

NEW HAMPSHIRE HYDRO ASSOCIATES
99 NORTH STATE STREET
CONCORD, N.H. 03301
(603) 224-8333

- No attachment of policy statement
- incorp. in the doc.
- drastic change of condition
(per Fitzhugh) - renegotiate

January 7, 1981

Mr. John E. Lyons
Public Service Company of New Hampshire
1000 Elm Street
Manchester, NH 02105

Re: Penacook Lower Falls Project Power Sales Agreement

Dear Mr. Lyons:

Enclosed please find a copy of proposed modifications and additions to Public Service's proposed power sales agreement that New Hampshire Hydro Associates offers for your consideration. Regarding the incremented energy cost (IEC) data that you provided with your letter of December 21, 1981, let me again assure you that NHHA clearly understands that these are only PSNH's current estimates, and that the actual IEC's will be those used in determining the price for power in the contract.

NHHA is currently drafting language concerning a "put" of the plant to PSNH should NHHA cease operations, and provisions for payments for capacity if and when the Penacook Project will enable PSNH to avoid adding capacity to their system.

NHHA looks forward to your expeditious response to the enclosed.

Sincerely,

NEW HAMPSHIRE HYDRO ASSOCIATES

By: Essex Development Associates, Inc.
General Partner

By: 

Warren W. Mack
Vice President, Development

WWM/hjd

Enclosures

LAWRENCE OFFICES

SIX ESSEX STREET, LAWRENCE, MA 01840 (617) 687-2312

NOTED NOV 19 1981 R.V.P.

LONG TERM
CONTRACT

CONTRACT FOR THE PURCHASE AND SALE
OF ELECTRIC ENERGY

CONTRACT, dated , 1982, by and between

New Hampshire Hydro Associates, a New Hampshire limited
partnership having its principal place of business in Concord,
New Hampshire (hereinafter referred to as SELLER), and
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, a New Hampshire corporation
having its principal place of business in Manchester, New Hampshire
(hereinafter referred to as PUBLIC SERVICE).

WHEREAS, SELLER is engaged in the business of generation of
electrical energy,

WHEREAS, SELLER desires to sell its entire generation output
to PUBLIC SERVICE,

WHEREAS, PUBLIC SERVICE is engaged in the business of the
generation, transmission, and distribution of electrical energy,

WHEREAS, PUBLIC SERVICE has determined it would be beneficial
to secure a reliable supply of electrical energy for a period of not
less than thirty years,

WHEREAS, SELLER is ^{desires} ~~willing and able~~ to sell its entire output
to PUBLIC SERVICE for thirty years;

NOW, THEREFORE, in consideration of the mutual covenants and
agreements hereinafter set forth, SELLER and PUBLIC SERVICE hereby agree
as follows:

Article 1. Basic Agreement.

Subject to the terms, provisions, and conditions of this
Contract, SELLER agrees to furnish and sell and PUBLIC SERVICE agrees to
purchase and receive all of the electric energy produced by the SELLER
from its Penacook Lower Falls generating facility, located in
the Village of Penacook ^{located within the City of Concord and the Town of Bosworth,}
New Hampshire.

Article 2. Availability & Delivery.

During the term hereof, SELLER shall operate its generating ^{facility} ~~unit~~ to the maximum extent reasonably possible under the circumstances and shall make available to PUBLIC SERVICE the entire net output ^{measured} ~~in~~ kilowatthours) from said ~~unit~~ ^{facility} when in operation.

Said ~~generation~~ ^{output} shall be delivered to PUBLIC SERVICE at the point of interconnection ^{to be mutually agreed upon} between the generating facility of SELLER and the _____ kilovolt electric system of PUBLIC SERVICE (hereinafter referred to as DELIVERY POINT).

Unless PUBLIC SERVICE converts its interconnecting circuit, all electric energy delivered to PUBLIC SERVICE through the DELIVERY POINT shall be _____ phase, sixty hertz current at _____ kilovolts.

Rider A
Article 3. Price.

The price charged by SELLER to PUBLIC SERVICE for sales of electric energy under this Contract shall be determined as follows:

RIDER A
A.

