

THIS INDENTURE made and executed this 16th day of November, 1921, between the People of the State of New York, party of the first part, and the Utica Gas and Electric Company, of Utica, N. Y., a corporation organized and existing under and by virtue of the Laws of the State of New York, with principal office and place of business in the City of Utica, N. Y., party of the second part, WITNESSETH:

Whereas the Special Examiner and Appraiser, acting under and pursuant to the provisions of Chapter 195, Laws of 1908, and acts amendatory thereof, duly entered into a written agreement with the party of the second part, dated the 14th day of June, 1921, (which agreement was on the 5th day of November, 1921, recorded in the office of the County Clerk of Oneida County, in Liber 798 of Conveyances, at page 15, and in the office of the County Clerk of Herkimer County, N. Y., on the 5th day of November, 1921, in Liber 256 of Conveyances, at page 290), providing for the settlement and adjustment of various claims and demands of the party of the second part against the State, growing out, among other things, of the appropriation by the State for Barge Canal purposes (to wit, for the construction and maintenance of the so-called Hinckley State Reservoir, in West Canada Creek, at Hinckley, N. Y.) of various tracts or parcels of land, aggregating about 1590.754 acres to the party of the second part belonging, situate in the towns of Trenton and Remsen, Oneida County, and Russia and Ohio, Herkimer County, which tracts or parcels of land are more particularly described on Appropriation Maps known as Appropriation Maps Nos. 2859, 2783, 2880, 130-H, 128-H, 129-H, 3820, 3525, 3531, 4728, 3533, 2845, 2897, 3878, 3203, 3209, 3205, 3206, 3524, 3207, 3544, and 3864, and

Whereas said contract provides among other things (including the payment by the State to the party of the second part of the sum of One Hundred Thousand Dollars (\$100,000.00) for the execution and delivery by the party of the first part to the party of the second

WATERWAYS  
MAINTENANCE  
SUBDIVISION

REC'D. MAY 15 1920

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part hereto, of this instrument, and

Whereas the said contract was duly approved by the Superintendent of Public Works and by the Canal Board on the 15th day of June 1921, and

Whereas the State, for the purpose of constructing and maintaining the said Hinckley State Reservoir, heretofore duly appropriated other and additional large tracts of land which, along with the aforesaid lands appropriated from the party of the second part, now constitute the bed and banks of said reservoir, and

Whereas the Canal Board, on the 15th day of June, 1921, duly adopted a resolution in substance and to the effect that the interest, easement or estate in the aforesaid lands acquired by the State for the purpose of constructing and maintaining the said Hinckley State Reservoir and for the use of the water impounded in and by said reservoir, represented, measured and defined by the scheme or plan of impounding and regulation provided for in the aforesaid contract and in this deed, might, in accordance with the terms and provisions of the aforesaid contract, be sold and exchanged for the lands appropriated from the party of the second part as aforesaid, beneficially to the State, and authorizing and directing the Superintendent of Public Works, to execute and deliver to the party of the second part this deed on the execution and delivery by the party of the second part to the party of the first part of the release of claims in said agreement provided for,

NOW THEREFORE, in consideration of the premises, and the execution and delivery by the party of the second part, to the party of the first part hereto, of the release of claims above referred to, the receipt of which is hereby acknowledged, the party of the first part does hereby grant and release, quitclaim and convey to the party of the second part, its successors and assigns, the following described interest, easement and estate in the lands, structures and waters in the towns of Trenton and Remsen, Oneida County, and Russia and Ohio, Herkimer County, acquired by the State as aforesaid, for the purpose of constructing and maintaining the

aforesaid Hinckley State Reservoir, and in and to the use of the waters impounded and to be impounded by said dam to wit:

The party of the first part undertakes and agrees to impound the waters of West Canada and Black Creeks, by means of said dam and reservoir, so long as the State shall continue to maintain said dam, or other dam constructed in the place thereof, to the storage capacity thereof, so far as practicable and consistent with the dominant use of the same for canal purposes, and to discharge the water impounded therein into the natural channel of West Canada Creek below said Hinckley State Reservoir, and above the riparian lands of the party of the second part situated on the West Canada Creek below said reservoir, in the manner set forth in the operating diagram hereto attached, marked "Exhibit B", entitled:

"Department of the State Engineer and Surveyor  
Operating Diagram for the Hinckley Reservoir

Showing the rates in cubic feet per second at which the water is to be discharged therefrom during each third of a month period, the rate to be uniform during each such period, and as shown for the observed elevation of the reservoir water surface at the beginning of each such period.

