



CHAPTER 94.

An Act to grant Power to the Corporation of the City of Port Alberni to enter into a certain Agreement with the Ritchie-Agnew Power Company, Limited.

[4th March, 1914.]

WHEREAS the Corporation of the City of Port Alberni is desirous Preamble.
of entering into an agreement with the Ritchie-Agnew Power Company, Limited, with the object of obtaining a supply of electrical energy for the purpose of providing light, heat, and power to the said municipality and the inhabitants thereof:

And whereas the Ritchie-Agnew Power Company, Limited, is willing to supply all the electrical energy which may be required by the said municipality and the inhabitants thereof, provided that the said municipality agree to obtain from the said Company all the electrical energy to be used within the present or future limits of the said municipality for the term of thirty (30) years next ensuing the execution of the Agreement set out in the Schedule hereto:

And whereas the said municipality and the said Company have agreed on the terms whereunder the said Company shall supply electrical energy to the said municipality, and the said terms are embodied in the Agreement set out in the Schedule hereto.

And whereas the Municipal Council of the Corporation of the City of Port Alberni has presented a petition praying that it may be empowered to enter into such an Agreement with the Ritchie-Agnew Power Company, Limited:

And whereas it is expedient to grant the prayer of the petition:

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Short title.

1. This Act may be cited as the "City of Port Alberni Electrical Supply Act, 1914."

Powers.

2. The Corporation of the City of Port Alberni is hereby empowered, when and so soon as a by-law ratifying the same has been submitted to and passed by a vote of the majority of the ratepayers of the municipality entitled to vote on money by-laws, to enter into the Agreement with the Ritchie-Agnew Power Company, Limited, set out in the Schedule hereto, and to carry into effect the said Agreement, and to do all things necessary to enable the Corporation to confer and perfect the rights, franchises, and privileges specified in the said Agreement; and the said municipality and the said Company shall have power at any time to modify the terms and conditions of the said Agreement set out in the Schedule hereto as to them may seem fit: Provided always that before any such modification of the said terms and conditions shall come into effect, such modification or modifications shall from time to time be embodied in a by-law which shall be submitted to and passed by the vote of a majority of the ratepayers of the municipality entitled to vote on money by-laws.

SCHEDULE.

THIS AGREEMENT, made in duplicate this day of , one thousand nine hundred and fourteen,

Between

ITCHIE-AGNEW POWER COMPANY, LIMITED, a corporation organized and existing under the laws of the Province of British Columbia, having its chief place of business in the City of Prince Rupert (and having an office in the City of Port Alberni), in the Province of British Columbia, both in the Dominion of Canada, which, with its successors and assigns, is hereinafter called "the Power Company," party of the first part;

AND

THE CORPORATION OF THE CITY OF PORT ALBERNI (hereinafter called "the Consumer"), party of the second part.

Whereas the Consumer is now engaged or will be engaged in providing public and private lighting and in selling and distributing electrical energy in the City of Port Alberni for private lighting, heating, and power, and desires to purchase electrical energy from the Power Company for these purposes:

And whereas the Power Company intends to install power plants as hereinafter mentioned, and is desirous of selling power to the Consumer upon the terms and for the period hereinafter set forth, and the Consumer is willing to purchase upon such terms:

Now, this Agreement witnesseth as follows:—

1. The Power Company agrees to supply to the Consumer at the boundary-line of the city, at a point to be designated by the Consumer, which is hereinafter called "the point of delivery," electrical energy to the extent and of the character hereafter provided for, as and when requested by the Consumer, at the same point or at any new points which the Consumer may at any future date designate at any time during the existence of this Agreement in the

manner and upon the conditions set out in this Agreement; the amount of such electrical energy to be such as the Consumer from time to time desires to take and use; upon the understanding that the Consumer will purchase from the Power Company all the electrical energy required within the city's present or future limits: Provided that the Power Company obtains the requisite approval of its plans by the Provincial Government, and so long only as the Power Company performs and observes all its covenants and obligations under this Agreement: Provided, moreover, that the Consumer shall be at liberty to use and sell electrical energy derived from its own present or future Diesel installation of one hundred and fifty (150) horse-power.

1A. Provided that nothing in this Agreement shall prevent any industry from obtaining power from its own plant, either in or out of the city limits, for its own purposes only.

