BADIN

AGREEMENT made and entered into this 19th day of February 1924, by and between Tallassee Power Company, a corporation of the State of North Carolina, as party of the first part, hereinafter called "Tallassee Company" and Carolina Power & Light Company, a corporation of the State of North Carolina, as party of the second part, hereinafter called "Carolina Company".

WHEREAS, it is the intention of Tallassee Company to construct, maintain and operate at or near High Rock, North Carolina, on the Yadkin River, upstream from the present hydro-electric development and storage reservoir of Tallassee Company, known as the "Narrows Plant", a dam and create a storage reservoir (hereinafter referred to as "High Rock" reservoir), and to use said High Rock reservoir and the Narrows reservoir for the purpose of impounding and subsequently discharging the flood waters of the Yadkin River so as to equalize, in so far as practicable, the river flow; and

WHEREAS the present Blewett Falls Hydro-electric Plant and those that subsequently may be built on the Yadkin River below the High Rock Reservoir by Carolina Company, or its subsidiary or affiliated interests will benefit by such equalization of the river flow.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the premises, and of $10 in cash by each of the parties hereto to the other paid, receipt whereof is hereby acknowledged, and of the covenants and agreements herein contained, the parties hereto do hereby covenant and agree as follows:

Section I Tallassee Company shall at its own cost construct, maintain and operate, on the Yadkin River, at or near High Rock, in the State of North Carolina, a dam which shall have a crest elevation at top of flood gates of not less than 655 feet above Tallassee Company datum and create a net effective storage capacity of at least 10,000,000,000 cubic feet of water useable by suitably located opening or openings for regulation of river flow. Tallassee Company shall proceed immediately on the signing of this agreement to acquire the lands necessary for the dam and reservoir and after a reasonable time for such acquisition shall proceed in good faith and with due diligence to construct the dam and put it into operation and shall complete it ready for operation on or before January 1st, 1929, or as soon thereafter as possible by the exercise of due diligence, without regard to the state of the financial market for securities or of the market for the electrical energy to be generated by Tallassee Company as the result of the construction of said dam.

Section II Tallassee Company shall begin to store water in said High Rock Reservoir as soon after the completion of same as surplus water (over and above normal requirements for the operation of plants of the parties hereto located there and below) is available for such storage and shall thereafter during the term of this agreement, at its own cost, maintain and operate in accordance with its best judgment and ability, said High Rock and Narrows reservoirs so as to equalize throughout the year the flow of the river below the Narrows plant to the end that during each calendar year the minimum flow shall be sustained at the highest practicable amount.

provided that whenever the flow into the High Rock Reservoir is less than 3600 cubic feet per second of time, then at such times, upon request of Carolina Company, Tallassee Company shall daily release from the Narrows plant reservoir the amount of water per day so requested to be released, but in no event more than the equivalent of the daily flow into the High Rock Reservoir.

Section III. Tallassee Company, shall, at all times keep daily records of elevation, inflow and discharge of each of said reservoirs, which records shall be furnished to Carolina Company from day to day, or from time to time, as requested. Tallassee Company and Carolina Company may at any time and from time to time, by mutual agreement temporarily suspend or change such regulation of the flow of said river, but any such suspension or change shall not be deemed to release or modify the obligations of the parties hereunder except during the time or times and to the extent that it shall have been mutually agreed that such suspension or change shall be in effect.

Section IV. At all times when storage space is available in the said reservoirs of Tallassee Company and Carolina Company has available electrical energy which it desires to use to effect storage of water in said reservoirs, Tallassee Company shall receive such energy as may be delivered by Carolina Company and retain in its reservoirs, for Account of the Carolina Company the water which would otherwise have been utilized by it in the generation of such energy and Tallassee Company shall upon demand of Carolina Company subsequently return to it the electrical energy so received to the extent that water so stored for Carolina Company's account is available for its generation and such return shall constitute the only payment for energy so delivered by

Carolina Company.

