

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATION OF ONTARIO HYDRO AND THE POWER AUTHORITY OF THE STATE OF NEW YORK FOR APPROVAL OF THE OPERATION AND MAINTENANCE ON A TEST BASIS OF A BOOM NEAR THE OUTLET OF LAKE ERIE TO REDUCE THE DISCHARGE OF ICE INTO THE NIAGARA RIVER.

ORDER OF APPROVAL

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

In accordance with Article III of the Boundary Waters Treaty, Ontario Hydro and the Power Authority of the State of New York, hereinafter referred to as the Applicants, under date of 2 March 1964 submitted, through Governments, complementary Applications to the International Joint Commission for its approval of the construction and operation, on a test basis, of a boom in Lake Erie near the entrance to the Niagara River;

The Commission, by Order of Approval dated 9 June 1964, approved, on a trial basis, the construction and operation by Ontario Hydro and the Power Authority of the State of New York of a boom near the outlet of Lake Erie to reduce the discharge of ice into the Niagara River, the said approval expired on 15 May 1965;

By Supplementary Order of Approval, dated 25 May 1965, the Commission amended the Order of Approval by providing for completion of boom disassembly by 15 May and extending the expiration date of the said Order to 15 May 1966;

By decision dated 20 April 1966, the Commission extended the termination date of the said Order, as amended to 15 May 1967;

By further decision dated 12 July 1967, the Commission extended the expiration date of the said Order, as amended, to 15 May 1972;

By further Supplementary Order of Approval, dated 3 October 1969, the Commission amended the Order of Approval and approved the concept of a flexible date for opening and closing the ice boom, provided for consultation by the International Niagara Board of Control, hereinafter referred to as the Board, as to the opening date and extended the expiration date of the said Order, as amended, to 15 May 1970;

By further decision dated 6 August 1970, the Commission extended the termination date of the said Order, as amended, to 15 May 1975;

By further decision dated 21 April 1975, the Commission extended the termination date of the said Order, as amended, to 15 May 1980;

By Application dated 13 November 1979, the Applicants petitioned the Commission for an extension of the termination date for an indefinite period, subject to existing conditions;

In accordance with the Commission's Rules of Procedure, the Commission received Statements in Response, and Statements in Reply, it gave due notice and held public hearings on July 8, 9 and 10, 1980 at Niagara Falls, Ontario, Buffalo, New York and Hamburg, New York, respectively, and received evidence from the Board, the Applicants, interested public officials, private citizens and corporations;

The Board stated that the ice boom has functioned as intended and proven to be effective and beneficial to the many interests along the Niagara River without a measurable detriment to others, that they had not received any conclusive information that would substantiate the allegation that the ice boom lengthens the ice season or increases erosion of Lake Erie beaches, that no other method of ice control can perform as satisfactorily as the boom and that since weather and ice conditions vary widely from year to year, the flexible date of opening the ice boom has proven its merit;

After careful consideration of the evidence, the Commission concludes that citizen and local Governmental concern remains high in the Buffalo region that the late removal of the ice boom causes ice to be retained longer on Lake Erie than would have occurred without the boom and extends the period of colder temperatures in the region; the best expert evidence to date indicates that that the ice boom does not have a significant influence on the weather; however, due to a scarcity of data, there remains some uncertainty; until such time as more conclusive evidence is made available, there will continue to be debate and uncertainty;

Consistent with the Commission's obligation under Article VIII of the Boundary Waters Treaty, "... the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.", a monitoring program should be maintained for a sufficient period of time to enable all interested parties to ascertain with greater certainty the effects of the boom on weather conditions in the Buffalo region; part of the program should be a further analysis of all waterfront and other temperature data;

In addition, it would appear to be useful to open and remove the ice boom at the earliest possible date consistent with the purpose for which the Application has been approved.

NOW THEREFORE THIS COMMISSION ORDERS AND DIRECTS THAT THE OPERATION AND MAINTENANCE BY THE APPLICANTS OF A BOOM IN LAKE ERIE NEAR THE ENTRANCE TO THE NIAGARA RIVER BE AND THE SAME IS HEREBY APPROVED ON A TEST BASIS, SUBJECT TO THE FOLLOWING CONDITIONS WHICH SHALL SUPERSEDE THE CONDITIONS OF THE ORDER OF APPROVAL DATED 9 JUNE 1964, AS AMENDED.

(a) The boom shall be located in Lake Erie at the head of the Niagara River about two miles upstream from the Peace Bridge, in an area where the water velocities are relatively low.

