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Entered  
Signed

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF THE SAINT JOHN RIVER POWER COMPANY FOR PERMISSION TO CONSTRUCT AND OPERATE CERTAIN PERMANENT WORKS IN AND ADJACENT TO THE CHANNEL OF THE RIVER ST. JOHN IN THE PROVINCE OF NEW BRUNSWICK AT A POINT ON THE SAID RIVER KNOWN AS GRAND FALLS.

WHEREAS, the Saint John River Power Company (hereinafter called "The Applicant") has presented to and filed with this Commission plans of certain permanent works (hereinafter referred to as "the said works") for the development of hydro electric power in and adjacent to the channel of the River St. John in the Province of New Brunswick at a point in the said river known as Grand Falls, and has applied for approval of the said works and authority to proceed with the construction of the same under the provisions of the Treaty between the United States and Great Britain relating to boundary waters and questions arising between the United States and Canada of the 11th day of January, 1909; and

WHEREAS, the power site at Grand Falls shown on said plans and described in said application lies wholly within the said Province of New Brunswick about three miles below the point at which the line of the international boundary intersects the medial thread of the River St. John, and it is proposed to create and maintain a ponded area in the said river for a distance of approximately thirty-two miles above said Grand Falls, approximately twenty-nine miles of which ponded area is in that part of the river along which the international boundary between the United States and the Dominion of Canada passes; and

WHEREAS, the power development and works proposed by the Applicant are substantially the same as those which were proposed by the New Brunswick Electric Power Commission in its Application to this Commission upon which this Commission gave its order of approval and authorization on the 22nd

day of June, 1925; and

WHEREAS, the present Application came on for hearing at the City of Washington in the District of Columbia on the 26th day of June, 1926, after due notice to all parties interested in both countries of the filing of said Application and of the time and place of said hearing; when evidence was adduced and counsel heard on behalf of all parties; and

WHEREAS, the Applicant has entered into an agreement with Madawaska Company (the successor in interest to Saint John Lumber Company) covering the same subject matter as was covered in the agreement between the New Brunswick Electric Power Commission and Saint John Lumber Company attached as Schedule A to the above mentioned Order of this Commission dated the 22nd day of June, 1925, and a copy of said agreement has been communicated to this Commission and contains provisions involving possible future references to this Commission; and

WHEREAS, the Applicant has entered into an agreement with Bangor and Arcostook Railroad Company and Van Buren Bridge Company covering the same subject matter as was covered in the agreement between the New Brunswick Electric Power Commission and said Companies attached as schedule B to said Order of this Commission, and a copy of said agreement has been communicated to this Commission and contains provisions involving possible future references to this Commission; and

WHEREAS, The Applicant has not yet effected a settlement with certain other owners of property which it is alleged will be taken or injuriously affected by said works, but has intimated that it expects and intends so to do; and

WHEREAS, conditional on this Order being granted, the agreement between Grand Falls Company, Limited, and the International Paper Company and the New Brunswick Electric Power Commission attached as Schedule C to said Order of

t's Commission has been cancelled by the parties thereto; and

WHEREAS, at the hearings on the above mentioned Application by the New Brunswick Electric Power Commission counsel for the United States claimed that the United States is entitled to a certain percentage of the power to be developed at Grand Falls as aforesaid, and the Dominion of Canada and the Province of New Brunswick denied this right; and

WHEREAS, in view of the fact that the New Brunswick Electric Power Commission had in fact agreed to furnish 2000 H.P. for use in the State of Maine at a price which in effect was not greater than that charged to like consumers of power in the Province of New Brunswick, this Commission deemed it unnecessary in making the Order on said Application of the New Brunswick Electric Power Commission to pass upon the respective contentions made by counsel as aforesaid, but considered it proper to reserve the right of the parties to reopen the question and ask for a decision on the above contentions should the above mentioned 2000 H.P. cease to be available for use in the United States at any time for any reason; and

