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Fifth. That said plans are just and equitable to the other municipalities and civil divisions of the State affected thereby and to the inhabitants thereof, particular consideration being given to their present and future necessities for sources of water supply.

Sixth. That said plans make fair and equitable provisions for the determination and payment of any and all legal damages to persons and property, both direct and indirect, which will result from the execution of said plans or the acquiring of said lands.

Wherefore, the Water Power and Control Commission does hereby approve the said application, maps and plans of Toddville water district and the first extension thereof, as thus modified.

In the Matter of the Application of the City of NIAGARA FALLS, the Village of Lewiston, the Village of Youngstown, the River Road Water District of the Town of Lewiston, the Ridge Road Water District of the Town of Lewiston, the Lake Road Water District of the Town of Porter, the Ransomville Water District of the Town of Porter, and Others, for Approval of Their Acquisition of a Source of Water Supply and of Their Financial and Engineering Plans for the Construction of a Water Supply System

Water Supply Application No. 1136

(Water Power and Control Commission, September 9, 1936)

Application approved as modified.

BY THE COMMISSION.—W. Levell Draper, mayor of the city of Niagara Falls, on July 31, 1936, James T. Carr, mayor of the incorporated village of Lewiston in the town of Lewiston, Niagara county, on July 17, 1936, Charles W. Ullrich, mayor of the incorporated village of Youngstown in the town of Porter, Niagara county, on July 25, 1936, each acting on behalf and in

the name of the municipality of which he is the chief executive, Milton E. Switzer, supervisor of the town of Lewiston, acting in the name of said town and on behalf of River road and Ridge road water districts therein, on July 17, 1936, and Herbert B. Eaton, supervisor of the town of Porter, acting in the name of said town and on behalf of Lake road and Ransomville water districts therein, on July 25, 1936, made application to the Water Power and Control Commission for approval of the plans of said municipalities and districts for the acquisition or taking of additional water supplies, the taking or condemnation of lands for such new or additional sources of water supply, the extension of supply and distribution mains into municipalities in the State wherein water has not heretofore legally been supplied, the construction of extensions to supply mains and of the construction proposed in connection therewith. This application was filed in the office of the Commission on August 4, 1936.

After due notice, published in the *Niagara Falls Gazette*, the *Youngstown Times* and the *Lockport Union-Sun and Journal*, the hearing on this application was held in the city hall of the city of Niagara Falls on August 25, 1936, at 10 o'clock (daylight saving time) in the forenoon. At this hearing the Commission considered the petition, maps and plans submitted, examined witnesses and heard arguments with regard to the project. The city of Niagara Falls was represented by J. William O'Brien, corporation counsel; Glen R. Bedenkapp, appeared for the two villages and four water districts. Objections were filed by Louis W. Falkner, R. D. Vestel, K. J. Ulrich, Laverne L. Gassler and Albert Johnston, all represented at the hearing by Isaac A. Lloyd.

On August 25, 1936, the Commission caused an engineering inspection to be made of the sites of the proposed works.

The project now under consideration is for the furnishing of water for domestic and public purposes

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and fire protection to all that portion of Niagara county fronting on Niagara river and extending from the northerly limits of the city of Niagara Falls to Lake Ontario and as far east as Eighteen-Mile creek. The city of Niagara Falls proposes to supply water to this area and to construct the supply main necessary to make this possible. Specifically the city of Niagara Falls proposes to supply water at wholesale to the villages of Lewiston and Youngstown, to the Ridge road, River road, Lake road and Ransomville water districts and to Fort Niagara. It also asks authority to wholesale water to such water districts or municipalities as may hereafter be formed in this area and, in default of the formation of such districts or municipalities, to retail water for domestic, industrial and fire protection purposes to individual consumers along the proposed pipe line and outside the limits of such municipalities and districts as may be operating their own mains. In order to carry out this project it is proposed to construct a twelve-inch cast iron pipe line in a generally northerly direction from the northerly end of the city system at Hyde Park boulevard, through Lewiston and along the river road to and through Youngstown, making suitable connections to the systems of the proposed takers of the water. This pipe line is to be constructed and to be owned by the city of Niagara Falls. The total cost of the work is estimated at \$275,055.37, of which amount the city is to contribute from funds on hand or the proceeds of a bond issue the sum of \$127,775.32 and the remainder, amounting to \$147,280.05, is to be obtained from the Federal Emergency Administration of Public Works. Water is to be delivered on five-year contracts at regular city rates.

