

*St. Paul*

THIS AGREEMENT, made and entered into this 14th day of March, in the year One Thousand Nine Hundred and Twenty-One, by and between CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, a corporation organized under the laws of the State of Wisconsin, party of the first part, hereinafter for convenience referred to as the "Railway Company", and the INTERMOUNTAIN POWER COMPANY, a corporation organized under the laws of the State of Montana, for convenience hereinafter referred to as the "Power Company", party of the second part,

W I T N E S S E T H :

WHEREAS, the said Power Company is engaged in the business of supplying electric power for the operation of railways and for other purposes; and

WHEREAS, the said Railway Company is engaged in operating a line of railway which lies partly within the State of Washington and partly within the State of 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:

ARTICLE I

That the said Railway Company will, prior to the first day of October, 1928, 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 between that certain station situated on said line of Railway, known and designated as Avery, Idaho, and that certain other station on said line of railway known as Othello, Washington, including or not, at the option of the Railway Company, the line of railway used by it between Plummer Junction, Idaho, and Marengo, Washington, via the City of Spokane, and any or all branch railway lines connecting with said railway line between said Avery and Othello, and that the said Railway Company will on or before the first day of October, 1928, receive and take from the Power Company, and that the said Power Company will, as soon as the 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.

ARTICLE II

Subject to the reservations and in accordance with the provisions of this agreement as hereinafter expressed and with special reference to Articles VI and VII, 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 for operating its railway equal to 10,000 kilowatts for the full period of this agreement.

IT IS AGREED that the amount of power delivered to the Railway Company shall be controlled in the following manner, the parties hereto jointly and equally paying the cost of furnishing, installing and maintaining such apparatus as may be necessary to carry out the following;

Suitable apparatus and circuits shall be installed on the poles and in the sub-stations of the Railway Company to limit the total amount of power delivered to it, to that which the Railway Company may be at the time entitled to receive under the terms of this contract. Such apparatus shall consist primarily of switches so controlled as to open the circuit when the average power for five minutes exceeds the amount of power which the Railway Company is entitled to receive. In making this installation the intent of the parties hereto is that the Railway Company shall not receive more power than it has contracted to receive and that the said switches will prevent either the over-draft or delivery of excess power.

If, notwithstanding the installation of such apparatus, the amount of power received by the Railway Company, taken as an average of the three highest five-minute demands shall in any month, except in case of accidental failure of wires or apparatus, exceed the amount which the Railway Company is entitled to receive at the time, then the Railway Company agrees to pay for such power for the month only during which such excess was taken under the same conditions, at the same rate as that provided for the fixed power which the Railway Company is obligated to receive under the terms of this contract.

In order to determine when the Railway Company shall advance to an additional option for power, as provided for in Article VII hereof, it is agreed that if the amount of power received in any month by the Railway Company, taken as an average of the three highest five-minute demands shall, except in case of accidental failure of wires or apparatus, exceed that which the Railway Company is entitled to receive at the time, then the Railway Company agrees that at the end of the twelve months' period of which said month is the first, and at the end of each succeeding twelve months' period, to immediately exercise an option, as provided in Article VII, for an additional amount of power equal to the average of the amounts of excess power received in each of the twelve preceding months, the amount of such excess in each month being the average of the three highest five-minute demands in such month, and the average demand for the year being the sum of such monthly excesses, if any, divided by twelve. This Article shall not be considered as applying to any month or months forming a part of the initial one year period referred to in Article VI, during which period payment for power is made only on the basis of kilowatt-hours actually used.

### ARTICLE III

All power is to be delivered in the form of three phase, 60 cycle, alternating electric current, at a potential of approximately 100,000 volts. The Power Company agrees that it will construct suitable transmission lines, and deliver said power at its own sole cost, at the terminals of air-break, high tension line switches to be provided by the Power Company at the sub-station of the Railway Company located at East Portal, Montana, and its sub-station to be located at or near Roxboro, Washington. The parties hereto mutually agree to co-operate fully in the operation of their interconnecting transmission lines. Whenever practicable, each party will notify the other in advance of any proposed switching operations to be performed by it when such switching will in any manner affect the operations of the other party, so that all necessary precautions can be taken by both parties to insure continuity of operations of their respective power systems.

IT IS FURTHER AGREED, that whenever it may become necessary in order to replace, renew or repair a part of the system used for the transmission or delivery of power, then the party undertaking such replacement, renewal or repair shall, if the occasion will permit of its being done, notify the other of its intention so to do, and such replacement, renewal or repair shall be made as expeditiously and diligently as the same can be reasonably completed, by the party whose duty it shall be to undertake and complete the same, and that there shall be no penalty or obligation incurred by either party to the other for such delays, interruptions or failures as are necessarily incidental to the performance of the work so undertaken.

If by reason of the making of such repairs, renewals or replacements, the Power Company is unable temporarily to furnish the Railway Company with the full amount of power which it shall be entitled to receive under the contract, it is agreed that during the

period of such interruption, the minimum payment of the Railway Company shall be on the basis of sixty percent of the amount of power which the Power Company shall be in a position to furnish. If the Power actually used by the railway exceeds said amount of sixty percent, the Railway Company shall pay for the kilowatt- hours actually used.

The Power Company agrees that it will not transmit power or energy over the transmission lines of the Railway Company for purposes other than provided for in this contract, unless a contract permitting such transmission of power is agreed upon between the parties hereto; Provided, however, that if it becomes necessary for the Power Company to transmit such power temporarily, the same may be done under the written authority of the Vice-President of the Railway Company, and not otherwise.