2. The Power Company agrees that it will construct a hydro-electric plant at Stamp Falls of an initial development of seven hundred and fifty (750) horse-power, and will construct a transmission-line from Stamp Falls to the Consumer's sub-station at the boundary of or in the City of Port Alberni; and the Consumer agrees that when such transmission-line shall have been completed to the said point of delivery, the Consumer shall pay for electrical energy taken by the Consumer in accordance with the terms and under the conditions set forth in this Agreement. The Power Company agrees that it will have so far completed its initial installation so as to be able to generate a force of seven hundred and fifty (750) horse-power at any one time at Stamp Falls and its transmission-line from Stamp Falls to the point of delivery, so that it will be in a position to supply electrical energy to the City of Port Alberni, but not to exceed such amount of electrical energy as can be produced by a force of three hundred and seventy-five (375) horse-power, within nine months from the approval of the Power Company's plans by the Provincial Government; and that it will immediately on execution of this Agreement take steps to obtain the approval of these plans. The Power Company also agrees that it will add to its initial installation if the Consumer requires more electrical energy than can be supplied by the said initial installation.

3. The Power Company covenants and agrees that the electrical energy sold under this Agreement may be used by the Consumer for any purpose whatever within the limits, present or future, of the City of Port Alberni; and the Consumer agrees that the electrical energy so supplied shall not be resold to or used by any person or company to whom a municipal franchise has been granted for the distribution of electricity.

4. And the Consumer covenants and agrees that it will arrange to use all electrical energy delivered by the Power Company under this Agreement in a manner that will not cause sudden fluctuations occasioned by hunting, pumping, or other disturbances in the method of user, thereby interfering with the Company's system.

5. The electrical energy furnished hereunder shall be in the form of three (3) phase alternating current having a normal frequency of sixty (60) cycles per second at a pressure of approximately twelve thousand (12,000) volts; after the Consumer has taken electrical energy to the extent of five hundred (500) horse-power, this voltage may be increased to sixty-six thousand (66,000) volts.

6. The Power Company covenants and agrees that it will maintain the voltage and frequency as steadily as will be ordinarily found in the best commercial practice by the installation of the latest approved design of motive power, machine governors, and potential regulators and compensators.

7. The electrical energy furnished hereunder shall be furnished and delivered to the Consumer at the point of delivery on the twelve thousand (12,000)

volt lines and after five hundred (500) horse-power is taken on the sixty-six thousand (66,000) volt lines, and shall be measured as to maximum demand and amount of energy used at said point of delivery on said twelve thousand (12,000) and sixty-six thousand (66,000) volt lines by suitable meters to be furnished and installed by the Consumer and approved by the Power Company; and the Consumer agrees to erect at each point of delivery a receiving-station and equip same with all the necessary apparatus for taking electrical energy at twelve thousand (12,000) and sixty-six thousand (66,000) volts.

8. If it be deemed by both parties (or by arbitrators if an agreement cannot be arrived at otherwise) to be desirable at any time or from time to time to install new meters of greater reliability or accuracy, then the Consumer shall install such new meters and shall pay for the same, together with the cost of installation.

9. Either party shall have the right to test said meters for corrections at any time and from time to time upon giving to the other party written notice forty-eight (48) hours in advance of the time of any proposed test, and if, upon making such test, said meters or any of them shall be found to be incorrect, proper allowance for such incorrectness shall be made to the party entitled thereto; but the corrections to be made on account of any test shall in no case be made for a longer period than thirty (30) days preceding the date of such test; if the meter or meters under test shall be found to be within one per cent. (1%) of perfect accuracy, then such meter or meters shall be considered satisfactory and no allowance shall be made; in case either party fails or refuses after forty-eight (48) hours of receipt of written notice by the other party to be present at the test of any meter provided for under this contract, then the other party may proceed with such test in the absence of the party so notified; and the readings of the meter or meters found on such test to be incorrect to be subject to the correction shown thereby.

10. A horse-power for the purpose of this Agreement is understood to mean seven hundred and forty-six (746) watts when the power factor of the power under this contract is above ninety per cent. (90%); if and when the power factor of the power taken under this contract falls below ninety per cent. (90%), then the said power to be paid for under this Agreement shall be computed by this formula. The volts in each phase multiplied by the amperes in each phase respectively and added together, the whole multiplied by nine-tenths (9-10ths) and divided by seven hundred and forty-six (746) equal horse-power, to be paid for.