December 14, 1920."

(The aforesaid operating diagram being, with certain modifications made by agreement between the parties, the same as the operating diagram described in the resolution of the Canal Board and report of the State Engineer hereto attached marked "Exhibit A".)

The party of the first part agrees to install at or near the so-called Hinckley State dam, and to maintain, suitable gages or other measuring appliances or devices for the purpose of accurately determining the quantity and rate of flow of water released by the State from time to time under or pursuant to the provisions of this contract; that the party of the second part shall have access thereto at all times for the purpose of inspecting and reading the same, and that the party of the first part will furnish the party of the second part, from time to time, with copies of any and all records of the quantity and rate of flow of water so released by the State

from said reservoir, made by it from readings or observations of said gages, appliances or devices.

The intent and purpose of the agreement being so to operate the Hinckley State Reservoir, that, after serving the canal uses and purpose of the State, it may, so far as practicable, be fully used for the storage of water and the regulation of the flow of West Canada Creek below the same for the benefit of the power property and riparian lands of the party of the second part on West Canada Creek below the Hinckley State Reservoir,

PROVIDED, HOWEVER, that during periods of extraordinary or unusual drought, flood, or emergency caused by the temporary failure of other sources of water supply for the canal use, or the necessity to maintain, repair or reconstruct any part or portion of the Hinckley State Dam, the Superintendent of Public Works or other officer or board succeeding to his powers and duties, without the payment of any damages to the party of the second part, upon such reasonable notice to the party of the second part, as the circumstances will permit, may temporarily vary or entirely suspend the operation of the said dam and reservoir as described and laid down in the operating diagram aforesaid, during the periods of such extraordinary or unusual drought, flood or emergency caused by the temporary failure of other sources of supply for the canal use, or the necessity to maintain, repair or reconstruct any part or portion of the Hinckley State Dam.

The party of the first part also undertakes and agrees promptly upon written notice given by the party of the second part to the Superintendent of Public Works or other officer or board succeeding to his powers and duties, to transport through the Hinckley State Reservoir, and to pass through the dam and into the natural channel of West Canada Creek, in addition to the flow of water to which the party of the second part is entitled as by the said operating diagram provided, the water stored in a reservoir or reservoirs, whether now owned, hereafter acquired, or constructed by the party of the second part on West Canada or Black Creeks and tributaries above the Hinckley State Reservoir, at substantially the same rate

of flow and, as nearly as practicable, at the same time, as such released, stored water of the party of the second part enters the Hinckley State Reservoir, such rate of flow to be uniform during the ten day periods contemplated by the operating diagram hereto attached marked "Exhibit B", except that during emergencies caused by accident or unforeseen conditions beyond the control of the party of the second part, resulting in temporary inability to operate the steam equipment of the party of the second part, the aforesaid rate of flow shall, so far as practicable, be varied, at the request of the party of the second part, so as to meet such emergencies.

PROVIDED, HOWEVER, and NOT OTHERWISE,

(A) That if at any time between May 1st and June 11th (both inclusive), of any year, the water surface elevation in the Hinckley State Reservoir becomes lower than the elevation necessary for a draft therefrom of five hundred cubic feet per second, as by the operating diagram provided, the party of the second part shall, so far as its storage of water will permit, upon notice by telephone or otherwise from the Superintendent of Public Works or other officer or Board succeeding to his powers and duties, and at a uniform rate to be specified by him, at once pass down from its storage reservoir or reservoirs, into the natural channel of West Canada or Black Creeks above the Hinckley State Reservoir, sufficient water to maintain the water surface elevation in said reservoir necessary for a draft therefrom of five hundred cubic feet per second as by the operating diagram provided, and

