

DEPARTMENT REPORTS

OF THE

STATE OF NEW YORK

CONTAINING THE

MESSAGES OF THE GOVERNOR

AND THE

DECISIONS, OPINIONS AND RULINGS

OF THE

State Officers, Departments, Boards
and Commissions

OFFICIAL EDITION

MARK GRAVES, Director of the Budget

VOLUME 41

ALBANY

J. B. LYON COMPANY, PUBLISHERS

1931

[Vol. 41] Water Power and Control Commission

In the Matter of the Application of the CITY OF SYRACUSE for Approval of the Construction of a Second Intake in Skaneateles Lake as an Increase in Its Water Supply and of Its Financial and Engineering Plans for the Construction Thereof

Water Supply Application No. 609

(Water Power and Control Commission, September 22, 1931)

Application approved as modified.

BY THE COMMISSION.—The city of Syracuse, in the county of Onondaga and State of New York, having on April 10, 1931, filed, under the provisions of Article XI of the Conservation Law, an application to the Water Power and Control Commission for approval of the plans of said municipality for the taking of additional supply of water from Skaneateles lake, the acquisition or taking of lands and rights necessary for such purpose and of the construction proposed in connection therewith; and

After due notice, published as required by law, the hearing on this application having been held in the council chamber in the city hall in said city of Syracuse on April 30, 1931, at 10:00 o'clock in the forenoon and thereafter continued, pursuant do adjournments duly taken, in said city of Syracuse on August 18, 1931, when it was finally closed; the applicant herein having been represented by Frank P. Malpass, corporation counsel and by Mark E. Conan, assistant corporation counsel; and objections having been filed by the incorporated village of Skaneateles, represented by Costello, Cooney & Fearon (George R. Fearon of counsel) its attorneys; by the town of Skaneateles and water district No. 1 of the town of Skaneateles, represented by Charles T. Major, supervisor of said town; and by the Waterbury Felt

Company, represented by Milford & Major (Charles T. Major, of counsel); and

The petition, maps and profiles submitted by the petitioner having been examined, the witnesses called having been heard, together with arguments of counsel, and due deliberation thereon having been had, the Commission finds it to be necessary, in order 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 other municipal corporations and other civil divisions of the State and the inhabitants thereof, to protect the water supplies and interests of other persons and waterworks corporations engaged in supplying or proposing to supply water to municipal corporations and other civil divisions of the State and the inhabitants thereof, to bring into cooperation all municipal corporations and other civil divisions of the State which may be affected thereby, to make just and equitable the submitted plan or scheme to determine and provide for the payment of the proper compensation for any and all legal damages to persons or property, whether direct or indirect, which will result from the acquiring of said lands and the execution of said plans and to make safe all dams, reservoirs or other structures to be constructed by said plans, that the applications, maps and plans submitted should be modified to conform to the following:

1. By this decision and approval all acts of applicant in installing No. 2 conduit, so called, and the diversion to the city from Skaneateles lake of thirty-two million gallons of water daily are, as far as may be necessary, hereby ratified and confirmed;

2. Authority is hereby granted for the building of the proposed new intake in Skaneateles lake, additions to the gate house in the village of Skaneateles and for the building of No. 3 conduit to the city of

[Vol. 41] Water Power and Control Commission

Syracuse. These works may be built of such capacity as applicant may deem to be advantageous;

3. Authority is hereby given to the city of Syracuse, subject to the further restrictions and limitations set forth below, to divert water to said city from Skaneateles lake in an amount not in excess of 56 million gallons in any one day;

4. Authority is hereby given to applicant to acquire, take or condemn such lands and rights as may be needed to carry out this particular project. Authority is also given for the acquisition by applicant of such of the former canal lands of the State of New York, under and near the outlet of Skaneateles lake, including the land on which the dam built by applicant now stands, in such amount as may now or hereafter be necessary to enable applicant to maintain said dam and control the level of the lake. No authority is hereby given to applicant to acquire, take or condemn such private lands about said lake as would be required to permit applicant to raise the level of the water of said lake above the present established mark;

5. All water drawn from Skaneateles lake, discharged into the outlet thereof or furnished or sold to others must be measured by recording meters of a type satisfactory to this Commission. Such meters and the records thereof must be open to public inspection at all reasonable times;

6. The Commission reserves the right from time to time to authorize the amount of water found reasonably necessary for the supply of other parts of the State and the inhabitants thereof to be taken from Skaneateles lake and applicant shall have no claim for compensation for the water so diverted, unless it shall render a service in connection therewith;

