

Original in document 1405

BY-LAW NO. 1905

OF THE CORPORATION OF THE CITY OF NORTH BAY

BEING a By-law to authorize the entering into an agreement between the Corporation and The Hydro-Electric Power Commission of Ontario for a supply of electrical power or energy;


WHEREAS under and by virtue of The Power Commission Act, R.S.O. 1950, Chapter 281, and amendments thereto, the Corporation may enter into an agreement with The Hydro-Electric Power Commission of Ontario for a supply of electrical power or energy;

AND WHEREAS the Corporation has applied to the Commission for such purposes and the Commission is willing to enter into such agreement;

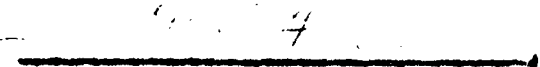
NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF NORTH BAY enacts as follows:-

- 1. THAT the Corporation do enter into the agreement with The Hydro-Electric Power Commission of Ontario for a supply of electrical power or energy which forms part of this By-law and a copy of which is hereto attached.
- 2. THAT the Mayor and the Clerk of the Corporation are hereby authorized to execute the said agreement on behalf of the Corporation by their signatures and the affixing of the corporate seal of the Corporation thereto and to deliver the agreement so executed to The Hydro-Electric Power Commission of Ontario, provided that the Corporation shall receive one counterpart executed by the said Commission.

DATED and FINALLY PASSED this 7th day of December A.D. 1959.



 Mayor



 Clerk

THIS AGREEMENT made in triplicate
this 7th day of January A.D. 1960.

BETWEEN:

THE HYDRO-ELECTRIC POWER COMMISSION
OF ONTARIO, hereinafter called "the
Commission"

OF THE FIRST PART,

-and-

THE CORPORATION OF THE CITY OF NORTH
BAY, hereinafter called "the Corporation"

OF THE SECOND PART.

WHEREAS by Agreement dated November 16, 1953 between the parties hereto, the Corporation contracted with the Commission for a supply of electrical power at a fixed rate, pursuant to the provisions of The Power Commission Act, R.S.O. 1950, Chapter 281, and amendments thereto (hereinafter called "the said Act");

AND WHEREAS the supply of power by the Commission to the Corporation under the said Agreement was continued up to and including July 31, 1959;

AND WHEREAS the Corporation has applied to the Commission for a supply of electrical power at cost as provided in the said Act, and the Commission pursuant to the said Act is willing to enter into an agreement for the supply of such power to the Corporation upon the terms and conditions hereinafter appearing;

AND WHEREAS the Council of the Corporation on the 7th day of December 1959, passed by-law No. 1905 authorizing the entering into an agreement with the Commission for such purpose upon such terms and conditions, and the execution of the agreement by the Corporation;

NOW THEREFORE THIS AGREEMENT WITNESSETH that subject to the said Act and for the considerations herein contained the parties hereto covenant and agree as follows:

1. THE COMMISSION AGREES:

(a) To reserve for and deliver to the Corporation Sixteen Thousand Kilowatts (16,000 kw) of power, commencing on August 1, 1959, hereinafter called "the Commencement Date";

1.(b) Upon the expiration of reasonable notice in writing which may be given by the Corporation from time to time during the continuance of this Agreement, to reserve for and deliver to the Corporation additional power, but if the additional power is not available when requested by the Corporation, the Commission shall have a reasonable time to make it available;

1.(c) To deliver the power under this Agreement at the points of delivery defined as the Commission's line dead-ending insulators on the Corporation's substations for power under this Agreement, and the Commission's dead-ending insulators on the Customer's side of the air-break switch at Murray Street for the transmission line serving the Craig Bit Company, and/or such other point or points as may be agreed upon between the Commission and the Corporation from time to time;

1.(d) To deliver the power hereunder as commercially continuous twenty-four (24) hour power every day in the year, except as otherwise provided in this Agreement;

1.(e) To use at all times first-class, suitable apparatus and plant, and to exercise all due skill and diligence so as to secure the satisfactory operation of the plant and apparatus of the Corporation.