(B) That if at any time between June 1st and June 11th (both inclusive), of any year, the water surface elevation in the Hinckley State Reservoir does not reach elevation 1225 (the crest of the spillway of the dam), the party of the second part shall, so far as its storage of water will permit, upon notice by telephone or otherwise from the Superintendent of Public Works or other officer or

board succeeding to his powers and duties, and at a uniform rate to be specified by him, pass down from its storage reservoir or reservoirs into the natural channel of West Canada or Black Creeks above the Hinckley State Reservoir, sufficient water to fill the said reservoir to elevation 1225 by the following 20th day of June, notwithstanding the draft therefrom during the period from June 1st to June 20th (both inclusive) of the quantity or flow as by the operating diagram provided, and

(C) That no part of the natural flow of West Canada Creek and its tributaries above the Hinckley State Reservoir shall be intercepted and stored by the party of the second part during the months of June, July, August or September of any year, except when the water in the said reservoir is flowing over the crest of the spillway, and

(D) That no part of the natural flow of West Canada Creek and its tributaries above the Hinckley State Reservoir shall be intercepted and stored by the party of the second part during the months of October, November or December of any year or the months of January or February of the succeeding year, when the elevation of the water surface in the Hinckley State Reservoir is below 1223, nor when the said water surface is above 1223 and is falling, and

(E) That no part of the natural flow of West Canada Creek and its tributaries above the Hinckley State Reservoir shall be intercepted and stored by the party of the second part during the months of March, April or May of any year when the water surface elevation in the Hinckley State Reservoir is below 1200 (25 feet below the crest of the spillway of the dam), and

(F) That in the event the party of the second part fails to comply with the provisions of this instrument set out in foregoing paragraphs or subdivisions marked "A", "B", "C", "D" and "E" respectively, the Superintendent of Public Works or other officer or board succeeding to his powers and duties, for the purpose of enforcing the aforesaid provisions, shall have free, unobstructed and undisturbed access to and control over, and the right to operate, all

gates, or other apparatus for the impounding of water in, and the discharge thereof from, the reservoir or reservoirs whether now owned or hereafter acquired or constructed by the party of the second part on West Canada or Black Creeks and tributaries above the Hinckley State Reservoir, and

(G) That the party of the second part shall provide, maintain and operate suitable gages which will accurately indicate the flow of water into and from, and the water surface elevation in each of its present or future storage reservoirs, and shall keep accurate records thereof, true and accurate copies of which, if and when requested by the Superintendent of Public Works, or other officer or board succeeding to his powers or duties, shall be promptly mailed to him.

The above limitations on the impounding of water by the party of the second part above the Hinckley State Reservoir shall continue and be in effect only so long as the Hinckley State Reservoir and dam continue to be maintained by the State as hereinbefore provided.

Nothing herein contained shall be construed as vesting the party of the second part with the right to make use of any part or portion of the waters impounded by or flowing over the State Dam at Hinckley for the generation of power at or under the head available at said dam, nor to prevent the State from selling, leasing or otherwise disposing of the same in such a manner as not to conflict with the plan of regulation of the discharge and the flow of water as in this instrument provided.

Nothing herein contained shall be construed to change, alter or modify in any respect the provisions of the contract between the Consolidated Water Company of Utica, N. Y., and the party of the second part, dated March 10th, 1905, or any amendments thereof or any contract substituted therefor, the provisions of said contract obligating the Consolidated Water Company to contribute to the flow of said stream from its storage reservoirs having been taken into

consideration in devising and preparing the aforesaid operating diagram. The purpose and intent of this agreement being to leave the relations of said companies and their respective rights under the said contract the same as if this contract had not been entered into nor the State's dam and reservoir constructed.

Nothing herein contained shall be construed to change, alter or modify in any respect the provisions of the contract between the Consolidated Water Company of Utica, N. Y., and Matthew A. Heeran, Special Examiner and Appraiser of the State of New York, acting for and on behalf of the State of New York, dated December 27, 1917.