11. The electrical energy contracted for shall be three (3) phase alternating commercially continuous twenty-four (24) hour power every day of the year, except as provided for in paragraph sixteen (16) hereof.

12. During the term of this Agreement and after the Consumer begins to take electrical energy hereunder, the Consumer agrees to pay the Company each month for the electrical energy used, at the following rates:—

Up to five hundred horse-power, one dollar per horse-power month for maximum connected load plus one and one-half cents (1.5c.) per kilowatt hour for all power used:

From five hundred (500) to fifteen hundred (1,500) horse-power, one dollar per horse-power month for each horse-power of maximum connected load plus one and a quarter cents (1.25c.) per kilowatt hour for all power used:

And for all power used over fifteen hundred (1,500) horse-power, one dollar per horse-power month for each horse-power of maximum connected load plus one cent (1c.) per kilowatt hour:

The maximum connected load to be arrived at every month by taking max-meter readings over a twenty (20) minute peak; the amount of power used to be measured on a watt-meter basis.

13. As soon as practicable after the first day of each calendar month, and not later than the tenth day of each such month, the Power Company shall render the Consumer a bill in such detail and with such particulars as the Consumer shall from time to time request of the amount of electrical energy used by the Consumer for the preceding month; and the Consumer shall pay the Power Company at the City Hall in Port Alberni the amount of such bill, or such amount as may remain after any proper corrections have been made, within fifteen (15) days after the rendering of such bill; and in default of payment within such fifteen (15) days the Power Company shall be entitled to charge interest at the rate of six per centum (6%) per annum.

14. If the Consumer, on or before the expiration of fifteen (15) days after such bill has been rendered, or at any time before the payment of such bill, shall claim that the bill contains overcharges or needs corrections in other particulars, then the Consumer shall pay such part of the bill as is undisputed; and in case an arrangement cannot be arrived at by mutual agreement between the parties within thirty (30) days, then such dispute shall be settled by arbitration as hereinafter provided.

15. It is agreed that the Power Company shall at all times so operate its hydro-electric plants as to furnish the Consumer with a first-class service.

16. The Power Company shall not be liable under this Agreement for any damages resulting from any interruption in the supply of electrical energy caused by war, so-called strikes or labour difficulties, riots or other public disturbances, public enemy, ice, flood, fires, the action of the elements, or by inherent defects in the apparatus or other parts of the Company's plants which are not known to the Power Company and could not be discovered by reasonable diligence; but in case the Power Company is able to supply a portion of the energy herein contracted for, it shall, during such time as it cannot supply to the Consumer its actual requirements for electrical energy furnish to the Consumer so much energy as it is able to furnish with the rightful requirements of its own uses and those of its other customers; and the Consumer shall take and pay for the same on the terms hereinafter provided: Provided, however, that the Power Company agrees that the Consumer shall be furnished from the available power at the disposal of the Power Company with such amount of electrical energy as will supply all public lighting, and such supply shall have the preference over power supplied private consumers. As a basis for determining such pro rata amount, the requirements of the Consumer and of the Power Company and of the Power Company's other customers shall be taken to be the same as their respective maximum demands and consumption during the thirty (30) days preceding such interruption of supply.

17. The Consumer agrees to save the Power Company harmless from and against any and all losses or damages sustained and any and all liability for injury to any person or property whatsoever incurred by the Power Company by reason of any negligence on the part of the Consumer, its officers, agents, or employees, in the operation or maintenance of any wires, apparatus, or appliances of the Consumer during the life of this Agreement, and shall pay and reimburse the Power Company for all costs, expenses, and attorney's fees which the Power Company may incur or which may be awarded against it in defending any suit or suits brought against it for such damages; provided the Consumer is notified of any such suit or suits and is given an opportunity to defend the same.

18. The Power Company agrees to save the Consumer harmless from and against any and all losses or damages sustained and any and all liability for injury to any person or property whatsoever incurred by the Consumer by reason of any negligence on the part of the Power Company, its officers, agents, or employees, in the operation or maintenance of any wires, apparatus, or appliances of the Power Company during the life of this Agreement, and shall pay and reimburse the Consumer for all costs, expenses, and attorney's fees

which the Consumer may incur or which may be awarded against it in defending any suit or suits brought against it for such damages, provided the Power Company is notified of any such suit or suits and is given an opportunity to defend the same.

19. This Agreement shall continue in force for a period of thirty (30) years from the day on which the Consumer begins to use the electrical energy.