2. THE CORPORATION AGREES:

(a) To take the power covered by this Agreement in accordance with the terms thereof;

2.(b) To pay the Commission in each year the cost to the Commission, as determined by it, of supplying and delivering power to the Corporation hereunder, including the Corporation's proportion as adjusted by the Commission of all costs incurred for the purposes of this Agreement, and without limiting the generality of the foregoing, the following:

- (i) The cost of operation, maintenance, depreciation and insurance of the works and the cost of administration of the Commission;
- (ii) Interest and expenses of debt service and interest credited on the balances remaining from time to time to the credit of reserve accounts established under the authority of the said Act;
- (iii) An annual sum sufficient to form in 40 years with interest at four per cent per annum, a sinking fund for the repayment of the advances made by the Province of Ontario under the said Act for the cost of the works, for the repayment of any other indebtedness incurred or assumed by the Commission in respect of the cost of the works, and for the restoration of any reserve or other funds of the Commission utilized for the payment of the cost of the works; and
- (iv) An amount to be determined by the Commission for the purposes of sections 13 and 15 and clause d of section 14 of the said Act,

and to make payment in twelve (12) monthly instalments based

on estimated rates fixed by the Commission, which rates shall be applied to the highest average amount of power taken by the Corporation during any twenty (20) consecutive minutes in each month; the cost to be determined by the Commission after the close of the fiscal year and the difference between the said cost and the amount paid by the Corporation in the said twelve (12) monthly instalments to be paid by the Corporation to the Commission on receipt of a bill therefor or to be credited to the Corporation, as the case may be;

2.(c) To pay all amounts payable by the Corporation for power hereunder in lawful money of Canada, at the offices of the Commission in Toronto. Bills for power hereunder shall be paid not later than ten (10) days after the date of rendering thereof. If any bill remains unpaid for fifteen (15) days the Commission may, in addition to all other remedies and without notice, discontinue the supply of power to the Corporation until the said bill is paid. No such discontinuance shall relieve the Corporation from the performance of the covenants, provisos and conditions herein contained. All payments in arrears shall bear interest at the rate of five per cent (5%) per annum;

2.(d) If in any month the Corporation takes power so that the average demand during any twenty (20) consecutive minutes is in excess of the amount of power ordered and held in reserve for the Corporation as provided in clause 1 hereof, the taking of the excess shall constitute thereafter an obligation on the part of the Commission to hold in reserve and deliver power increased by the excess to the extent, if any, allowed by the Commission; in any event, the Corporation shall pay for power for the said month as if the excess had been taken for the whole month;

2.(e) To take power exclusively from the Commission during

the continuance of this Agreement;

2.(f) At all times to take and use the power in such manner that the ratio of the kilowatts to the kilovolt amperes (read simultaneously) is unity, but when this is not possible the Corporation shall pay for ninety per cent (90%) of the maximum kilovolt amperes (considered as true power or kilowatts) when the said ninety per cent (90%) is in excess of the maximum kilowatts taken; the maximum in kilowatts or kilovolt amperes shall be taken as the maximum average or integrated demand during any twenty (20) consecutive minutes;

2.(g) To use at all times first-class, suitable standard commercial apparatus and plant which shall be subject to the approval of the Commission, and to operate and maintain the apparatus and plant so as not to cause more than minimum disturbance to or fluctuation in the Commission's power supply or system, and to exercise all due skill and diligence so as to secure satisfactory operation of the plant and apparatus of the Commission and of the Corporation;

2.(h) To co-operate with the Commission at all times by all means in its power to fulfil the objects of this Agreement and of the said Act and to advance the purposes of the Commission.