The objectors represented themselves as taxpayers of the village of Youngstown and as opposed to the project for various reasons, chiefly in that they wished Youngstown to continue to operate its own plant and that in their opinion the Niagara Falls

water is of inferior quality to that of Youngstown and they requested the Commission to delay making a decision on this project until another referendum election thereon had been had in the village.

After due study of the petition and its exhibits, the evidence and arguments given at the hearing and the report of the engineers of the Commission on this application, it appears as follows:

Niagara Falls is a city in Niagara county, situated on the right bank of Niagara river, on the top of the escarpment and extending both above and below the falls. This city has been a famous resort for many years and is now an important industrial center, particularly for the chemical industries and the generation and transmission of hydro-electric power. The population of this city in 1930 was 75,460. Niagara Falls is now supplied with Niagara river water by municipal effort. The bulk of it comes through an intake situated near the northerly tip of Grand Island, is purified by filtration and chemical treatment. Another plant takes water from the power canal on the east side of the river and this water is similarly purified. A new intake is now being constructed in connection with the plant first mentioned and when this is completed it is expected that the use of the other plant will be suspended except during emergencies. There is also talk of extending the intake tunnel further to the west into the Canadian channel on the other side of Grand Island, in order to obtain water which is free from contamination by Buffalo sewage. This water as distributed is of good quality.

The capacity of the works on completion of the intake and leaving out of consideration the second plant will be 32,000,000 gallons daily. The average consumption in the city is 20,000,000 gallons daily and the peak draft about 25,000,000 gallons daily. There is a sewerage system in Niagara Falls discharging sewage into Niagara river below the cata-

ract. This sewage is to be screened and sterilized.

Lewiston is an incorporated village in the town of Lewiston, lying on the right bank of the river just north of the escarpment. The population in 1930 was 1,013. This village has a publicly owned water supply system, taking water from the river. This water is purified by passage through mechanical gravity filters and by chemical treatment. It also supplies water to two water districts, Ridge road water district, extending to the east along the ridge, and River road water district, extending northerly towards Youngstown along the river bank highway.

Youngstown is an incorporated village in the town of Porter, situated on the right bank of Niagara river adjacent to and south of the United States Military Reservation at Fort Niagara, which reservation lies in the angle between the river and Lake Ontario. This village has a publicly owned water supply system taking water from the river. This water before distribution is passed through a pressure filter and submitted to chemical treatment. Youngstown also furnishes water to two districts, Lake road water district lying to the northeast, east of the fort and along the lake shore, and Ransomville district, lying some five miles to the east.

All of these plants at one time or another have been passed upon by this Commission or its predecessors in office, but it should be noted that the Niagara Falls and Youngstown applications were acted upon prior to the time when the predecessors of this Commission were required to make determination as to the quality of the water to be supplied.

Fort Niagara is also supplied with water pumped from the river.

The total demands for water in the area which Niagara Falls now desires to supply are estimated at 1,000,000 gallons daily.

Niagara river water is somewhat polluted as it leaves Lake Erie. As it flows onward it receives the

sewage of Buffalo, the Tonawandas and the municipalities participating in this proceeding. In addition, it receives enormous quantities of trade wastes, many of them originating from the chemical industries and therefore particularly prone to cause tastes and odors in the water. Between Buffalo and the falls the pollution tends to hug the east shore of the river, so that except during unusual weather conditions, the water on the west side of the east branch of the river is of considerably better quality. The flow is thoroughly mixed by the falls and rapids and from Lewiston onward the entire river is heavily polluted, although the intensity of this pollution is less, due to the mixing, than in the polluted vein above the falls.

Tonawanda, North Tonawanda, Lockport and Niagara Falls all obtain their water supplies from the river. With the exception of the older intake at the Falls, these intakes are all on the west side of the east channel and all the water is now filtered and sterilized. By careful treatment these places now have reasonably good water. Below the falls, Lewiston and Youngstown take water from the river. The raw water is heavily polluted and requires the best treatment plants and most expert supervision to assure the health of these communities. The Lewiston filters are of a fairly adequate type but are getting old and have insufficient capacity. The Youngstown plant was never adequate for the work it has to do, the filters are of the wrong type, have outlived their usefulness and have insufficient capacity. Neither of these villages is large enough to be able to hire the high grade of supervision essential for the proper purification of this highly polluted raw water.