19A. At the termination of ten (10) and twenty (20) years from the date of the commencement of the user by the Consumer of the electrical energy hereby contracted for, there shall be a revision of the rates provided for in this Agreement; the new rates to be fixed upon such revision shall be settled by the agreement of the parties hereto, and in the event of difference, by arbitration as herein provided.

20. If at any time any difference of opinion or controversy shall arise between the parties hereto with regard to their respective rights, duties, or obligations under this Agreement, or in respect to any payments to be made by virtue hereof, it is agreed that the differences between them shall be submitted to the award of arbitrators in the manner following: To a single arbitrator, if the parties can agree on one; if not, each party hereto shall name one arbitrator and the two arbitrators so named shall before further proceedings name a third. Whenever either party wishing any matter hereunder to be arbitrated shall in writing request the other party to name an arbitrator to act hereunder, and the other party neglects for a period of two (2) weeks after receipt of such notice to name an arbitrator, such arbitrator may be appointed by any Judge of the Supreme Court or any County Court in British Columbia, with the same effect as though appointed by such other party; and whenever two arbitrators appointed as aforesaid by the parties cannot agree upon the appointment of a third arbitrator to be appointed, such third party may be appointed by said Judge. Application for such appointment by the Court shall be made to said Judge upon at least two (2) clear days' notice in writing to the parties hereto or to the one of them not making the application. Each party agrees to perform its part of each award made in writing by either a single arbitrator or by three (3) such arbitrators upon any question submitted to them. The award in writing of the arbitrator or of the three (3) arbitrators as to the amount of the loss or damage claimed by either of the parties hereunder to have resulted from an alleged breach by the other party shall be conclusive and binding upon the parties hereto as to the amount thereof, and no suit at law or equity or other proceedings of a legal nature shall be begun by either party for breach of this Agreement unless and until as a condition precedent thereto the amount of loss or damage allowed by the moving party to have resulted from the alleged breach shall have first been referred to arbitration as aforesaid. The expenses connected with such arbitration shall be borne by the parties hereto or one of them in such manner and amount as the arbitrator or arbitrators determine.

21. The arbitration under the provisions of this Agreement shall be conducted in accordance with the Statutes of the Province of British Columbia providing for the arbitration of disputes and differences. All rights of appeal given by law against awards shall be open to either party.

22. The Power Company agrees with the Consumer that it will not supply or sell electrical energy within the boundaries of the City of Port Alberni, other than to the Consumer itself, except upon request of the Consumer and upon such mutual arrangement as may from time to time be agreed upon: Provided, however, that if any industry requiring power desires to purchase this power direct from the Power Company, the Power Company, with the consent of the Consumer, shall be allowed to furnish power to this industry within the city limits; in this event the power taken from the Power Company by the industry shall be regarded in the same light as if supplied through

the Consumer, and the Consumer's rates and amounts of power shall be based upon the total consumption taken by the Consumer and the industry.

23. The Consumer agrees that it will at all times use first-class modern standard electric power apparatus and plant, and that it will at all times maintain an efficient staff for the distribution and sale of light and power.

24. The Power Company agrees in every possible case to employ local labour and to purchase supplies and materials from local merchants, always provided that they can obtain said supplies and materials at a reasonable rate.

25. The Power Company and the Consumer mutually agree to co-operate in all matters and to endeavour to interest industries to locate within the city limits and to take power. And it is mutually agreed that the engineers of the Power Company shall at all times assist the engineers of the Consumer to obtain and maintain a reputation for continuous and satisfactory power service.

25A. The Power Company will not enter into any contract which shall contain more favourable terms than the present Agreement, with any municipality.

26. This Agreement shall extend to and be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and the Consumer will not do, suffer, or permit any act or omission by themselves or any person contrary to the terms of this Agreement.

27. In the event of any doubt hereafter arising as to the power of the Consumer to enter into this Agreement, the parties hereto mutually agree that they will use their best endeavours to obtain the ratification of this Agreement by the Legislative Assembly of this Province.

In witness whereof the said parties hereto have severally caused these presents to be executed in their names and behalf by their duly authorized officers and to be impressed with their corporate seals, attested by their respective officers, the day and year first above written.

RITCHIE-AGNEW POWER COMPANY, LIMITED.

Attest:
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By

CORPORATION OF THE CITY OF PORT ALBERNI.

Attest:
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By