand (10,000) kilowatts plus the additional amount which the Railway Company shall have called for under the provisions of its said option.

#### TENTH.

It is agreed that at any time subsequent to January 1, 1923, and prior to January 1, 1928, the Railway Company shall have, and it is hereby given, the right, to be exercised at its option, in writing as aforesaid, to take and receive from the Power Company and the Power Company shall be under obligation to sell and deliver to the said Railway Company, an amount of power in addition to the amounts previously provided for, of not less than thirty-five hundred (3500) nor more than seven thousand (7000) kilowatts. Provided that if the said Railway Company shall at any time during the period between January 1, 1923, and January 1, 1928, so exercise its option for additional power, then in such event the Railway Company shall be under obligation to take and receive, during the remainder of the entire term of this contract, the amount of power represented by the amount which the Railway Company had been under obligation to take and receive, plus the amount of power which it shall have called for under the provisions of this option.

#### ELEVENTH.

In the event of the Railway Company having failed to exercise its option for additional power provided for in Article Ninth hereof, it is understood and agreed that the Railway Company will thereafter possess the right to call for or receive additional power except as hereinafter provided for in Article Twelfth.

#### TWELFTH.

It is agreed that the Railway Company shall have, and it is hereby given, the right, to be exercised at its option, in writing as aforesaid, of taking power in addition to the ten thousand (10,000) kilowatts herein contracted for, up to the full amount of twenty-five thousand (25,000) kilowatts at any time subsequent to January 1, 1918, and prior to January 1, 1928, provided it shall have called for under the provisions of this option for at least seventy-five hundred (7500) additional kilowatts prior to January 1, 1923.

It is agreed that the provisions set forth in Article Eighth hereof, with reference to the minimum payments which shall be made for power delivered under this contract, shall apply in like proportion to the amount which the Railway Company shall be under obligation to take after having exercised its right with reference to any of the options herein expressed, the same as said provision covers the rate of payment to be made upon the original amount herein contracted for.

#### THIRTEENTH.

If the Railway Company shall be unable on account of strikes, fires, floods or other causes beyond its control, to receive or use the power herein provided for, or some part thereof, then it is understood and agreed that the Railway Company shall pay for so much power only as can be received and used by it during said period. If the Power Company, by reason of any unavoidable cause or accident, or because of strikes, floods or fires, shall be unable at any time during this contract to make delivery of power as herein agreed, then the said Power Company shall not be liable in any sum for such failure so caused to deliver power during such period. In the event of this contract being suspended on account of any of the reasons hereinbefore enumerated, it is agreed that the period of such suspension shall be added to the term of the contract herein provided for, and the contract and all of its provisions shall be extended for such period equal to the period of suspension.

It is further understood and agreed that if the Power Company shall at any time be permanently enjoined, restrained or prevented by Federal or State interference, or by final judgment or decree of any court of competent jurisdiction, from maintaining transmission lines or other works necessary to enable it to perform its engagements hereunder, the Power Company shall thereupon be relieved from any obligation thereafter to furnish or deliver power under the terms hereof, and the Railway Company shall likewise be relieved from any obligation thereafter to take or pay for such power.

#### FOURTEENTH.

It is agreed that the obligation of the Power Company to deliver the power herein contracted for to the Railway Company shall be given a preference over any other obligation that may be entered into by the Power Company for the sale and delivery of power and that the said Power Company will at all times perform its obligations under this contract before supplying or furnishing power to any other customer whatsoever.

It is agreed that the Power Company shall hold itself in readiness to furnish all of the power herein contracted for up to the maximum amount that the Railway Company shall be entitled to receive continuously so that the Railway Company shall during the full period of this contract, except as otherwise herein provided for, be able to draw upon the said Power Company for the full amount of power which it shall be entitled to receive at such times as may be necessary to meet the requirements of its business.

It is also agreed that in the event of the Power Company failing for reasons other than those specified in Article Thirteenth to operate its hydro-electric works, situated near Thompson Falls in Sanders County, Montana, and known as the THOMPSON FALLS DEVELOPMENT, or deliver power under the terms of this contract the said Railway Company shall have and it is hereby given the right to enter into the possession of the said hydro-electric works and to operate such works during such period as the Power Company shall fail or refuse to perform its engagements hereunder.