(b) The boom shall consist of a series of floating sections anchored at intervals to the bed of the river; shall be equipped with devices to facilitate the prompt removal of any or all sections of the boom should the need arise for such actions; and shall be equipped with suitable markers as may be prescribed by United States and Canadian Coast Guard regulations.

(c) Before commencing installation of the boom, the Applicants shall obtain the Commission's approval of the plans for the operation and maintenance of the boom, including provisions for the emergency opening and complete removal of the boom, such plans shall be submitted to the Commission through its International Niagara Board of Control.

(d) Installation of the floating sections of the boom shall not commence until the water temperature at the Buffalo water intake reaches 4°C (39°F) or such other date as may be communicated to the Applicant by the Commission, through the Board, having regard to the weather and other conditions prevailing in that year.

(e) All floating sections of the ice boom shall be opened by April 1; provided that the Commission may determine a later opening date if in its judgment the requisite conditions set forth in guidelines approved by the Commission are not met. Complete disassembly and removal of all remaining floatation equipment shall be completed within two weeks thereafter. Notwithstanding any other provisions of this Order, the Commission retains the right to require opening or removal of all or any part of the boom at any time because of the existence of an emergency situation.

(f) The Applicants shall be responsible for the operation and maintenance of the boom, including its removal in whole or in part, so as to minimize possible adverse effects to all interests as compared with preproject conditions.

(g) In order that the Board may be in a position to provide informed advice to the Commission as to the opening date of the boom, the Board shall consult each year with representatives

of the Applicants and such interests as the Board considers may be affected by the opening of the boom.

(h) Ontario Hydro shall be responsible for the disposition of claims for physical injury or damage to persons or property occurring in Canadian territory in connection with the maintenance, operation, installation or removal of the said boom or any part of it, and for the satisfaction of any such claims that are valid.

(i) The Power Authority of the State of New York shall be responsible for the disposition of claims for physical injury or damage to persons or property occurring in United States territory in connection with the maintenance, operation, installation or removal of the said boom or any part of it, and for the satisfaction of any such claims that are valid.

(j) The Applicants shall keep the Commission currently informed, through the Board, regarding the installation, operation and removal of the boom, the formation, retention and recession of the ice cover and ice conditions in the Niagara River. Formal reports shall be submitted through the Board each month or more frequently as conditions may warrant or as the Commission may require.

(k) A monitoring program shall be undertaken of weather conditions in the Buffalo region pursuant to a plan of study to be prepared by the Board and approved by the Commission and said monitoring program shall be carried out at the expense of the Applicants.

(l) This approval shall terminate:

(a) on the first day of November 1980, unless before that date, the Applicants have informed the Commission in writing that it accepts all of the Conditions set forth herein;

(b) on the 15th day of May 1985, unless the Commission, at the request of the Applicants, fixes a later termination date.

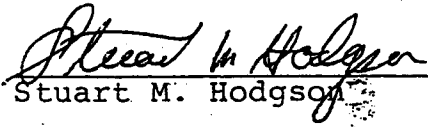
AND IT IS FURTHER ORDERED that the Commission will retain jurisdiction over the subject matter of these Applications and, after giving such notice and opportunity

to all interested parties to make representations as the Commission deems appropriate, may make such further Order or Orders relating thereto as may be necessary in the judgment of the Commission.

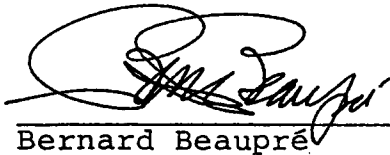
Signed this 25th day of September 1980.



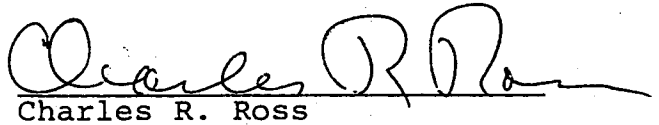
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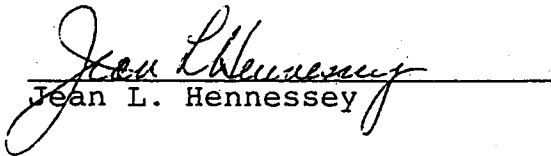
Stuart M. Hodgson



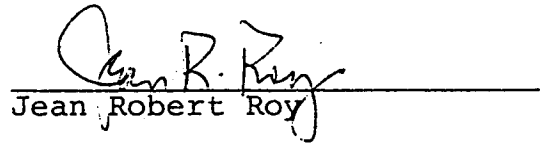
Bernard Beaupré



Charles R. Ross



Jean L. Hennessey



Jean Robert Roy