

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE APPLICATIONS OF THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO AND THE POWER AUTHORITY OF THE STATE OF NEW YORK FOR APPROVAL OF THE CONSTRUCTION AND OPERATION 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

WHEREAS under certain conditions ice is discharged from Lake Erie into the Niagara River in quantities that exceed the ice passage capacity of the river; and

WHEREAS under such conditions there may be damage and flooding along the shores of the Niagara River and curtailment of hydro-electric power production; and

WHEREAS in accordance with Article III of the Boundary Waters Treaty, The Hydro-Electric Power Commission of Ontario 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 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; and

WHEREAS the Applicants have stated that the purpose of the boom is to accelerate the formation of a stable ice cover

upstream, reduce movement in the cover while it is being formed and provide additional stability to the downstream edge of the natural ice arch at the outlet of the lake; and

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

WHEREAS, in accordance with its Rule of Procedure 14, the Commission held a preliminary meeting at Washington, D. C., on 8 April 1964 which was attended by representatives of both Applicants, Counsel for the Government of Canada, Counsel for the Government of the United States, and the International Niagara Board of Control; and

WHEREAS the Commission, in accordance with its Rule of Procedure 29, reduced the periods of time normally provided under Rules 9, 10, and 20 for the processing of Applications; and

WHEREAS no Statements in Response, which the Rules of Procedure provide may be submitted prior to the hearing, were received by the Commission; and

WHEREAS pursuant to published notices, a hearing was held in Buffalo, New York, on 4 May, 1964, 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 Applicants, describing the nature and purpose of the proposed boom and its anticipated effects; and

WHEREAS at the hearing testimony was presented by experts on behalf of the Applicants which supported the construction and operation of the proposed boom on a test basis; and

WHEREAS the preponderance of testimony submitted by other interested persons generally favoured approval of the Applications; and

WHEREAS at the hearing Counsel for the Government of Canada and Counsel for the Government of the United States raised no objection to the Applications before the Commission, but referred to the requirements of applicable Canadian and United States law, respectively, and suggested that any approval of the Applications by the Commission should include appropriate conditions with regard to the Applicants' responsibility for claims for physical injury or damage occurring in either country; and

WHEREAS an application by The Hydro-Electric Power Commission of Ontario for a licence under the Navigable Waters Protection Act has been submitted to the Minister of Public Works and action thereon is now pending; and

WHEREAS an application by the Power Authority of the State of New York for a Department of the Army permit has been submitted to the U. S. Army Engineer District, Buffalo, and action thereon is now pending; and

WHEREAS the Commission, after consideration of the Applications, the testimony at the hearing and all other information

available to it, has concluded that a boom which would facilitate the formation and stabilization of an ice cover at the foot of Lake Erie would reduce the discharge of ice into the Niagara River and would have beneficial effects.

NOW THEREFORE THIS COMMISSION ORDERS AND DIRECTS that the construction and operation by The Hydro-Electric Power Commission of Ontario and the Power Authority of the State of New York of a boom in Lake Erie near the entrance to the Niagara River be and the same is hereby approved on a trial basis, subject to the following conditions:

(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 and shall be equipped with devices to facilitate the prompt removal of any or all sections of the boom should the need arise for such action.

(c) Before commencing installation of the boom, the Applicants shall obtain the Commission's approval of the final plans showing the detailed design, location, 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 boom and the transverse cable shall commence not earlier than 1 November, and complete closure shall not

be accomplished before the first Monday of December or such later date as may be communicated to the Applicants by the Commission, through the said Board of Control.

(e) The floating boom and the transverse cable shall be removed by the first Monday of April and disassembly shall be completed by 15 May, or by such earlier dates respectively as may be communicated to the Applicants by the Commission through the said Board of Control. However, the Commission retains the right to require the removal of all or part of the boom at any time because of the existence of an emergency situation.

(f) The Applicants shall be responsible for the construction, 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 to observe the effectiveness of the boom in accelerating the formation of an ice cover that will reduce excessive ice discharge to the river and also to reduce the possibility of the boom breaking due to an accumulation of ice, the Applicants, as soon as practicable after the formation of a satisfactory ice cover, shall remove such sections of the floating boom as the Commission may designate through the said Board of Control.

(h) This approval shall terminate on the 15th day of May following the commencement of operation of the boom unless the Commission, at the request of the Applicants, fixes a later termination date.

(i) The Hydro-Electric Power Commission of Ontario 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 construction, 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 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 construction, 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.

(k) The Applicants shall keep the Commission currently informed, through the said Board of Control, 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 said Board each month or more frequently as conditions may warrant or as the Commission may require.

(l) The Applicants shall comply with the terms of such further Order or Orders relating to the subject matter of these Applications 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 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 9th day of June, 1964.

A. D. P. Heeney

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