WHEREAS, the New Brunswick Electric Power Commission undertook, in the event of an application being made under the provisions of said Order of this Commission referred to in the preceding paragraph, and this Commission having failed to render a decision thereon, that it would until this Commission renders a decision on said contentions, upon receiving reasonable notice in writing in that behalf, continue to make available for use in the United States the said 2000 H.P. on terms similar to those specified in above agreement, unless relieved by order of this Commission from so doing; and

WHEREAS, the members of this Commission after having read the letters addressed to its Chairman from the Premier of New Brunswick and the Chairman of the New Brunswick Electric Power Commission and from Grand Falls Company, Limited, and International Paper Company referred to in the Application in

is matter, and also letters to the Chairman of this Commission from the Attorney General of the State of Maine, from the Bangor and Arcootack Railroad Company and Van Buren Bridge Company, from Madawaska Company, from the Canadian National Railways and from the Canadian Pacific Railway, and after having read the agreements above referred to, and after having heard the evidence adduced and counsel for the Applicant, the United States, the Bangor and Arcootack Railroad and Van Buren Bridge Company, the Canadian National Railways and the Canadian Pacific Railway, and after having considered the matters above recited, have determined that the said works should be approved and authority given for the construction thereof pursuant to said Treaty, subject to the conditions hereinafter set forth.

1. THIS COMMISSION THEREFORE ORDERS AND DIRECTS that the said plans be and the same are hereby approved, and the construction and operation of works in accordance therewith authorized under the provisions of said Treaty, upon and subject to the following conditions:

(1) That this Commission reserves to itself the right to take jurisdiction in the instances mentioned in the above mentioned agreements of the Applicant with Bangor and Arcootack Railroad Company and Van Buren Bridge Company, and with Madawaska Company.

(2) That the said Applicant make suitable and adequate provision, to the satisfaction of this Commission, for the protection and indemnity against injury of all other interests on either side of the boundary.

(3) That the said works shall have such discharge capacity and be so constructed as to permit of the passage of water at all flood stages in no less quantity than would pass down under natural conditions in the international section of the river, and whenever the flow of the river exceeds the discharge through the power house to such an extent as to cause the ponded level of the water surface immediately above the dam to rise above elevation 427.26 (mean

sea level datum) -- being the operating level shown on sheet number 3 of said plans -- the sluices and other works for the passage of water shall be so operated as to provide for the passage of the river flow until the water level at the dam falls to said elevation.

2. AND THIS COMMISSION DOETH HEREBY RESERVE to the Applicant and to all parties having claims for injuries in respect of said works other than the parties to said agreement the right to apply for such further order, direction or action with reference to such claims as may seem proper.

3. AND THIS COMMISSION ALSO ORDERS AND DIRECTS, in accordance with Applicant's suggestion in that respect set out in Section 2 of its Application, that the Applicant execute and deliver to International Paper Company an agreement in substantially the form appearing as Schedule A hereto and covering the supply of 2000 H.P. of energy for use in the United States, it being understood that this condition is being imposed in order that the position of the United States and of the State of Maine on the one hand, and that of the Dominion of Canada and Province of New Brunswick on the other hand, shall be substantially the same under this Order as under the above mentioned Order of this Commission dated the 22nd day of June, 1925. But should the above mentioned 2000 H.P. cease to be available for use in the United States at any time for any reason this Commission reserves the rights of the parties to reopen the question and ask for a decision on the contentions of the United States and State of Maine and of the Dominion of Canada and Province of New Brunswick advanced at the hearings of this Commission on the above mentioned application of the New Brunswick Electric Power Commission, held at Van Buren, Maine, on the 25th day of March, 1925, and at Montreal on the 15th and 16th days of May, and the 12th and 13th days of June, 1925. And until this Commission renders a decision on such questions the Applicant shall make available at least 2000 H.P. for use in the United States upon receiving reasonable notice in writing requiring it so to do unless relieved by order of this Commission from so doing. Liberty is hereby reserved to the Applicant from time to time and at

ry time to apply to this Commission for relief from said requirement.

