



International Joint Commission
Commission mixte internationale

April 30, 1999

Mr. David Preston
Director, U.S. Transboundary Division (URE)
Department of Foreign Affairs and International Trade
Lester B. Pearson Building
125 Sussex Drive
Ottawa, ON K1A 0G2

Dear Mr. Preston:

The Commission refers to your letter of December 9, 1998, transmitting an application by the Buffalo and Fort Erie Public Bridge Authority for an IJC Order of Approval for the Peace Bridge Capacity Expansion Project: the construction of a multi-span, multiple steel arched bridge over the Niagara River and Black Rock Canal, between Fort Erie, Ontario and Buffalo, New York.

After due consideration of this matter pursuant to the terms of the Boundary Waters Treaty of 1909 and the Commission's Rules of Procedure, the International Joint Commission has issued the attached Order of Approval for this project.

The Commission wishes to note that, during its public hearings a number of people expressed opposition to the bridge, particularly from aesthetic and planning perspectives. The Commission can only consider the application that has been submitted to it through the U.S. and Canadian governments. It is not within our authority to review publicly presented alternatives.

The Commission also wishes to note that it has been informed by the Applicant that, pursuant to legislation in Canada and the United States, under certain circumstances, assets of the Buffalo and Fort Erie Public Bridge Authority in Canada shall become the property of the Crown or such jurisdiction, authority or agency as the Governor in Council shall designate and that assets of the Buffalo and Fort Erie Public Bridge Authority in the State of New York shall be under such jurisdiction, authority or agency as the legislature of the State of New York may designate. The Commission assumes that the existing bridge and the new bridge will remain subject to its Orders of Approval regardless of ownership.

A similar letter is being sent by the U.S. Secretary of the Commission to the U.S. Department of State. A copy of the Order is also being transmitted directly to the applicant.

Sincerely,

Murray Clamen
Secretary
Canadian Section

Enclosure

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY FOR APPROVAL TO MODIFY THE EXISTING PEACE BRIDGE OVER THE NIAGARA RIVER BETWEEN FORT ERIE, ONTARIO, AND BUFFALO, NEW YORK, AND TO CONSTRUCT A PARALLEL MULTI-SPAN, MULTIPLE STEEL ARCH BRIDGE.

ORDER OF APPROVAL

April 30, 1999

WHEREAS the Niagara River is a boundary water within the meaning of Article III of the Boundary Waters Treaty of 1909, hereinafter called the Treaty, between Canada and the United States of America;

WHEREAS the International Joint Commission, hereinafter called the Commission, was informed that the Buffalo and Fort Erie Public Bridge Authority, hereinafter called the Applicant, was created by the State of New York to be a body corporate and politic, constituting a public benefit corporation, with the power, among other things, to enlarge the existing bridge, whose construction was approved by the Commission in its Order of Approval of October 6, 1925, and to construct an additional, independent and adjacent bridge, together with such incidental structures as shall be necessary and convenient for approaches, and to maintain, reconstruct, repair, replace and operate any properties acquired by it;

WHEREAS legislation has been enacted in Canada and in the United States with respect to the Buffalo and Fort Erie Public Bridge Authority which acquired, on terms specified in the legislation, among other things, the bridge constructed pursuant to the Commission's Order of Approval of October 6, 1925;

WHEREAS, in accordance with the Treaty and the Commission's Rules of Procedure, on December 9, 1998, the Canadian Department of Foreign Affairs and International Trade and the United States Department of State sent to the Commission an application dated November 25, 1998, from the Applicant for approval to construct a multi-span, multiple steel arch bridge over the Niagara River and Black Rock Canal between Fort Erie, Ontario and Buffalo, New York;

WHEREAS construction of the new bridge will require modifications to the piers of the

existing bridge, the Applicant wrote a letter to the Commission on March 2, 1999, which confirmed that its application included a request to amend the Commission's Order of Approval of October 6, 1925, for the existing bridge, in so far as that is required for modification of the existing bridge and construction of the new bridge;

WHEREAS the Applicant has informed the Commission that it has obtained domestic approvals required in Canada and in the United States from the New York State Department of Environmental Conservation, the U.S. Army Corps of Engineers, the U.S. Coast Guard, the New York State Department of State, the Ontario Ministry of Environment and Energy, the Ontario Ministry of Natural Resources, and the Canadian Department of Fisheries and Oceans;