#### ARTICLE IV

It is agreed that the power herein contracted for shall be measured at the sub-stations of the Railway Company, one located at Avery, Idaho, and the other to be located at or near Roxboro, Washington, by curve drawing watt-meters and watt-hour meters, or such approved instruments for the measurement of electric power and energy as may be agreed upon by the parties hereto, such instruments to be furnished, installed and maintained at the expense of the Power Company.

Said instruments by means of necessary transformers, shall be connected in the 100,000 volt circuit which supplies power to the Railway Company at each measuring point. The Railway Company agrees to provide room in its sub-stations at the measuring points for the installation of the Power Company's measuring apparatus, and the Power Company will without charge, allow the joint use of the Power Company's instrument transformers for the operation of the joint proposed power indicating or limiting system, or for any other purposes by the Railway Company, provided such use will not affect the accuracy of the Power Company's instruments.

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 ninety-five percent, leading power factor when the machines are operating at their maximum load, and the Railway Company agrees to adjust the power factor of its load from time to time as the Power Company may request, within the reasonable operating limits of its receiving apparatus.

It is mutually understood and agreed by the parties hereto that the Power Company's meters in the Railway Company's sub-stations will be arranged to automatically deduct power or energy returned to the Power Company's lines in connection with the operation of the Railway Company's so-called system of regenerative braking of trains.

#### ARTICLE V.

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 the measuring points for the energy delivered to it under the terms and provisions of this contract at the rate of \$0.00536 (Five hundred thirty-six thousandths of a cent) per kilowatt hour, as shown by the instruments provided for in the Fourth Article hereof; said payments to be made not later than the fifteenth 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.

#### ARTICLE VI

It is agreed that one year after power shall first be received under the terms of this contract but in any event not later than October 1st, 1928, and during the remaining term of this contract from the expiration of said period of one year or said date of October 1, 1928, as the case may be, 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 percent of the amount which the said Railway Company would pay to the 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.

#### ARTICLE VII

It is agreed that the Railway Company shall have the right, to be exercised at its option, such option to be exercised by its giving the Power Company written notice thereof, to receive power in addition to the Ten Thousand (10,000) kilowatts herein contracted for, up to the full amount of Twenty Thousand (20,000) kilowatts at any time subsequent to the date of commencement of minimum payments as provided for in Article VI, but not later than ten years after such date, and provided it shall have called for, under the provisions of this option, a total of at least Twenty-five Hundred (2500) additional kilowatts within five years after said date. It is understood that the total amount of power to be delivered under this contract shall not exceed Twenty Thousand (20,000) kilowatts.

The Power Company shall have the right from time to time to extend the time limitations specified in the first paragraph of this Article, within which the Railway Company may increase the demand for power.

IT IS AGREED that the provisions set forth in Article VI 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.

#### ARTICLE VIII

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 during such period shall pay only for the actual kilowatt-hours received and at the rate per kilowatt-hour herein provided. If the Power Company, or the Companies from which it may obtain power for fulfilling its obligations under this contract, or either, or any of them, shall, by reason of any unavoidable cause or accident, or because of strikes, floods, or fires, be unable at any time during this contract to make delivery of power as herein agreed, to the extent of the inability, so caused, the said Power Company shall

not be liable in any sum for such failure to deliver power during such period, and the Railway Company, during such period, shall pay a minimum based on sixty per cent of the amount of power which the Power Company shall be in a position to furnish; if, however, the amount of power actually used by the Railway Company exceeds said amount of sixty per cent, the Railway Company shall pay for the kilowatt hours actually used.

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.

#### ARTICLE IX

IT IS AGREED that the Railway Company shall have a preferential right to receive power from the Power Company, and that up to the full amount which the Railway Company shall have contracted to receive and use, the Power Company will sell and deliver said power before filling any other contract.

IT IS FURTHER 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 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.

#### ARTICLE X

IT IS AGREED that the Railway Company shall have the right to receive and use the power herein provided for in the operation of its railway and for such other purposes as it may require electric power 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 person or persons or corporations whatsoever, and that it will not, during the life of this contract, use or apply the said electric power to any use or purpose other than in connection with the operation of its said line of railway, shops, stations, coaling stations, ice houses, and other railway uses, either power or lighting.

#### ARTICLE XI

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 of 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 thus 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 Washington 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 said parties hereto with respect to the matter so submitted and decided by said arbitrators.

The award and decision of the arbitrators under the provisions hereof shall be served by them, or some one of 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 party 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 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 so to do, and such failure shall continue for a period of thirty 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.

#### ARTICLE XII

This contract shall take effect and be in force only in the event of the Railway Company giving written notice to the Power Company on or before October 1, 1925, of its decision to electrify its said railway line between said stations of Avery, Idaho and Othello, Washington.

The date of termination of this contract in the event it becomes effective, as provided for in the preceding clause, shall be the 13th day of March, A.D. 2015.

ARTICLE XIII

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, or assigns of the respective parties hereto.

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

INTERMOUNTAIN POWER COMPANY,

By Cornelius F. Kelley, President.

(Seal)  
Attest: (Illegible) Secretary.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.,

By H. E. Byram, President.

(Seal)  
Attest:  
R. J. Marony, Ass't. Secretary.

Approved for execution: H. B. Earling, Vice President.  
Form approved: F. M. Dudley, Gen'l. Attorney.  
R. Beeuwkes, District Engineer.