4. AND THIS COMMISSION DOETH FURTHER ORDER AND DECLARE that nothing in this Order contained, in the recitals or elsewhere, shall by implication or otherwise be construed or taken as an expression of opinion on the part of the Commission with reference to the contentions above recited or as a recognition in any way of the principles contended for by counsel for either country at the hearings above mentioned.

Dated at Washington, D.C., this 28th day of June, A. D. 1926.

C. S. Clark

*[Signature]*

Fred T. Dubois

H. C. Powell

P. J. McEnroe

H. H. Beards

Schedule A

MEMORANDUM OF AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 1926,

between

SAINT JOHN RIVER POWER COMPANY, incorporated by an Act of the Legislative Assembly of the Province of New Brunswick passed at its session held in the year 1926 (hereinafter with its successors and assigns called the "Power Company") of the first part, and

INTERNATIONAL PAPER COMPANY, a company duly incorporated under the laws of the State of New York (hereinafter with its successors and assigns called the "Paper Company") of the second part;

WHEREAS, the Power Company under its act of incorporation has been authorized and empowered to proceed with the development of the water power at Grand Falls, in said Province, and in order to carry out such development intends to build certain dams and works in and on the St. John River at and near said Grand Falls, and to develop storage works in the Provinces of Quebec and New Brunswick and in the State of Maine which works and developments at or near said Grand Falls and said storage works are hereinafter collectively called the "Grand Falls Power Works;" and

WHEREAS, the Power Company has been authorized by the International Joint Commission to construct those parts of the Grand Falls Power Works which are to be situated at and near said Grand Falls; and

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. In the event of the Power Company actually proceeding with the development of Grand Falls and producing power therefrom under authority given

it by the International Joint Commission by its order dated the \_\_\_\_\_ day of \_\_\_\_\_, 1926, or under authority given the Power Company in modification or enlargement of or substitution for the authority so given by the International Joint Commission, the Power Company will, when power is first generated at said Grand Falls, enter into a contract with the Paper Company whereby the Power Company will bind itself to reserve for a period of five (5) years and sell to the Paper Company (in case the Paper Company shall desire to purchase the same) and deliver to the Paper Company at the international boundary at a point between said Grand Falls and Van Buren, in the State of Maine, for use in said State of Maine, primary power generated from the initial development at said Grand Falls in a block (subject to the provision next below) of two thousand (2,000) horse power. Such contract shall provide that the Paper Company may, at its option, at any time and from time to time, take such power in any amount, within a limit of ten (10) per cent. less or more than such block. Such contract shall be renewable at the option of the Paper Company for successive five (5) year terms, and the price for the power to be supplied thereunder shall be a net price free from any taxes by the Province of New Brunswick, or any taxing authority of said Province, as an export of power or otherwise. Such contract shall also provide that the Power Company will use its best efforts to prevent any tax by the Dominion of Canada on the supplying of such power as an export of power or otherwise and to prevent any surcharge being placed on the supplying of such power as an export of power or otherwise. The price of the power and the other provisions of such contract shall be such as are determined upon to the satisfaction of the parties hereto; provided, however, that the price shall be determinable at each such renewal and shall not in any case be higher than the price, at the time of the execution of the



contract or any renewal or renewals thereof, being paid by any consumer of a like class for primary power delivered or to be delivered at the same place nor relatively higher than the price being paid by any consumer of a like class for primary power delivered or to be delivered at a different place.

IN WITNESS WHEREOF the parties hereto have caused this Memorandum of Agreement to be executed under their corporate seals respectively by their officers thereunto duly authorized on the date first above mentioned.

SAINT JOHN RIVER POWER COMPANY

By \_\_\_\_\_

President

and by \_\_\_\_\_

Secretary

INTERNATIONAL PAPER COMPANY

By \_\_\_\_\_

Vice President

and by \_\_\_\_\_

Secretary