3. This Agreement shall remain in force during the period of Forty (40) years commencing on the Commencement Date.

4. (a) The power delivered to the Corporation hereunder shall be alternating, three-phase, having a nominal frequency of sixty (60) cycles per second and a nominal voltage of Twenty-two Thousand Volts (22,000 v.). The Commission will exercise its best endeavours to limit variations from the

nominal frequency and the nominal voltage, or either of them, to tolerable values, but in no event shall the Commission be liable to the Corporation for any loss, damage or injury resulting directly or indirectly from variations in the nominal frequency and the nominal voltage, or either of them;

For the purposes of this Agreement, "power" means electrical power and includes energy;

4.(b) The maintenance by the Commission of the agreed voltage and the agreed frequency at the points of delivery shall constitute the supply of power involved herein and a fulfillment of all operating obligations of the Commission hereunder, and when the voltage and the frequency are so maintained the amount of power, its fluctuations, load factor, power factor, distribution as to phases and all other characteristics and qualities shall be under the sole control of the Corporation;

4.(c) In case the Commission shall at any time or times be prevented from delivering the power or any part thereof by any cause reasonably beyond the Commission's control, including without limiting the generality thereof, strike, lockout, riot, fire, insurrection, hurricane, civil commotion, flood, invasion, explosion, the Queen's enemies or act of God, then the Commission shall not be bound to deliver power during such time or times; the Commission shall be prompt and diligent in removing the cause of such interruption and when the cause of interruption is removed the Commission shall, without any delay, deliver the said power; no such interruption shall release the Corporation from any obligation under this Agreement;

4.(d) The Commission shall have the right at reasonable times and, when possible, after reasonable notice has been given to the Corporation, to discontinue the supply of power

to the Corporation for the purpose of safeguarding life or property or for the purpose of operation, maintenance, replacement or extension of the Commission's apparatus, equipment or works, but all such interruptions shall be of a minimum duration and, when possible, arranged for at a time least objectionable to the Corporation; no such interruption shall release the Corporation from any obligation under this Agreement.

5. The engineers of the Commission or any of them, or any other person or persons appointed by the Commission for the purposes of this clause, shall have the right from time to time, during the continuance of this Agreement, to inspect the apparatus, plant and property of the Corporation, and take records at all reasonable hours.

6. The Commission shall, at least annually, adjust and apportion the amounts payable by the Corporation to the Commission under this Agreement.

7. The Commission shall be a trustee of all property held by the Commission under this Agreement for the Corporation and other municipal corporations supplied by the Commission, but the Commission shall be entitled to a lien upon the said property for all moneys expended by the Commission under this Agreement and not repaid to it. At the expiration of this Agreement the Commission shall determine and adjust the rights of the Corporation and other municipal corporations supplied by the Commission, having regard to the amounts paid by them, respectively, under the terms of their agreements with the Commission and such other considerations as may appear equitable to the Commission and are approved by the Lieutenant-Governor in Council.

8. Without the written consent of the Corporation, the

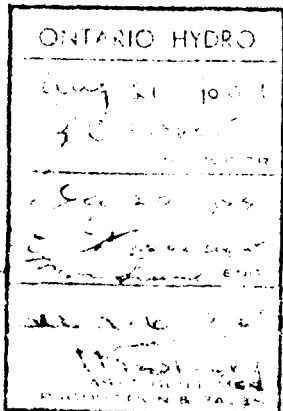
Commission shall not sell power to any person or persons within the limits of the Corporation; no power shall be supplied by the Corporation to any railway for motive purposes or to any electrical distributing company without the written consent of the Commission, but the Corporation may sell power to any other person or persons or manufacturing companies within the limits of the Corporation, provided that such power shall not be sold for less than cost, nor shall there be any discrimination as regards price and quantity.

9. Any waiver by either party or failure to exercise any right or enforce any remedy shall be limited to the particular instance and shall not be deemed to extend to any other matter under this Agreement or in any way affect the validity of this Agreement.

10. This Agreement shall extend to, be binding upon and enure to the benefit of the successors and assigns of the parties hereto.

11. As of the Commencement Date, this Agreement supersedes the Agreement dated November 16, 1953 between the parties hereto for supply of power by the Commission to the Corporation at a fixed rate.

IN WITNESS WHEREOF the Commission and the Corporation have caused this Agreement to be executed by the affixing of their corporate seals attested by the signatures of their proper officers duly authorized in that behalf.



THE HYDRO-ELECTRIC POWER COMMISSION
OF ONTARIO

Chairman

Secretary

THE CORPORATION OF THE CITY OF NORTH BAY

Mayor

Clerk