

INTERNATIONAL JOINT COMMISSION

OPINION

IN THE MATTER OF

THE APPLICATIONS OF THE MICHIGAN
NORTHERN POWER COMPANY

AND

THE ALGOMA STEEL CORPORATION
LIMITED

FOR APPROVAL OF DIVERSION OF WATER,
CONSTRUCTION OF COMPENSATING WORKS,
AND PLANS THEREFOR, IN THE ST. MARYS
RIVER AT SAULT STE. MARIE

By MR. POWELL



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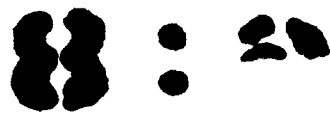
INTERNATIONAL JOINT COMMISSION.

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INTERNATIONAL JOINT COMMISSION.

IN THE MATTER OF THE APPLICATION OF THE ALGOMA STEEL CORPORATION (LTD.) FOR THE APPROVAL OF THE DIVERSION OF THE WATERS OF THE ST. MARYS RIVER AND OF CERTAIN PROPOSED COMPENSATING WORKS.

The history of this application and the facts connected therewith are so fully set forth in the opinion of Mr. Casgrain that it is unnecessary to restate them.

The application as amended is essentially for the diversion of the waters of St. Marys River on the Canadian side of the international boundary line to the extent of 30,000 second-feet of their constant flow, including the waters already diverted, and of 5,000 feet of their intermittent flow.

The applicant also proposed in his application to construct certain remedial or compensating works on the Canadian side of the boundary line, the approval of which by the commission is asked for.

On the hearing of the application the commission was also requested, as incidental to its approval of this proposed diversion and of these compensating or remedial works, to prescribe a range of levels for the waters of Lake Superior. The proposed compensating works form part of a scheme formulated by the Michigan Northern Power Co. and the applicant for a continued series of sluice gates, beginning on the United States shore of the rapids of the St. Marys River and extending across the international boundary line to and connected with existing sluice gates on the Canadian shore. The whole series of gates and the power canal on the American side and the power canal on the Canadian side through which the diversion will be effected are to be used or worked as one system.

The Michigan Northern Power Co.'s application as amended asks for the approval by the commission of the diversion of the 30,000 second-feet of the constant flow of the waters of the river on the United States side of the international boundary line, including the waters already diverted on that side, and of 5,000 second-feet of the intermittent flow of these waters.

No objection based upon the decision of the commission in the case of the Kettle River Dam has been raised as to the jurisdiction of the commission.

It is being contended before us that no diversion of the waters as asked for in this application should be permitted which would lower the level of the waters of Lake Superior and thereby interfere with navigation interests in them. On the other hand, it was contended that the damming of the lake's waters by the whole of the continued series of sluice gates, or by that portion of the series proposed to be erected on the Canadian side of the boundary, would have the effect of raising the waters and thereby flooding the riparian lands along the lake and interfering with the docks, sewers, etc., of the different communities along its shore.

From the evidence before the commission it is clear that the proposed canals and the diversion of the waters of the lake and the proposed sluice gates and the appliances for working them are of the most efficient type or character, and would unquestionably afford facilities for increasing or diminishing as the occasion might require the natural or existing discharge. The result of their construction would unquestionably be a betterment of existing conditions. The only question involved in which there would be any difficulty is the proper operation of the power canals and the sluice gates. Inasmuch as the works approval of which is sought would affect interests on both sides of the boundary line, and the proposed works of the Michigan Northern Power Co. would also affect interests on both sides of the line, it is, in the first place, highly desirable that the control of these power canals and sluice gates should be in the hands of a joint board, comprised of a representative or representatives from the United States and Canada, respectively.

As it would be an advantage to all concerned to have the flow of the waters of the lake maintained at as uniform a level as practicable, it is also desirable that the commission should prescribe the limits within which the level of the lake should be maintained. The engineers of the United States and Canada, respectively, have suggested that the limits, high and low, of the waters of the lake should, if possible, be 603.6 and 602.1 feet above mean tide in the harbor of New York. They have also suggested that the minimum limit of the height at which the waters of the lake should be sought to be maintained is 603.1 feet above said tide level.

Some doubt has been created in my mind by the evidence as to whether or not it would be safe to make the attempt of maintaining the waters at a minimum level of 603.1 above said mean tide. While it is unnecessary to state at length why I entertain these doubts, I may say the regulation of the level of a large body of water like Lake Superior has never been attempted, and therefore the commis-

sion has nothing in the way of experience in regulating the levels of other waters which is of much value. We are to some extent taking a leap in the dark, and we should prescribe no rules in respect to the minimum of the waters of the lake, and any rule which the commission lays down in respect to the range of the levels should be subject to such future modifications as experience may hereafter show to be desirable. The order of approval should be made subject to the conditions suggested by the engineers of the United States and Canada, as amended by the commission. As these amended conditions are set forth in the order, it is not necessary to state them here.

While it may be a matter of doubt whether the commission would have the power to limit the levels of the lake, looking at the question as an independent subject of jurisdiction, I have no doubt of the commission's power to limit the levels as a remedial or compensating measure in connection with the diversion of the waters as applied for.

H. A. POWELL.

IN THE MATTER OF THE APPLICATION OF THE MICHIGAN
NORTHERN POWER CO. FOR THE APPROVAL OF THE DIVER-
SION OF THE WATERS OF THE ST. MARYS RIVER AND OF
CERTAIN PROPOSED COMPENSATING WORKS.

As this application involves precisely the same principles as are involved in the application of the Algoma Steel Corporation (Ltd.), I need only say, for the reasons given by me as my opinion in that case, I think an order should be made by the commission in this case on the same lines as the order made in the other case.

H. A. POWELL.