WHEREAS the Applicant has obtained approval from the International Boundary Commission;

WHEREAS notices that the application had been filed were published in accordance with the Rules of Procedure of the Commission;

WHEREAS Statements in Response to the application received by the Commission and a Statement in Reply from the Applicant are on file and available for examination at the offices of the Commission in Ottawa and Washington;

WHEREAS pursuant to published notices public hearings were held in Niagara Falls, Ontario on the evening of January 27, 1999, and at Amherst, New York, on the evening of January 28, 1999, at which all persons attending and interested were afforded an opportunity to make presentations and present evidence to the Commission with respect to this matter. Copies of the transcripts of the public hearings are on file and available for examination at the offices of the Commission in Ottawa and Washington;

WHEREAS pursuant to the Treaty the Commission must require, as a condition of its approval that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the boundary which may be injured thereby;

WHEREAS the Commission has been informed that construction of the new bridge will raise levels upstream in the Niagara River and on Lake Erie temporarily by less than 10 millimetres during construction under average annual discharge conditions (5860 cubic metres per second), and that this impact will dissipate within approximately one year after the cofferdams required for construction are removed;

WHEREAS the Commission was informed that under average annual maximum daily discharge conditions (7100 cubic metres per second) the effect of the new bridge will be to

lower water surface elevations at the upstream end of the hydraulic model by 1 millimetre from existing conditions;

WHEREAS the Commission has determined that temporary water level impacts under average annual discharge conditions will not significantly increase the potential for upstream shoreline property or other damages;

WHEREAS the Commission has been informed that construction of the new bridge and construction which Ontario Power Generation proposes to undertake above the Falls in the Niagara River with respect to redevelopment and expansion of its water diversion facilities in the river will not have any cumulative effects on water levels or flows in the Niagara River or on Lake Erie, beyond the temporary 10 millimetre increase referred to above;

WHEREAS the Commission has been informed that suitable measures have been developed and will be implemented during and after construction to avoid, minimize or compensate for adverse environmental effects of the project, including on fish habitat, water quality, migratory flyways, and concerning ice transport;

WHEREAS, in response to concerns raised during the public hearings regarding impacts to water velocities and their effect on recreational boating, the Commission was informed that construction of the second Peace Bridge will have no impact on either the average river velocity or the existing peak water velocity;

WHEREAS the U.S. Coast Guard and the Canadian Coast Guard have considered the effects of the proposed project on navigation, including clearances of the bridge over the Niagara River, and have issued permits approving the proposed project.

NOW THEREFORE THIS COMMISSION APPROVES the construction, maintenance and operation, by the Applicant, of a second bridge span crossing the Niagara River between Fort Erie, Ontario, and Buffalo, New York, and of modifications to the existing Peace Bridge, described in the documents that have been submitted by the Applicant to the Commission, subject to the following conditions:

1. The second span shall be located upstream of the existing span, known as the "Peace Bridge", with a separation between the bridge decks of approximately 24 metres, and its five piers shall be aligned with those supporting the existing span, as shown on a drawing entitled "River Piers General Arrangement and Notes" (Sheet No. 169 of 416 of Construction Plans for the Second Peace Bridge, dated June 1, 1998.)
2. The outer geometry of the five piers of the second span, including the connection of the in-river piers of the new span to the in-river piers of the existing span (from nose

to tail) and the hydraulic mitigation for the shoreline piers, shall be as shown on Sheet Nos. 170, 173, 176, 177, 180, 181, 185, 190, 191, 202, and 203 of Construction Plans for the Second Peace Bridge, dated June 1, 1998, and as modeled in the "Hydrotechnical Report for Second Peace Bridge", dated November 1998.

