



125 Sussex Drive  
Ottawa, Ontario  
K1A 5G2

December 21st, 1998

Mr. Murray Clamen  
Secretary, Canadian Section  
International Joint Commission  
100 Metcalfe Street  
Ottawa, Ontario K1P 5M1

Dear Mr. Clamen,

I have the honour to inform you that the Governments of Canada and the United States have agreed, pursuant to Article IX of the Boundary Waters Treaty of 1909, to request the Commission to examine into and report upon matters concerning the proposed redevelopment and expansion of Ontario Hydro's water diversion facilities in the Niagara River.

The Governments of Canada and the United States (the Governments) agree that the 1950 Niagara River Diversion Treaty is a special agreement within the meaning of Article XIII of the 1909 Boundary Waters Treaty and, therefore, that the approval of the IJC under Article III of the Boundary Waters Treaty for uses, obstructions and diversions provided for under the Niagara River Diversion Treaty is not necessary.

Pursuant to Article II of the Niagara River Diversion Treaty, on October 10, 1950, the Governments requested the IJC to make recommendations as to the nature and design of certain remedial works in the Niagara River. The IJC made such recommendations on May 5, 1953, which included among the remedial works to be constructed a Chippawa-Grass Island pool control structure and two crestfills. Both governments approved these recommendations and construction of the works was duly completed in 1957.

Subsequently, the IJC issued Orders of Approval under Article III of the Boundary Waters Treaty, including an Order of August 15, 1961, an Order of May 17, 1963, and a Supplementary Order of June 10, 1965, which resulted in, respectively, alterations to the pool control structure, alterations to a shoal located in the Niagara River near Tower Island to prevent ice obstructions and the construction of a ramp from the pool control structure to Tower Island.

The Governments agree that these Orders of Approval were made in the context of the Report and Recommendations under Article II of the Niagara River Diversion Treaty and consequently agree to treat them as Recommendations under Article IX of the Boundary Waters Treaty. The Governments hereby formally approve those recommendations

and request the Commission to continue carrying out its existing responsibilities with respect to the remedial works.

The Governments further agree that future questions put to the International Joint Commission with respect to these remedial works will be referred pursuant to Article IX of the Boundary Waters Treaty.

Accordingly, in view of Ontario Hydro's latest plans to redevelop and expand its generating facilities in the Niagara River, the Governments have decided to refer to the Commission the Ontario Hydro Project for recommendations under Article IX of the Boundary Waters Treaty.

In the conduct of its work, the Commission is requested to consider all effects that Ontario Hydro's proposed Project may have on the functioning of the remedial works.

Where the Commission considers it helpful or necessary to its work, the Commission should also consider other transboundary effects of the Project, including environmental effects.

Based on its findings the Commission shall make recommendations to Governments four months from the time that this Reference is presented to the Commission.

In the conduct of its investigation and the preparation of its report, the Commission shall make use of information and technical data available to the Governments and that may become available to the Governments during the course of its investigations. In addition, the Commission may seek the assistance, as required, of specially qualified personnel in the two countries.

The Commission shall develop, as early as practicable, cost projections for the study under reference, for the information of the Governments.

An identical letter is being sent to the Secretary of the United States Section of the Commission by the U.S. State Department.

Yours sincerely,

  
David Preston  
Director  
U.S. Transboundary Division