To have and to hold the above granted rights, easements and estate to the party of the second part, its successors, grantees and assigns, as and for the term or period of time above provided.

IN WITNESS WHEREOF, the party of the first part has caused this instrument to be executed by the Superintendent of Public Works, and his seal to be affixed thereto the day and year first above written.

THE STATE OF NEW YORK

(Seal)

By

Charles L. Cadle

Superintendent of Public Works  
of the State of New York.

STATE OF NEW YORK, )  
COUNTY OF ALBANY. ) SS:

On this 16th day of November, 1921, before me, the subscriber, personally came Charles L. Cadle, Superintendent of Public Works of the State of New York, to me known to be the person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for and on behalf of the State of New York.

Alfred M. O'Neill

Notary Public.

EXHIBIT A

HINCKLEY STATE DAM.

The State Engineer and Surveyor presented the following report:

To the Honorable The Canal Board of the State of New York:

Gentlemen:- I desire to direct the attention of the Board to the claims of the Utica Gas and Electric Company against the State, arising from the construction of the Hinckley reservoir. This company owns and operates a hydro-electric power station on West Canada Creek about five miles below the Hinckley dam, and approximately one-fourth mile upstream from the point where water from the Hinckley reservoir is diverted by the State through a feeder to the Rome summit level of the Barge Canal.

During the period 1911-1914 the State appropriated from the Utica Gas and Electric Company for the reservoir site, 32 parcels of land, embracing approximately 1,600 acres, bordering upon West Canada Creek and Black Creek. I am convinced that the property was acquired by the Utica Gas and Electric Company and its predecessor, The Trenton Falls Power Company, for the purpose of constructing a reservoir at or near the site where the State's reservoir has been built, and that the project was conceived and the acquisition of the land accomplished before the State committed itself to the project of constructing its reservoir. I am informed that the company's investment for this purpose exceeds \$250,000. I am also informed that the Utica Gas and Electric Company owns storage reservoir sites upstream from the Hinckley reservoir and owns riparian property between the Hinckley dam and the power plant at Trenton Falls.

The Utica Gas and Electric Company filed 21 claims against the State, aggregating \$750,000. for the value of the land appropriated and for consequential damages to its remaining property and alleges that the property appropriated has a special value by reason of its adaptability for reservoir sites.

The State's reservoir is approximately three times the size of the reservoir projected by the Utica Gas and Electric Company. It is, of course, apparent that if the control of the discharge of the

water stored in the reservoir built by the State was exercised without regard to canal uses and purposes, and solely for the benefit of the claimant, it would be of greater value to the claimant than the storage that would have been available if the Utica Gas and Electric Company project had been carried to completion, with a further expenditure upon its part of approximately \$500,000. for the dam. But the primary and dominant use and purpose of the reservoir is the canal use and purpose; and, while the Utica Gas and Electric Company has the use of all the water let down from the reservoir for the supply of the canal (its plant being situated between the reservoir and the point where the water is diverted by the State), the exercise of control over the discharge of the stored water by the State without regard to the interests of water power users and solely for canal purposes, would not considerably benefit the claimant. The size of the reservoir and the extent and character of the watershed above it are such, however, as to permit the regulation of the stream in such manner that a very considerable benefit can be secured to the Utica Gas and Electric Company and other users of water power on West Canada Creek without impairing the use of the reservoir for the canal.

We have made careful studies of the records of the flow of the stream, both before and after the dam was built, and of the rainfall records for the past ninety years, and have compiled a diagram showing the manner in which the control of the discharge of the water might be exercised to secure the maximum practical use of the water (first and primarily) for canal purposes, and (second) for power purposes. A copy of the diagram showing the proposed method of operation is hereto attached, entitled:

"Department of State Engineer and Surveyor, Hinckley Reservoir Operating Diagram, uniform draft to be maintained throughout each third of a month determined by observing reservoir water surface elevation at beginning of each third month period. April 16, 1919."