Such storage of water by Tallassee Company and delivery of energy to and by Carolina Company shall be subject to the following provisions and limitations:

(a) Such energy shall be received by Tallassee Company whenever the same can be utilized by itself and/or its customers, and to the extent (1) that interconnections and receiving apparatus may be available from time to time to receive the amount of energy Carolina Company desires to deliver; and (2) that such reservoir capacity is available for the storage of water for Carolina Company's account.

(b) In the event water is so stored in Tallassee Company's reservoirs for Carolina Company's account and water is subsequently either

(1) released from the Narrows Reservoir on request of Carolina Company, under Section II hereof, in excess of the amount which, in the judgment of the Tallassee Company, should then be released, or

(2) wasted by overflow from the Narrows Reservoir, each day second foot of water so released or wasted from said Narrows Reservoir shall cancel Tallassee Company's obligation to return the energy represented by the water so released or wasted to the extent of three hundred and sixty four (364) kilowatt hours, and such cancellations of energy shall be credited to that owing by Tallassee Company.

(c) All water so stored for account of Carolina Company not so utilized by it hereunder within eighteen months after the storage of same shall be deemed cancelled by the lapse of time. No demand of Carolina Company for power hereunder shall be allowed to interfere with Tallassee Company's supply of power for its own use and that of its consumers.

(d) Energy furnished to Tallassee Company by Carolina Company and used by Tallassee Company through its double-deck 66 cycle / 60 cycle machine at Narrows Plant shall be measured by meter located at the Badin Substation of the Carolina Company, and shall subsequently be returned by Tallassee Company to same point of delivery on a basis of 66/100 kilowatt hours for each kilowatt hour previously furnished to Tallassee Company by Carolina Company.

(e) Energy furnished by Carolina Company to Tallassee Company at Badin Substation for use of Tallassee Company or for delivery by Tallassee Company to any other company at that substation shall be metered at said substation and shall be returned by Tallassee Company to Carolina Company on the basis of one kilowatt hour for each kilowatt-hour previously furnished by Carolina Company.

(f) Energy delivered by Carolina Company and received by Tallassee Company at any other point, or through other receiving apparatus than specified in paragraphs (d) and (e) above, shall be returned to Carolina Company on the basis of one kilowatt-hour for each kilowatt-hour previously furnished by Carolina

Company, less estimated transmission, transformation and conversion losses sustained by Tallassee Company in receiving said energy and returning the same to Carolina Company. Said losses shall be determined by mutual agreement from time to time.

(g) The use of Tallassee Company's storage capacity by Carolina Company, as herein provided, shall be secondary only to the use of such storage capacity on the part of Tallassee Company for storing waters of the Yadkin River for the use and purpose set forth in Section II hereof, for which purpose this Section IV shall be subject to said Section II.

For the purpose of future power exchange and storage, as herein contemplated, the parties hereto shall maintain the existing interconnections between their respective power systems, including the Badin Switching Station and Narrows Substation of Carolina Company, and throughout the term of this agreement the Carolina Company shall without extra charge be permitted to maintain the Narrows and Badin Substations and inter-connecting transmission lines on the lands of the Tallassee Company, and Tallassee Company shall continue to operate said substations for Carolina Company.

From time to time when said substations are not desired for use by Carolina Company either in whole or in part, Tallassee Company shall without cost have the privilege of utilizing the unused capacity of same for the delivery of power to itself and its consumers. Said substations shall at all times be kept in repair and otherwise maintained by Carolina Company at its cost.

Section V. Beginning with the date when the High Rock Reservoir shall have been completed and filled up to 50% of the net effective capacity thereof, Carolina Company shall, as long as this agreement shall remain in effect and said reservoirs shall be maintained and operated as in this agreement provided, make payment to the Tallassee Company at the end of each calendar month at the rate of Eight Thousand, Three Hundred and Thirty-Three Dollars and Thirty-three and one-third Cents ($8,333.33-1/3) per month.

Section VI. Neither this agreement nor any acts or things done hereunder shall (except for the purpose of this agreement as herein provided) be construed as a release or surrender or modification by either of the parties hereto of any rights which the parties hereto or their subsidiary or affiliated interests may have or may hereafter acquire, as riparian owners or otherwise, with respect to the use of the waters of Yadkin River at any point or points on said river.