~~An index price of 9.0 cents per kilowatthour (KWH) is established for the Contract pricing and is the initial price to be paid under this Contract subject to the following provisions.~~

1. For the first 10 years of the Contract, PUBLIC SERVICE will retain 10 percent (0.9 cents per KWH) for all energy purchased. During the second 10 years of the Contract, PUBLIC SERVICE will pay the SELLER an additional 0.9 cents per KWH, above the contract price, for purchased energy. The total of said additional payments, for any given year, shall not exceed one-tenth (1/10) of the total money retained by PUBLIC SERVICE during the first ~~ten Contract years.~~

2. ~~At such time that 96 percent of PUBLIC SERVICE's incremental energy cost exceeds the index, the rate to be paid under this Contract will increase in accordance with the provisions of Paragraph B.~~

B. All escalating payments in excess of the index will be determined as a percentage of PUBLIC SERVICE's incremental energy cost. As soon as 96 percent of PUBLIC SERVICE's incremental energy cost exceeds the index, the contract price will be based on 96 percent of PUBLIC SERVICE's incremental energy cost for a period of one year. For each subsequent year, the percentage of PUBLIC SERVICE's incremental energy cost to be paid will be reduced by 4 percent (i.e. 96 percent, 92 percent, 88 percent, 84 percent, etc.), until the incremental energy cost is reduced only 2 percent to reach 50 percent of PUBLIC SERVICE's incremental energy cost. At such time, the contract price will remain at 50 percent rate for the remainder of the contract term.

PUBLIC SERVICE's incremental energy cost, for any hour, is equivalent to the marginal cost of providing energy for that hour. The marginal cost, for any hour, is the energy cost of the most expensive unit or purchased energy supplying a portion of PUBLIC SERVICE's load during that hour and includes all costs in the New England Power Exchange (NEPEX) bus rate cost for the incremental unit. The NEPEX bus rate costs are essentially the cost of fuel consumed. PUBLIC SERVICE's incremental energy cost, for the purposes of this Contract, will be expressed as a yearly average and will be calculated by averaging all 8,760 hourly incremental energy costs over the calendar year.

~~If the price paid during any year is less than the appropriate percentage of PUBLIC SERVICE's incremental energy cost for that year, an adjustment will be made for all energy sold to PUBLIC SERVICE. The adjustment will consist of an additional payment for each KWH sold to PUBLIC SERVICE during said year based on the difference between the price paid and the appropriate percentage of PUBLIC SERVICE's incremental energy cost. The adjustment will be paid within one month after PUBLIC SERVICE's incremental energy cost for the previous year has been determined.~~

If the price paid during any year is more than the appropriate percentage of PUBLIC SERVICE's incremental energy cost for that year, an adjustment will be made for all energy sold to PUBLIC SERVICE. The adjustment will consist of a refund to PUBLIC SERVICE for each KWH sold during said year based on the difference between the price paid and the appropriate percentage of PUBLIC SERVICE's incremental energy cost. The refund will be made to PUBLIC SERVICE by applying one-twelfth of the total amount as a reduction to each month's payment by PUBLIC SERVICE during the current year. If for any month, no payment is due the SELLER, or the payment due is not equal to the refund, a payment to PUBLIC SERVICE will be made by SELLER so that the total recovery is achieved by PUBLIC SERVICE by the end of the current year.

Article 4. Metering.

The metering shall be configured so as to represent the generation delivered to PUBLIC SERVICE. The metering may be installed on the generation side of the transformer provided that transformer losses are subtracted from the measured generation by a ^{mutually agreeable} suitable method.

SELLER will install, own, and maintain all metering equipment as referenced in Article 5, to measure the flow of electrical energy from SELLER to PUBLIC SERVICE. If at any time, the meter is found to be in error by more than two percent fast or slow (+ or - 2%), SELLER shall cause such meter to be corrected and the meter readings for the period of inaccuracy shall be adjusted to correct such inaccuracy so far as the same can be reasonably ascertained, but no adjustment prior to the beginning of the preceding month shall be made except by agreement of the parties. All tests and calibrations shall be made in accordance with Section V-14 of the NHPUC Rules and Regulations Prescribing Standards for Electric Utilities in effect as of September 8, 1972, as amended.