In order in some degree to protect the water supply of these downstream communities, the State Department of Health has required Niagara Falls to treat its sewage by screening and sterilization, but it has stated that these requirements will be reduced to some extent if the downstream intakes are done away

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with. That department actively advocates the present plan as a health measure. Niagara Falls stated that this plan will enable it to make a saving of at least \$35,000 a year in the operation of its sewage treatment works.

As above stated the downstream filters need rebuilding, Youngstown completely and Lewiston at least in part. New pumping equipment with additional storage should also be provided. These villages have estimated that under this project they can purchase water at materially less cost than they can now pump and filter it, even without considering the rebuilding of the treatment plants.

This project promises marked financial advantages to all concerned.

On the virtual abandonment of the old east side intake the Niagara Falls raw water will usually be reasonably susceptible to treatment. During certain times of climatic stress and particularly during the spring break-up, it will be difficult adequately to purify this water in such fashion that it will not have disagreeable tastes and odors. These conditions now apply to all the plants and the large modern purification plant at the Falls is better equipped to cope with such a situation than the small plants now operating and furthermore, and most important, it is financially possible for the Falls to hire the proper personnel to operate the large plant. It is probable that in the not distant future the Falls intake will be extended into the Canadian channel thus avoiding most of the pollution.

The Commission is of the opinion that this project will benefit all concerned therein.

In this matter Niagara Falls is operating under the provisions of chapter 109, Laws of 1936. This law empowers the city to carry out the present project and to sell water as proposed provided that thereby the inhabitants of the city itself are not deprived of water. The statute does not give the takers of water

assurance of the continuance of the arrangement and leaves the matter of price to be agreed upon between the city and the purchaser. There is no provision for adjudication of difficulties and disputes.

This project has been authorized by the city by resolution of the council adopted on February 10, 1936. The other parties to the proceedings have authorized the making of this petition and the villages have obtained the approval of their electors but no actual contracts or agreements have been entered into. It is the consensus of opinion that a term of five years is all that can be specified in such contract, but the city has suggested the insertion of a renewal clause allowing for a five-year extension at the same rates.

Although there is now no reason to expect arbitrary or oppressive action by the city and the interests of the city would seem to be best served by continuance of the proposed arrangement, the fact remains that there is nothing in the wording of the statute that would prevent the city from arbitrarily discontinuing the service or greatly increasing the rates charged on renewal of a contract. In like manner it appears that the individual consumers outside of the villages and districts would have no protection from such acts. Should this occur the villages might find themselves confronted with the task of constructing new pumping and purification plants as neither of the existing plants would have more than salvage value after a five year shutdown.

The Commission believes that in this respect the project is not entirely fair and just to the takers of the water and that it is the duty of the Commission under the law to remedy this situation if it is possible so to do.

In view of the fact that the city is warmly advocating this project and has stated that it anticipates material financial return therefrom, it would seem just for the Commission to require the city and its customers to consent to submit any such controversy as

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may arise with regard to the above matters to this Commission for adjudication and settlement.

The plans filed with the application provide for safe and suitable construction.

It appears that reasonably adequate provision has been made for financing this project.

The carrying out of this project will not adversely affect the water supply interests of any other portion of the State.

The legal damages which may be caused by the execution of the plans of the petitioner do not appear to be such as to require any special consideration or legislative enactment in order that they may be equitably determined and paid.

The objectors in this case were certain taxpayers of Youngstown, who are opposed to the project and wish the village to continue to supply itself with water. They stated that they had filed a petition with the board of that village asking it not to enter into any contract with the city for the purchase of water unless and until such action had been authorized by a second referendum vote in the village. They also claimed that the water furnished Niagara Falls was of quality inferior to that furnished by Youngstown and advanced certain arguments not strictly within the province of the Commission.