It is further agreed that in the event of the Power Company or any successor in interest desiring at any time to transfer the property constituting its said power site or any part thereof or any interest therein or in the event of the said Power Company desiring to create any lien or encumbrance by mortgage, deed of trust or otherwise upon the said property or any portion, thereof, that the said instrument of transfer, mortgage, deed of trust or such other encumbrance as may be placed upon said property, shall be subject to the terms of this contract and that the right which is given to the Railway Company to operate in the event of the happening of any of the contingencies above specified shall be and it is hereby made binding upon all persons taking title or claiming through the said Power Company and to that end and for that purpose it is agreed that all of the covenants herein contained shall be and they are hereby made covenants running with the land and any instrument of transfer, lease, mortgage, deed of trust or other instrument which may be executed as aforesaid for the purpose of securing any bonds, notes or other evidences of indebtedness or for any other purpose whatsoever shall contain suitable stipulations and provisions that such transfer, lease, mortgage, deed of trust

or other instrument, as the case may be, shall be subject to the rights of the Railway Company under this contract, and it shall also be made a condition of any such Transfer, lease, mortgage, deed of trust or other instrument, that in the event of a default or other cause occurring resulting in the sale of the property or any interest therein or in the foreclosure of any lien which may exist against the said property or any interest therein the transfer of said property whether under a power of sale contained in any mortgage, or transfer or other instrument creating such lien or right in said property or in the event of foreclosure the decree of the court adjudicating the matter shall contain equitable provisions and stipulations which shall be binding upon the purchaser under such sale and which will insure the carrying out of the obligations of the Power Company hereunder by its successor in interest, without any option or election or other right being given to such successor to discontinue the obligations of the Power Company or of any such obligations hereunder.

#### FIFTEENTH.

It is agreed that the Power Company shall have, and it is hereby granted, subject to the right of the Railway Company to prescribe such reasonable limitations as may be deemed by it advisable to insure the safety of its business, and to provide for the safe conduct of the current or energy transmitted, as hereinafter provided, the right to construct transmission lines over, across, along and upon the right of way of the said Railway Company wherever it may see fit, for the purpose of transmitting and conducting electrical power or energy for purposes other than to supply said Railway Company with power, provided, however, that the location of poles and wires shall be designated by the Railway Company and that notwithstanding such designation, if the Railway Company afterwards requires the use of the right of way or station grounds, or any part thereof, for any purpose, the Power Company will remove, at its own sole expense, on sixty (60) days notice, its poles and wires to another location on the Railway Company's property, if such location can be furnished by the Railway Company, or if not, to a location outside of and off the Railway Company's property, and that the said Power Company shall so conduct such electrical power or energy as will cause no interference, damage or injury to the said Railway Company or interfere in any manner with any of the operations of said Railway Company, or the telephone or telegraph service along its line or railway. In case the Power Company extends its transmission lines along or parallel to the Railway Company's right of way, then in that event, the Power Company will deliver power and hereby agree to deliver power at such other points along the railway line as best serves the purpose of the Railway Company. The Power Company further agrees to purchase at a mutually agreed upon price, and operate at its own expense such transmission lines as may have been built by the Railway Company on its right of way and as come within the area of such extension of the Power Company's transmission line.

#### SIXTEENTH.

It is agreed that the Railway Company shall have the right to receive and use the power or current herein provided for in the operation of its railway, and for such other purposes as it may require electric power or current incidental to the operation of its said railway; but that it shall have no right; and it hereby agrees that it will not sell or dispose of any of the electric power which it is entitled to receive and use under the terms of this contract, to any other person or persons or corporations whatsoever, and that it will not, during the life of this contract, use or apply the said electric power or current to any use or purpose other than in connection with the operation of its said line of railway, shops, stations, coaling stations, icehouses and other railway uses, either power or lighting.