If the stream is regulated by the State in approximately the

manner that our studies indicate is feasible, and such regulation is secured to the claimant by contract or otherwise, its value will exceed, or at least equal, the value of the land appropriated from the Utica Gas and Electric Company and all other damages suffered by the said company by reason of the aforesaid appropriation and the construction by the State of the Hinckley dam and reservoir.

Several conferences have been had between representatives of the claimant and representatives of the Attorney-General's Department and of this department respecting the adjustment of these claims. It is understood that if such regulation is carried into effect and successfully operated for a period of one year, and arrangements are thereafter made between the parties for its continuation, the claimant will release the State from all its claims including claims for the value of the land appropriated, and, further, will forthwith execute and deliver to the State a stipulation waiving interest on its claims during the one year period during which the aforesaid method of regulation is undergoing a practical test as to its efficacy.

I believe that the development of power at the Hinckley dam is impracticable, on account of the widely varying head, and because such use of the water at the dam is inconsistent and in conflict with the necessity to conserve the water for canal uses.

I am informed that it is the opinion of the Attorney-General that an engagement on the part of the State to regulate the stream in the interests hereinbefore stated is not inhibited by section 16 of the Barge Canal Act. If some such arrangement with the Utica Gas and Electric Company is not made, and it sees fit to prosecute its claim, there is nothing that can prevent the recovery by the claimant of the value of the land appropriated.

I am presenting the situation to the Board for such action as is warranted.

Dated, August 6, 1919.

Respectfully submitted,

FRANK M. WILLIAMS,

State Engineer and Surveyor.

By the Attorney-General:

Resolved, That this Board does hereby approve the plan outlined in the foregoing report of the State Engineer, dated August 6, 1919, for the conduct of a test to determine the results obtainable from the control and regulation of the flow of the West Canada creek at the so-called Hinckley State dam, as therein provided, and does hereby authorize and direct the Superintendent of Public Works and the State Engineer to take the necessary steps and measures to carry the said plan into effect, provided the Utica Gas and Electric Company shall execute and deliver to the Superintendent of Public Works an instrument, approved as to form by the Attorney-General, waiving interest on its various claims against the State growing out of the appropriation of lands, or interest in lands, for the construction of the Hinckley State dam and reservoir, during the period of one year during which the aforesaid test is being conducted.

On calling the ayes and noes the resolution was adopted by the following vote: Ayes, Messrs. Hugo, Wells, Newton, Williams, Wals - 5; Noes - 0.

(Exhibit B, Operating Diagram for the Hinokley Reservoir, attached)  
(Blue Print.)

(Endorsed)

DEED

Releasing interest, easement  
and estate in lands, waters  
&c. Contract No. 50.

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The People of the State of New York

to

Utica Gas and Electric Company.

## STATE OF NEW YORK

Secretary of State's Office

Recorded Nov 18 1921 Vol. 4 Deeds

by Supt. of Public Works at Page 242.

John J. Lyons

Secretary of State

Examined and compared with the original.

*Harold C. Cressler*  
 .....  
 Deputy Secretary of State.

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THIS INDENTURE made this 22nd day of November nineteen hundred and twenty-one, BETWEEN Charles L. Cadle, Superintendent of Public Works of the State of New York, for THE PEOPLE OF THE STATE OF NEW YORK, party of the first part, and Charles F. Hammond, residing in the Village of Seneca Falls, Town of Seneca Falls, County of Seneca, and State of New York, party of the second part, WITNESSETH:

WHEREAS, the State of New York did heretofore, pursuant to the provisions of Chapter 147 of the Laws of 1903, and acts amendatory thereof and supplemental thereto, by Map No. 3174, Barge Canal Contract No. B, appropriate a certain tract or parcel of land, the property of the party of the second part, including the property hereinafter mentioned and described, and,

WHEREAS, the Canal Board of the State of New York, did heretofore and on the 19th day of January 1921, duly adopt a resolution of which the following is a copy, to wit:

"WHEREAS, the State of New York formerly appropriated for Barge Canal purposes the lands shown on Map No. 3174, Barge Canal Contract No. B, and