The question as to whether or not Youngstown should continue with this project rests entirely with the people of that municipality. This Commission cannot dictate their choice. The Commission cannot agree that Youngstown water is ever better than that of Niagara Falls. It believes it possible to improve Niagara Falls water by extending the intake to the Canadian channel but even at present it finds the water of that city to be of good sanitary quality and of better esthetic quality than Youngstown could obtain if it gave its water proper treatment. The Commission does not consider Youngstown water with the present inadequate and worn out purification

plant as ever of safe quality. It has previously so found and it has required Youngstown either to procure water from the Falls as proposed herein or to rebuild its plant as a condition precedent to the taking on of additional customers.

The Commission finds it to be necessary to protect the water supply and the interests of the applicant and of the inhabitants of the territory supplied by it with water, to protect the water supply and interests of any other municipal corporation or other civil division of the State and the inhabitants thereof, and to protect the water supply and interests of any other person or water works corporation engaged in supplying water to any other municipal corporation or other civil division of the State and the inhabitants thereof, that the application, maps and plans submitted should be modified to conform to the following:

1. By virtue of this decision and approval the city of Niagara Falls is hereby granted such authority as may be required from this Commission for the carrying out of this project. This includes the selling of water to such municipalities and districts as may have authority from this Commission to take such water and also for the supply of water to individuals, institutions and plants, for domestic, industrial and fire fighting purposes within reach of the proposed pipe line and not within the limits of any incorporated village or duly constituted water district.

2. Nothing in this decision contained shall authorize the city of Niagara Falls to supply water in any manner within a duly organized village or district in competition with such village or district unless such supply shall be authorized by the local authorities.

3. Niagara Falls may supply water to no municipality or district, other than those participating in these proceedings, unless and until such proposed taker of the water shall have applied for and obtained the consent and approval of this Commission.

4. The city of Niagara Falls shall agree that, in the event any controversy shall arise between said city

and a taker of water under the authority of this decision, which controversy shall not be over matters covered by a valid contract and which cannot be settled by negotiation, such controversy may, by either party thereto, be submitted to this Commission for adjudication and settlement after due hearing of all parties concerned and the said city shall abide by the decision of the Commission.

5. The city of Niagara Falls must, before the terms of this decision become effective, have filed in the office of the Commission a written acceptance of condition 4, above.

6. Should either of the villages of Lewiston or Youngstown contract with the city of Niagara Falls for a supply of water, as contemplated by this project, as soon as such delivery actually starts, said village shall thereupon abandon and physically disconnect its existing pumping and treatment plant and intake. Thereafter that village shall not again install a plant for obtaining a supply of water from Niagara river, nor shall it rebuild, reequip or use its existing plant without the further consent and approval of this Commission.

7. These works shall be completely constructed within three years of the date of this decision.

The Water Power and Control Commission, having given due consideration to the said petition and its exhibits, the proofs and arguments submitted at the hearing and the reports of its engineers thereon, determines and decides as follows:

First. That the application, maps and plans submitted are modified as set forth above and, as so modified, are the plans hereinafter mentioned.

Second. That the plans proposed are justified by public necessity.

Third. That said plans provide for the proper and safe construction of all work connected therewith.

Fourth. That said plans provide for the proper protection of the supply and the watershed from

contamination and for the proper filtration of such additional supply.

Fifth. That said plans are just and equitable to the other municipalities and civil divisions of the State affected thereby and to the inhabitants thereof, particular consideration being given to their present and future necessities for sources of water supply.

Sixth. That said plans make fair and equitable provisions for the determination and payment of any and all legal damages to persons and property, both direct and indirect, which will result from the execution of said plans or the acquiring of said lands.

Wherefore, the Water Power and Control Commission does hereby approve the said application, maps and plans of the city of Niagara Falls and others, as thus modified.

In the Matter of the Application of the VILLAGE OF DEFERET, Jefferson County, for Approval of Its Acquisition of a Source of Water Supply and of Its Financial and Engineering Plans for the Construction of a Water Supply System

Water Supply Application No. 1137

(Water Power and Control Commission, September 9, 1936)

Application approved as modified.

BY THE COMMISSION.—Frank B. Reynolds, mayor of the incorporated village of Defereit, in the town of Wilna, Jefferson county, acting on behalf and in the name of said village, on July 31, 1936, made application to the Water Power and Control Commission for approval of the plans of said village for the acquisition or taking of a water supply, the taking or condemnation of lands for any new or additional sources of water supply and of the construction of a water works system therein. This application was