#### SEVENTEENTH.

Any and all questions which shall or may arise touching this agreement or the construction or performance of any provision thereof, shall be submitted to the decision of three disinterested persons to be chosen as follows:

The Railway Company shall select one and the Power Company shall select one and the two thus chosen shall select the third, and the persons thus chosen, after a full hearing to both parties and full examination of the matter in dispute, shall determine the same in writing, and the decision of the majority of the three persons thus chosen shall be final. If either party shall neglect or refuse to appoint an arbitrator on its own part, then ten days after receiving written notice from the other of its appointment of an arbitrator on its part, the arbitrator so appointed by the party giving such notice may select a disinterested person to act as an arbitrator for and on account of the party so notified and refusing or neglecting to appoint an arbitrator on its part, and the two thus chosen shall select a third. If the two so chosen in either of the methods above provided shall be unable to agree upon a third arbitrator, or shall fail to agree upon a third arbitrator, and such inability shall continue for a period of fifteen days, then in that event the parties hereto shall and may notify the Chief Justice of the Supreme Court of the State of Montana of such fact and he shall and may appoint said third arbitrator. The decision and award of the arbitrators as herein provided, or any two of them, shall be binding and conclusive upon the parties hereto with respect to the matters so submitted to and decided by said arbitrators.

If any arbitrator appointed by either of the parties hereto shall neglect or fail to act, notice of such failure shall be served upon the party appointing such arbitrator by the other party, and in case such party shall fail to appoint another arbitrator, or shall fail to cause the arbitrator first appointed to act, and such failure shall continue for a period of ten days, then the arbitrator appointed by the other party may select a disinterested person to act as an arbitrator for and on account of the other party, and the two thus chosen shall select a third, and the decision and award of such arbitrators or any two of them shall be binding and conclusive upon the said parties with respect to the matter so submitted and decided by said arbitrators.

The award and decision of the arbitrators under the provision hereof shall be served by them, or someone for them, upon the parties within fifteen days after the time when such arbitrators shall make their award.

It is further mutually agreed that any difference which may arise as to the construction of or the transaction of any business under this agreement by the parties hereto, shall not interrupt the transaction of such business nor the operation of trains, nor the delivery of power, but all said business of either parties and operations of trains and the delivery of power shall continue in the same manner in which the same shall have been transacted prior to the arising of such difference until the matter of difference shall have been fully determined by the arbitrators as aforesaid, and thereupon such payments or restoration shall be made by the respective parties each to the other as may be required by the decision or award of said arbitrators.

In case any charge made or item embraced in any statement rendered by either party to the other shall be contested and submitted to arbitration under the terms hereof and an award shall be made by said arbitrators requiring payment thereof or any part thereof, or in case any failure to comply with any other covenant or agreement in this contract, is alleged by either party against the other, and the same is submitted to arbitration as herein provided and decided by said board of arbitration, then the losing party shall pay the amount of such award or comply with the terms and requirements thereof, and if it fails to do so and such failure shall continue for a period of thirty (30) days after the service of the award, then and in that event the prevailing party shall have the right to terminate this agreement according to the terms and provisions thereof for and on account of such failure and default.

#### EIGHTEENTH.

It is agreed that this contract shall be, and it is hereby made for the full term and period of ninety-nine (99) years from and after this date.

NINETEENTH

It is agreed that the terms and provisions of this contract shall inure to the benefit, of, and its obligations shall be binding upon, the successors, grantees and assigns of the respective parties hereto.

IN WITNESS WHEREOF the respective parties have caused these presents to be executed by their proper officers, thereunto duly authorized, the day and year first above written.

THOMPSON FALLS POWER COMPANY,

ATTEST:

C. R. Mc Cabe,

Its Asst. Secretary.

By: John D. Ryan,

Its President.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY,

ATTEST:

E. W. Adams,

Its Secretary.

By: A. J. Earling,

Its President.

STATE OF NEW YORK,

County of New York -- ss.

On this 5th day of March, in the year 1913, before me, Henry Michaelis, a Notary Public within and for the County of New York, State of New York, personally appeared John D. Ryan, known to me to be the President of the Thompson Falls Power Company, the corporation that executed the within instrument, and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

(SEAL)

Henry Michaelis.

Notary Public within and for the County of New York, State of New York, residing at New York City, New York.

My Commission expires March 20, 1914.  
Notary Public No.  
93, New York County,  
Register's No. 4135.

STATE OF ILLINOIS,

County of Cook -- ss.

On this 11th day of February, in the year 1913, before me W.D. Willard, a Notary Public within and for the County of Cook, State of Illinois, personally appeared A.J. Earling, known to me to be the President of the Chicago, Milwaukee & St. Paul Railroad Company, the corporation that executed the within instrument, and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

(SEAL)

W.D. WILLARD,

Notary Public within and for the County of Cook, State of Illinois, residing at Chicago.

My Commission expires May 11, 1916.