3. The outer geometry of cofferdams used during construction shall be as shown on Sheets 204-206 of Construction Plans for the Second Peace Bridge, dated June 1, 1998, and as modeled in the "Hydrotechnical Report for Second Peace Bridge", dated November 1998. Construction of near shore cofferdams shall not occur between March 31 and July 1 in order to protect fish habitat during fish spawning periods. No more than two cofferdams shall be in place in the river at any time in order to limit potential water level increases upstream of the bridge during construction.
4. Fish habitat mitigation shall be undertaken in accordance with agency programs in both countries.
5. The Applicant, in coordination with the U.S. National Oceanic and Atmospheric Administration and Environment Canada, shall install as soon as practicable, but no later than the start of in-river construction, and shall maintain for ten years two water level gages in the Niagara River downstream of the proposed structure, one near each shore to address superelevation effects. Acceptable locations include the former Peace Bridge gage site on the Bird Island Pier, a Broderick Park site on Squaw Island on the U.S. side, the former Water Survey of Canada site on the shore behind the Ming The restaurant, or a site immediately downstream of the Peace Bridge on Niagara Parks Commission property. Data from these gages shall be made available to these agencies in a format that permits real-time access and ready distribution, quality control, and archiving. Using the data from these and other gages, the Applicant shall submit two reports to the Commission and its International Niagara Board of Control, hereinafter called the Board. The first report, which shall be submitted following installation of the third cofferdam, shall address impacts of construction to date on water levels. The second report, which shall be submitted within one year following completion of construction, shall address impacts of the completed structure on water levels. The Board will monitor data from these gages thereafter for the remainder of the ten-year period to assess water level conditions in the vicinity of the Peace Bridge. Before the ten-year period is completed, the Board will make recommendations to the Commission on the need for further monitoring.
6. The Applicant shall deliver to the Commission upon receipt and prior to the commencement of construction copies of any required U.S. or Canadian federal, state, or provincial approvals that have not been delivered as of the date of this Order of Approval.

7. The Applicant shall provide the Commission with written assurance by September 30, 1999, that any potential Year 2000 (Y2K) computer problems associated with construction in the river that could affect water levels, or associated with construction practices intended to protect water quality or wildlife habitat, have been considered and addressed.
8. Construction affecting water levels and flows shall occur in accordance with the time schedule presented to the Commission by the Applicant, beginning this year and concluding by December 31, 2003.
9. The Applicant shall notify the Commission and its International Niagara Board of Control in advance of any changes to the structure that, if they were modeled with the SMS/FESWMS hydraulic model on which the November 1998 "Hydrotechnical Report for Second Peace Bridge" is based, would cause any change (0.001 metre or greater) in water levels under average annual discharge conditions (5860 cubic metres per second).
10. The Applicant shall consult with the Commission if, during construction, projected average monthly water levels on Lake Erie with a 5% exceedence probability, as determined by the coordinated forecasts of Environment Canada and the U.S. Army Corps of Engineers each month for the upcoming six-month period, are within 0.2 metre of the maximum average monthly water level of 175.04 metres. Under such conditions, the Applicant shall recommend to the Commission within one month possible mitigation to limit construction impacts on water levels. The Commission shall review the proposals and determine what mitigation the Applicant shall provide.
11. The Applicant shall be responsible for the disposition of claims for physical injury or damage to persons or property occurring in Canada or the United States in connection with the construction, maintenance and operation of the works approved herein and for the satisfaction of any such claims that are valid in accordance with the appropriate laws of Canada and the United States.
12. The Commission retains jurisdiction over the subject matter of the application and after giving such notice and opportunity to all interested parties to make representations as the Commission deems appropriate may make further order or orders relating thereto as may be necessary in the judgment of the Commission.
13. The Applicant shall confirm to the Commission, prior to starting construction, that financial arrangements are in place to allow it to complete the new bridge.

14. This approval will terminate:

(A) ninety (90) days after the date of signing of this Order, unless within that time the Applicant informs the Commission in writing that it accepts all the conditions set forth herein;

(B) December 31, 2003, unless the structure is essentially complete.

15. This Order is subject to review every twenty-five (25) years following the date of this Order.

Signed this 30th day of April, 1999



Thomas L. Baldini
United States Chairman



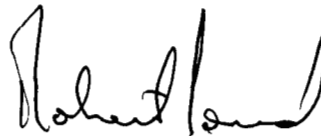
Susan B. Bayh
Commissioner



Francis Murphy
Commissioner



Alice Chamberlin
Commissioner



Robert Gourd
Commissioner