7. Skaneateles lake and the tributaries and outlets thereof are hereby declared to be the natural and

proper sources of water supply for all parts of the drainage basin thereof and also for any part of the towns of Skaneateles or Elbridge, Onondaga county, and the easterly part of the town of Sennett, Cayuga county, and of the inhabitants thereof. These inhabitants are hereby declared to have a right so to be supplied superior to the rights of the city of Syracuse and applicant may draw from this lake only water which is in excess of the reasonable needs of these inhabitants and, in default of service rendered, shall have no claim for compensation or for damage by reason thereof;

8. Any municipality, water district or similar political subdivision of the State situated in or including any part or all of the towns and parts of towns above named may apply to this Commission for permission to take the water needed for the supply of such applicant and the inhabitants thereof from any pipe line or conduit owned by the city of Syracuse. On approval of such application said city shall permit the necessary connections to be made to its conduits and shall furnish such water, subject to such terms and conditions as may be specified by this Commission in its decision approving and authorizing such taking. All taps and connections shall be made and the necessary meters installed and maintained at the expense of the taker or takers of the water. Connections shall be made in conformity with the reasonable requirements of the proper authorities of the city of Syracuse. Syracuse shall be paid for the water so taken at the rate which may be agreed upon between that city and the taker of the water, or, if they cannot agree, shall, on application of either party, be fixed by this Commission;

9. With regard to the incorporated village of Skaneateles, the requirement of an application to this Commission for authority to take a supply of water

[Vol. 41] Water Power and Control Commission

from the Syracuse conduits, as specified in condition 8 above, is dispensed with; the making of connections to any or all the Syracuse conduits and such taking of water in amounts reasonably necessary to meet the needs of the village and of the inhabitants thereof and also, so long as Skaneateles water district No. 1 shall elect to continue to purchase a supply of water from said village, to meet the needs of the inhabitants of said district, is hereby approved and authorized; provided however, that the other provisions of said condition 8 and of the other conditions and requirements of this decision shall remain in full force and effect; and provided further that said village agrees, upon order of this Commission to install such apparatus for the treatment or purification of all water so drawn, as this Commission may at any time find to be necessary, and thereafter to operate such apparatus in a manner satisfactory to this Commission;

10. By the acceptance of this decision and approval by the city and the village, they mutually agree as follows:

(a) Skaneateles is authorized to make connections to any or all of the Syracuse conduits; paying the city for the taps to the two present conduits an amount equal to the cost of such taps, but not in excess of \$2,500, if such taps are made in the tops of the conduits, all work in connection therewith to be done by Syracuse.

(b) Skaneateles to give Syracuse free rights of way for such intakes and conduits as the city may build from time to time across property of the village.

(c) Skaneateles agrees to make no claim against Syracuse for damages resulting from raising the level of Skaneateles lake as contemplated when present dam at outlet was built, if city raises the sea walls on village property to correspond and fills in the land behind such walls.

(d) Skaneateles agrees to convey to Syracuse such portions of the former canal lands at outlet of the lake, recently granted the village by the State, as the city may hereafter desire, on payment therefor of a sum to be agreed upon between the parties, or, if they cannot agree, to be fixed by this Commission.

(e) Syracuse is to make no other charge for the water furnished to Skaneateles or through that village to Skaneateles water district No. 1.

11. Applicant shall at all times maintain such volume of flow in Skaneateles outlet as shall, at the outfall of the sewage treatment plant of the village of Skaneateles, be equal to the population of that village divided by one thousand and multiplied by seven cubic feet per second. Such flow is intended to be the amount needed so to dilute the effluent from the village sewage treatment plant that there will be no condition of public nuisance created in the outlet below the outfall thereof. Should the event prove this amount to be in error, the Commission will, on application of the city or village, reopen this case in order to make a suitable adjustment of the amount of flow to be maintained. Such reopening will be made on application of the city and a suitable reduction made in the flow required on showing by the city that it has installed and will operate additional and more effective works for the treatment, purification or diversion of the sewage of the village;

12. The Commission reserves the right to require applicant to make such changes in any portion of the works already built in connection with the second and third conduits and second intake as may be found to be necessary to assure the safety and suitability of such works. All remaining portions of said third conduit and second intake and structures appurtenant

thereto must be completely constructed in accordance with plans which have previously been submitted to and approved by this Commission;

13. The second intake and appurtenant works shall be fully constructed within five years of the date of this decision;

14. Before applicant shall have authority to acquire or to take the flowage rights necessary to enable it to raise the level of Skaneateles lake above the present high water mark thereof (said to be El. 463.87 Syracuse water board datum or El. 863.45 U. S. Geologic Survey datum) it must have applied for and received the further consent and approval of this Commission;

15. Applicant shall continue to maintain the watershed of this lake in sanitary condition and to sterilize all water drawn from the lake to the city. This Commission reserves the right to require the taking of additional precautions, the satisfactory treatment or additional treatment or purification of the water used by it, should future analyses or inspections show necessity for so doing; and

16. Should any question or controversy arise as to any of the above matters and on petition of any interested party, this Commission reserves the right insofar as its authority will permit, to take such steps as may be necessary justly to settle such controversy.