Get a copy of
these Rules
and
Regulations)

The meter shall be tested as prescribed in said Rules and Regulations.

In addition to the regular routine tests, ^{prescribed in said Rules and Regulations,} SELLER shall cause the meter to be tested at any time upon request of and in the presence of a representative of PUBLIC SERVICE. If such equipment proves accurate within two percent fast or slow (+ or - 2%), the expense of the test shall be borne by PUBLIC SERVICE.

PUBLIC SERVICE reserves the right to secure or seal the metering installation, to require SELLER to measure electrical energy sold to PUBLIC SERVICE on an hourly basis, and to require SELLER to notify PUBLIC SERVICE once each day of SELLER's generation in kilowatthours for each hour during the prior 24 hours.

Article 5. Interconnection & Protection Requirements.

which equipment shall be similar to that installed in generating facilities in the region which are similar to that of Seller,

The SELLER shall install all interconnection, protection, metering, and control equipment as specified in PUBLIC SERVICE's study of the SELLER's electric generating facility, which study is, or will be upon mutual consent of both parties, attached hereto as Attachment A, and

any other such equipment which may be ^{reasonably} necessary to ensure the safe and reliable operation of SELLER's generating ^{facility} ~~unit~~ in parallel with PUBLIC SERVICE's system. SELLER shall bear all costs associated with said equipment and its installation.

All said interconnection, protection, metering, and control equipment including, but not limited to, line extensions, transformers, meters, relays, breakers, and appurtenant equipment shall remain the sole property of SELLER.

SELLER shall have sole responsibility for the operation, maintenance, and repair of its generating ^{facility} ~~unit~~, including the interconnection, protection, metering, and control equipment. SELLER shall maintain, repair, or replace said generating ^{facility} ~~unit~~ including said equipment whenever necessary for the safe and reliable operation of SELLER's electric generating facility in parallel with PUBLIC SERVICE's system. RIDER B

In addition to the above, upon the ^{commencement of the term} ~~effective date~~ of this Contract, and every twelve months thereafter, the SELLER shall test, or cause to be tested, all protection devices including verification of calibration and tripping functions; and the SELLER shall notify PUBLIC SERVICE in writing that said tests have been conducted. SELLER shall ^{orally} notify PUBLIC SERVICE of any defect affecting the safety or reliability of said equipment not later than two hours after its discovery of the same.

If either party reasonably determines that any portion of the protection system as required in Article 5, its operation or use thereof, will or may not perform its protective function, including but not limited to opening the interconnecting tie, SELLER shall open the interconnection between PUBLIC SERVICE's system and SELLER's facility.

SELLER shall notify PUBLIC SERVICE not more than two days after it has opened said interconnection. PUBLIC SERVICE shall not be obligated to purchase electrical energy from SELLER, and the interconnection shall remain open, until SELLER has satisfactorily cured said defect at no cost to PUBLIC SERVICE.

Article 6. Right of Access.

Upon ^{reasonable} prior written or oral notice to SELLER, PUBLIC SERVICE shall have the right to enter the property of SELLER at reasonable times and shall be provided access to SELLER's metering, protection, control, and interconnection equipment *for the purposes of inspection thereof.*

Article 7. Modifications.

If SELLER plans any ^{material} modifications to its electric generating facility, SELLER shall give PUBLIC SERVICE prior written notice of its intentions. In the event that PUBLIC SERVICE reasonably determines that said modifications would necessitate changes to the interconnection, protection, control, or metering equipment or would cause PUBLIC SERVICE to incur additional expenses associated therewith, the SELLER shall make such changes as reasonably required by PUBLIC SERVICE and reimburse PUBLIC SERVICE for said expenses before PUBLIC SERVICE is obligated to purchase any increased output.