Section VII. Any dispute hereunder arising over a question of fact or as to the meaning or application of this agreement shall be submitted to three arbitrators, to be selected as follows:- One shall be selected by Carolina Company, one by Tallassee Company, and these two shall select a third, or in case they cannot agree on a third within five (5) days after the two have been chosen, a third arbitrator shall upon the written request of either of the two be appointed by any person who is a Judge of the United States District Court, of the Eastern District of North Carolina, and the three arbitrators so selected hereunder shall hear and determine the matter in dispute and a decision by a majority of them shall be final and binding between the parties hereto, provided, however, that if either party shall fail or neglect for a period of ten (10) days after receipt of written notice by the other to select an

arbitrator upon its part, the arbitrator appointed by the party giving such notice shall select another arbitrator, and the two thus chosen shall select a third and the three thus chosen shall proceed to hear and determine the matter in dispute and a decision of a majority of the three shall be final and binding; and provided further, that each of the parties shall be given at least ten (10) days written notice prior to the hearing of any matter submitted to such board of arbitrators. The arbitrators' fees and the expense of the arbitration shall be borne and paid for by the party losing in the arbitration, but in the event of a divided award, the division of such fees and expenses shall be made as directed by the arbitrators. The parties to this agreement covenant with each other to abide by the decision of the arbitrators selected hereunder. The submission to arbitration of any dispute hereunder shall be prerequisite to any suit or action at law upon this contract.

Section VIII. None of the parties hereto shall be liable for any act or thing done or omitted to be done or occurring in whole or in part by reason of act of God or the public enemy, flood, ice, dry weather, movement of earth or rock, earthquake, storm, fire, lightning, strike or stoppage of labor, failure of contractors and of suppliers of machinery and material, commotion, riot, war, pestilence or famine, order of any court or duly constituted authority or any other thing reasonably beyond the control and not attributable to the neglect or fault of the parties hereto. And all the terms of this agreement shall be subject to the provisions hereof.

Section IX. This agreement shall inure to the benefit of and be

binding upon the parties hereto and their successors and assigns, and shall continue in force until December 31st, 1967, and thereafter until terminated by mutual consent of the parties hereto, or their respective successors or assigns, but in no event longer than ninety-nine years beginning January 1st, 1968.

IN WITNESS WHEREOF, the parties hereto have caused their corporate names to be hereunto subscribed and their corporate seals to be hereunto affixed by their officers thereunto duly authorized as of the day and year first above written.

TALLASSEE POWER COMPANY

By E. R. Bickauer
Vice President

Attest:

R. Rutledge
Asst. Secretary

CAROLINA POWER & LIGHT COMPANY

By Wm. A. Lee
Vice President

Attest:

Secretary

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

THIS IS TO CERTIFY that, before me Mercedes Leach a Notary Public, in and for the above named state and county, personally came Wm. Barbee, with whom I am personally acquainted, who, being by me duly sworn, says: That he is Vice President, and that H. P. Summerson is Secretary of Carolina Power & Light Company, the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is such common seal; that the name of the corporation was subscribed thereto by said Vice President; that said Vice President and Secretary subscribed their names thereto and said common seal was affixed by order of the Board of Directors of said corporation; and the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this 19th day of February, 1925.

Mercedes Leach

NOTARY PUBLIC, Kings County
Clerk's No. 251, Register's No. 6731
Certificate filed in New York County
Clerk's No. 670, Register's No. 6260-A
My Commission expires March 30, 1926

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF ALLEGHENY)

THIS IS TO CERTIFY that, before me, Carl A. Geib a Notary Public, in and for the above named commonwealth and county, personally came G. T. Gibbons, with whom I am personally acquainted, who, being by me duly sworn, says: That he is Vice President, and that T. E. Hitchens is Asst Secretary of Tallassee Power Company, the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is such common seal; that the name of the corporation was subscribed thereto by said President; that said President and Secretary subscribed their names thereto and said common seal was affixed by order of the Board of Directors of said corporation; and the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this 25th day of February, 1926.

Carl A. Geib

CARL A. GEIB
NOTARY PUBLIC
MY COMMISSION EXPIRES
JANUARY 20, 1930