

10 June 1963

Dear Mr Martin,

On 11 April 1963, Mr A. Alexis Johnson, Deputy Under Secretary of State, United States Department of State forwarded to the United States Section of this Commission, the Application of the Power Authority of the State of New York for approval of the removal of a shoal located in the Niagara River upstream from the American Falls and entirely on the United States side of the International Boundary and requesting this Commission to deal with the Application as expeditiously as possible.

I now have the honour of transmitting to the Government of Canada, in accordance with the terms of Article XI of the Boundary Waters Treaty of 1909, a duplicate original of the Commission's "Order of Approval in the matter of the Application of the Power Authority of the State of New York for approval of excavation to reduce the elevation of a shoal in the Niagara River near Tower Island", dated 17 May, 1963, signed by all six Commissioners.

Yours sincerely,



D.G.Chance
Secretary

Secretary of State

for External Affairs,

Ottawa.

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF THE POWER AUTHORITY OF THE STATE OF NEW YORK FOR APPROVAL OF EXCAVATION TO REDUCE THE ELEVATION OF A SHOAL IN THE NIAGARA RIVER NEAR TOWER ISLAND.

ORDER OF APPROVAL

WHEREAS the Niagara River is a boundary water within the meaning of the Preliminary Article of the Boundary Waters Treaty which was signed on 11 January 1909; and

WHEREAS in accordance with Article II of the Treaty concerning the Diversion of the Niagara River which was signed on 27 February 1950, certain remedial works necessary to enhance the beauty of the Falls by distributing the waters so as to produce an unbroken crestline on the Falls, recommended by the International Joint Commission, on 5 May 1953, were approved by the Governments of the United States and Canada on 21 July 1953 and were constructed under the supervision of the International Joint Commission; and

WHEREAS by an Order dated 15 August 1961, the Commission approved the construction, maintenance and operation by The Hydro-Electric Power Commission of Ontario of additional remedial works on the Canadian side of the International Boundary in the Niagara River designed to improve control of the levels of the Chippawa-Grass Island Pool and to facilitate the passage of ice on the Canadian side; and

WHEREAS experience during the winters of 1961-2 and 1962-3 has indicated that the passage of ice along the United States side of the Chippawa-Grass Island Pool is impeded during heavy ice runs by a shoal on the United States side of the International Boundary, resulting in adverse effects upon the control of Pool levels; and

WHEREAS in accordance with Article III of the Boundary Waters Treaty, the Power Authority of the State of New York has applied to the Commission, through the Government of the United States, under date of 8 April 1963, for approval of construction operations, including construction of a temporary cofferdam, to reduce the elevation of the said shoal to 555.0 feet, United States Lake Survey 1935 Datum; and

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

WHEREAS the Commission, in accordance with its Rules of Procedure 29, reduced the periods of time stated in Rules 9, 10, 11 and 20; and

WHEREAS no Statements in Response to the Application were filed with the Commission; and

WHEREAS The Hydro-Electric Power Commission of Ontario, jointly with the Applicant, submitted a Brief dated 24 April 1963 fully supporting the Application for the Commission's approval; and

WHEREAS pursuant to published notices, a hearing was held at Niagara Falls, New York, on 8 May 1963, at which all persons interested were afforded convenient opportunity of presenting evidence to and being heard before the Commission; and

WHEREAS at the hearing testimony was presented on behalf of the Applicant, describing the nature and purpose of the proposed construction operations and their anticipated effects; and

WHEREAS The Hydro-Electric Power Commission of Ontario, having indicated in the said joint Brief its reasons for fully supporting approval of the Application, acknowledged at the hearing that it was willing to be associated with the Applicant in complying with any conditions of approval which the Commission considered necessary and appropriate; and

WHEREAS no one appeared at the hearing to offer any objections to approval of the Application by the Commission; and

WHEREAS at the hearing Counsel for the Government of the United States and Counsel for the Government of Canada stated that the said Governments had no objection to approval of the Application by the Commission; and

WHEREAS the Commission concludes that removal of the said shoal will permit a more uniform passage of ice thus reducing the risk of damage in and along the river above Niagara Falls, facilitating the use of all water available for power purposes under the said Treaty of 1950, and, during ice runs, improving the control of the levels of the Chippawa-Grass Island Pool within the established range; and

WHEREAS the Commission concludes that the removal of the said shoal is not likely to have an appreciable effect on ice conditions and water levels in the river below the Falls; and

WHEREAS the Commission concludes that removal of the said shoal in the manner proposed will not impair the scenic beauty of the Niagara River and Falls;

NOW THEREFORE THIS COMMISSION ORDERS AND DIRECTS that the construction operations specified in the said Application of the Power Authority of the State of New York, dated 8 April 1963, to reduce the elevation of a shoal located in the Niagara River on the United States side of the International Boundary, near Tower Island, to elevation 555.0 feet, United States Lake Survey 1935 Datum, and in the plans and specifications attached thereto be and the same are hereby approved, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any non-compliance with the requirements of the said Niagara Diversion Treaty of 1950 regarding the flow of water over the Falls or, except to the extent provided in condition (b) herein, with the objectives specified in the Commission's Report of 5 May 1953, to the Governments of Canada and the United States regarding the distribution of flows and the level of the Chippawa-Grass Island Pool.
- (b) The construction operations shall be so planned and carried out as to reduce the flows over the American Falls by the least practicable amount and for the shortest practicable period of time.
- (c) The said construction operations shall be carried out under the general supervision of the International Niagara Board of Control, acting on behalf of the Commission, and that Board will report to the Commission at such times as the Commission may request or as the Board may consider appropriate and, in any event, a final report will be submitted when the Board considers that the operations have been satisfactorily completed.
- (d) Acceptance by the said Board of Control of the general plans for the construction operations and the schedule of construction shall be obtained before construction is undertaken.
- (e) In the event of ice conditions which are likely to cause damage in or along the river, the Applicant and The Hydro-Electric Power Commission of Ontario shall so operate the Chippawa-Grass Island Pool control structure and any other facilities available to them, or either of them, as


to minimize the total possible adverse effects of the said ice conditions, considering all interests involved. The Applicant and The Hydro-Electric Power Commission of Ontario shall keep the said Board of Control currently informed in this respect.

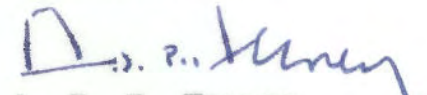
(f) The Applicant shall be responsible for the disposition of claims for physical injury or damage to persons or property in connection with the construction operations hereby approved, both before and after completion, and for the satisfaction of any such claims that are valid.


(g) The Applicant shall comply with the terms of such further Order or Orders relating to the subject matter of this Application as may be made by the Commission pursuant to the final paragraph of this Order.

AND IT IS FURTHER ORDERED that the Commission will retain jurisdiction over the subject matter of this Application and may, after giving such notice and opportunity to all interested parties to make representations as the Commission deems appropriate, make such further Order or Orders relating thereto as may be necessary in the judgment of the Commission.

Signed this 17th day of May 1963.


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A. D. P. Heeney


Eugene W. Weber


D. M. Stephens


Charles R. Ross


René Dupuis