If the PUBLIC SERVICE interconnecting circuit is converted to a higher voltage in the future, the SELLER shall be responsible for all interconnection changes necessitated by the conversion and shall bear all costs associated with said conversion. *Public Service shall give Seller*

blc notice of said conversion.

Article 8. Billing & Payment.

PUBLIC SERVICE shall read the meter, installed in accordance with Article 4, ^{no later than the close of business on the first business day following} ~~on or at~~ the end of each month, and PUBLIC SERVICE shall, ^{no later than the close of business on the second business day following the end of each month,} send the SELLER a form showing the month's beginning and ending meter readings and total net kilowatthour generation.

SELLER shall then transmit to PUBLIC SERVICE a bill showing the amount due, which amount will be determined by multiplying the rate per kilowatthour specified in Article 3 times the number of kilowatthours delivered to PUBLIC SERVICE since the prior reading of the meter, and PUBLIC SERVICE will send to SELLER a payment for that amount within 20 days of receipt of SELLER's bill. ^{RIDER C}

Article 9. Liability & Insurance.

a. Each party will be responsible for its ^{own} facilities and the operation thereof and will indemnify and save the other harmless from ^{and against} any and all loss by reason of property damage, ^{or} bodily injury, including death resulting therefrom, suffered by any person or persons including the parties hereto, employees thereof or ^{third parties} ~~members of the public~~, (and all expenses in connection therewith, including attorney's fees), whether arising in contract, warranty, tort (including negligence), strict ^{caused by such party, its officers, employees, agents or directors, or} liability or otherwise, ^{caused by or sustained on,} ~~or alleged~~ ~~to be caused by or sustained on~~ equipment or facilities, or the operation or use thereof, owned or controlled by such party, ^{unless caused by an act of negligence or willful misconduct of the other party or} ~~except that~~ each party shall be solely responsible for ^{an officer, employee, agent or director of} and shall bear all costs of claims by its own employees or ^{the other} contractors growing out of any workmen's compensation law. ^{party.} ^{Notwithstanding the foregoing,}

RIDER C1

- b. SELLER hereby agrees to maintain in force and effect, for the duration of this Contract, Workmen's Compensation Insurance, as required by statute, and Comprehensive General Liability Insurance for bodily injury and property damage at minimum limits of \$1,000,000. Within sixty days of the effective date of this Contract, the SELLER agrees to provide PUBLIC SERVICE with a certificate of such insurance.
- c. In no event shall PUBLIC SERVICE be liable, whether in contract, tort (including negligence), strict liability, warranty, or otherwise, for any special, indirect, incidental, or consequential loss or damage, including but not limited to cost of capital, cost of replacement power, loss of profits or revenues, or the loss of the use thereof. This provision, subsection c of Article 9, shall apply notwithstanding any other provision of this Contract.

d. RIDER E.

Article 10. Force Majeure.

~~Either~~ ^{Neither} party shall ~~not~~ be considered to be in default hereunder and shall be excused from purchasing or selling electricity hereunder if and to the extent that it shall be prevented from doing so by ~~storm,~~ ^{severe weather,} flood, lightning, earthquake, explosion, equipment failure, civil disturbance, labor dispute, act of God or the public enemy, action of a court or public authority, withdrawal of facilities from operation for necessary maintenance and repair, or any ^{other} cause beyond the reasonable control of either party. RIDER F

Article 11. Effective Date & Contract Term.

~~This Contract shall become effective between the parties as of the date hereof, provided that the metering, interconnection, and~~

RIDER G

~~protection equipment, as specified herein has been properly installed by the SELLER. If said equipment has not been properly installed, this Contract shall become effective between the parties as of the date of proper installation of said equipment or as of the date SELLER begins delivering energy to PUBLIC SERVICE, whichever occurs latest. As of the effective date of this Contract, the Contract shall remain in full force and effect for thirty (30) years.~~

In order for any modification to this Contract to be binding upon the parties, said modifications must be in writing and signed by both parties.

Article 12. Prior Agreements Superseded.

This Contract with Attachment A represents the entire agreement between the parties hereto relating to the subject matter hereof, and all previous agreements, discussion, communications, and correspondence with respect to the said subject matter are superseded by the execution of this Contract.

