

130449

Re-Power contract
Coniagas

November 7, 1933

750 horsepower, from the time at which the peak of 800 horsepower or more was reached.

The contract was made, as may be remembered, in two parts. The first part was executed, and was on a kilowatt hour basis. The second part was on a peak horsepower basis, and was unsigned, but the first contract contained a provision that by appropriate notice, the Reduction Company could transfer itself to the operation of the second contract. This notice was given either at the time or shortly after the commencement of the delivery of power. The second contract was on the printed form, with certain changes and interlineations in ink.

Chief among the changes in the printed form, was the deletion by means of red ink, of the clause providing for automatic increase of the firm power with the demand of the consumer. It may have been the intention of the parties, as shown by the deletion of this clause, that the firm power did not automatically increase. In Mr. Tilley's view, it is at least strongly arguable that they did not succeed in giving effect to that intention. His view is that any other construction than the automatic increase of firm power does violence to the balance of the contract.