Article 13. Waiver of Terms or Conditions.

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Contract shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

Article 14. General.

This Contract shall be binding upon, and inure to the benefit of the respective successors and assigns of the parties hereto, provided that SELLER shall not assign this Contract except to an affiliated company, without the prior written consent of PUBLIC SERVICE, which

company" shall include any partnership in which SELLER or one of SELLER's subsidiaries or affiliates is a general partner or any corporation in which SELLER or one of its subsidiaries or affiliates owns or controls more than 50 percent of the voting stock or otherwise has operating control. In the event of an assignment to an affiliate, SELLER shall notify PUBLIC SERVICE within five (5) days of the effective date of the assignment.

^ Rider H

Article 15. Arbitration

RIDER I

Article 15b. Applicable Law.

This Contract is made under the laws of The State of New Hampshire and the interpretation and performance hereof shall be in accordance with and controlled by the laws of that State.

Article 16⁷. Mailing Addresses.

^ Rider J

The mailing addresses of the parties are as follows:

SELLER: New Hampshire Hydro Associates
99 North State Street
Concord, New Hampshire 03301
With a copy to:

*Essex Development
Associates, Inc.
110 Tremont Street
Boston, MA 02108
Attn: General Counsel*

↑
PUBLIC SERVICE: Public Service Company of New Hampshire
1000 Elm Street
P.O. Box 330
Manchester, New Hampshire 03105
Attn: Henry J. Ellis, Vice President

IN WITNESS WHEREOF, the parties have hereunto caused their names to be subscribed, as of the day and year first above written.

NEW HAMPSHIRE HYDRO ASSOCIATES

By: Essex Development Associates, Inc., General Partner

By: _____

Name: _____

Title: _____

(Witness)

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Henry J. Ellis, Vice President

(Witness)

RIDER A

Article 3. Price.

The price charged by SELLER to PUBLIC SERVICE for sales of electric energy under this Contract shall be determined as follows:

A. For the initial ten (10) years of the term of the Contract, commencing as described in Rider G, below, (operating years 1 through 10 of the facility operations) an index price of 10.0 cents per kilowatt hour (kwh) is established and is to be paid under this Contract.

B. For the subsequent twenty (20) years of the term of the Contract, (years 11 through 30 of the facility operations) the price paid will be the greater of:

- (i) 8.1 cents per kwh less the Amortized Premium, or
- (ii) The percentage of PUBLIC SERVICE'S incremental energy cost for the current year per Paragraph II B of PUBLIC SERVICE'S POLICY STATEMENT CONTRACT PRICING PROVISIONS, LIMITED ELECTRICAL ENERGY PRODUCERS, dated (hereinafter referred to as PSNH Policy Statement) attached hereto as Attachment B. as if said paragraph had been in effect since the commencement of this Contract less the Amortized Premium.

For the purpose of this paragraph the following definitions shall be used:

Amortized Premium: a levelized number expressing the amount by which the index price paid pursuant to this contract during the initial ten (10) year term exceeds the index price paid pursuant to Paragraph II, Option II Fixed Rate-Future Escalating Contract, of PSNH Policy Statement (hereinafter referred to as Option II).

Amortized Premium Base: The sum of the Annual Premiums for the initial 10 years, each escalated at the applicable PUBLIC SERVICE Discount Rate to the end of year 10.

The Amortized Premium and Amortized Premium Base shall be calculated as follows:

$$\text{Amortized Premium} = \text{Amortized Premium Base} \times \frac{i(1+i)^n}{(1+i)^{n-1}}$$

Where $n = 20$

i = the current year PUBLIC SERVICE discount
rate

$$\begin{aligned} \text{Amortized Premium Base} = & \text{Annual premium Year 1} \\ & + \text{Annual premium Year 2} \\ & + \dots \\ & + \text{Annual Premium Year 9} \\ & + \text{Annual Premium Year 10} \end{aligned}$$

Where:

$$\text{Annual Premium Year 1} = P \times (1 + i_1) \times (1 + i_2) \times \dots \times (1 + i_q) (1 + i_{10})$$
$$\text{Annual Premium Year 2} = P \times (1 + i_2) \times (1 + i_3) \times \dots \times (1 + i_q) (1 + i_{10})$$
$$\text{Annual Premium Year 10} = P (1 + i_{10})$$

Where (1) P is 10.0 cents per kwh less price per Paragraph

II.B of PSNH Policy Statement

(2) i_n is the PUBLIC SERVICE discount rate applicable

for year n expressed as a decimal.

For the purposes of determining the Amortized Premium Base and the Amortized Premium, the PUBLIC SERVICE Discount Rate shall be the sum of:

- (i) The percent of equity in PUBLIC SERVICE'S capital structure times the allowed rate of return on equity for PUBLIC SERVICE, plus
- (ii) The percent of preferred stock in PUBLIC SERVICE'S capital structure times the cost of preferred stock for PUBLIC SERVICE, plus
- (iii) The percent of debt in PUBLIC SERVICE'S capital structure times the cost of debt for PUBLIC SERVICE.

This Discount Rate shall be determined annually by PUBLIC SERVICE and submitted together with appropriate backup documentation and calculations, to SELLER.

Rider B

Public Service shall be solely responsible for arrangements for further transmission service from the Delivery Point.

Rider C

When all or part of any bill shall remain unpaid for more than twenty (20) days after the rendering thereof by Seller, interest at the rate of 1 1/2% per month shall accrue to Seller from and after the rendering of said bill and be payable to Seller on either (a) such unpaid amount, or (b) in the event the amount of the bill is disputed, the amount finally determined to be due and payable. In the event that PUBLIC SERVICE does not read the meter by the date prescribed above, Seller may submit, and Public Service shall accept and make payment for power on the basis of Seller's meter reading.

Rider C1

In the event indemnification as to any claim is sought pursuant to this Article, the party seeking indemnification shall, within ten (10) days after receiving notice of such claim, give the other party written notice of such claim and an opportunity to defend against such claim and shall cooperate with the other party in such defense.

Rider D

(other than amounts due and owing pursuant to this Contract for payment for output from Seller's generating facility)

Rider E

Notwithstanding anything to the contrary contained in this Contract, Seller shall not be responsible in tort or contract or otherwise to Public Service for damages of any description whatsoever, including but not limited to incidental, indirect or consequential damages, which may result from any interruption or failure of service or deficiency in quality of service unless such interruption or failure or deficiency is the result of negligent or willful default by Seller in rendering service hereunder. It is the intent of the provisions of this paragraph that Public Service shall assume the risks of interruption, failure or deficiency in quality or quantity of service caused by the hazards of business to the same extent as if Public Service were itself operating Seller's generating facility for the purpose of supplying itself with electricity.

Rider F

The party whose performance is affected shall promptly notify the other party in writing of any actual or potential delay and shall use all reasonable efforts and diligence to overcome, remove or remedy the cause in the shortest practicable time.

Rider G

This Contract shall become effective between the parties as of the date hereof and shall run for a term of thirty (30) years, such term to commence upon the latest to occur of the execution and delivery of this Contract, the proper installation by Seller of the metering, interconnection and protection equipment as specified herein or the Date of Substantial Completion, as such term is defined in the Construction Contract dated January, 1982 between Seller and Perini Corporation.

Rider H

Notwithstanding the foregoing, Public Service hereby understands, agrees and consents to the assignment by Seller of all the right, title and interest of Seller in and to this Contract to New England Merchants National Bank as security for Seller's obligations under a loan agreement to be entered into between Seller and said bank to finance the development, construction, rehabilitation and operation of Seller's generating facility and the notes under said loan agreement.

Rider I

All claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof, shall be decided in Boston, Massachusetts in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Rider J

Except as otherwise specifically provided, all notices required or permitted by this Contract shall be in writing and shall be deemed to have been duly given when delivered in hand or deposited in the mail, postage prepaid, registered mail addressed to the party to whom notice is being given at its address set forth below.