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 Syracuse as thus modified.

Memorandum.

BY THE COMMISSION.—This is an application from the city of Syracuse, Onondaga county, whereby approval is asked for the withdrawal of additional amounts of water from Skaneateles lake for the supply of the people of Syracuse. The petition was signed by Rolland B. Marvin, mayor, on April 8, 1931, and was filed on April 10, 1931.

Notice of the hearing thereon was given in the *Syracuse Post-Standard*, *Syracuse Journal*, *Syracuse Herald*, *Skaneateles Press*, *Elbridge Courier* and *Jordan Leader*. The hearing was held in Syracuse city hall on April 30, 1931, and after the failure of certain negotiations and other delays, was finally continued in the office of Costello, Cooney & Fearon, in Syracuse, on August 18, 1931.

[Vol. 41] Water Power and Control Commission

On August 19, 1931, the Commission caused an engineering inspection to be made of Skaneateles outlet.

Syracuse desires by the construction of a new intake in Skaneateles lake and the completion of a new conduit between such intake and the city to increase the amount of water that can be drawn from the lake for the supply of the city and the inhabitants thereof. The new intake is to be built near that now in place. It is to be about 4,400 feet in length; that portion in the lake to be of sixty-inch steel or iron pipe or fifty-four-inch concrete pipe, the remaining 200 feet to the gate house to be sixty-inch cast iron pipe. The lake end is to terminate in a cross, giving three inlet openings, which are to be screened. The gate house is to be a new structure, adjacent and similar to that now in place. The third conduit has been partly built, exact details of the remaining sections have not yet been worked out. Starting at the gate house and proceeding towards the city, the condition of this conduit is as follows: 3,225 feet not built, 59,400 feet of thirty-six-inch cast iron, 22,800 feet not built, 5,400 feet of forty-two-inch cast iron and 8,040 feet of forty-eight-inch cast iron. This conduit terminates in the new Knapp reservoir, but is cross connected to the other conduits and the city distribution system. City now asks approval of a draft of fifty-eight million gallons per day on the lake. It proposes to build the third conduit of such size as to make a larger draft possible. All water drawn from the lake is to be measured and chlorinated. The quality of the lake water is to continue to be protected by sanitary restrictions, collection and removal of polluting substances from the watershed. The estimated cost of these improvements is \$240,000.

The village of Skaneateles filed objections to this project, on the grounds that the right of that village to an adequate supply of water from the lake should

be protected, provision should be made for the maintenance of such continuous flow in Skaneateles outlet as may be needed to prevent insanitary conditions therein and said village should be authorized to connect the suction mains of its pumps to the city conduits and be allowed to draw water therefrom for the purposes of the village and water district supplied by it.

The town of Skaneateles, Skaneateles water district and Waterbury Felt Company filed objections couched in general terms, except that it was stated that the city had already done work in connection with this proposed additional diversion without having obtained due authority therefor from this Commission.

Syracuse is a city, situated in Onondaga county at the head of Onondaga lake. It is an important industrial center. According to the petition, the present population is about 214,000 and this is increasing at the rate of 2.4 per cent annually. Total of assessed valuations within city limits is \$388,786,503. Total present outstanding indebtedness is \$34,652,642.57, of which amount the sum of \$5,974,250 was issued for water supply purposes.

A public water supply system was first installed in Syracuse before 1846 by Syracuse Water Company, which pumped water from Onondaga creek. This plant was taken over by the city in 1892. Onondaga creek was abandoned as a source of water supply soon afterwards and water taken from Skaneateles lake under authority of Laws of 1889, chapter 291, section 18, and Laws of 1890, chapter 314.

Skaneateles lake is now the only source of water supply for Syracuse. This lake is about twenty miles southwest of the city and at an elevation 460 feet higher than the business center thereof. This lake is some sixteen miles in length, has a water surface of about 14.1 square miles and a tributary drainage area of 75.1 square miles. This lake is drained by Skaneateles

[Vol. 41] Water Power and Control Commission

les outlet, which starts in the village of Skaneateles and flows in a generally northerly direction through the hamlets of Willow Glen, Mottville, Marysville, Skaneateles Falls, and Skaneateles Junction, thence, with some changes in course, through the village of Elbridge and Jordan to join Seneca river near the latter place.

Many years ago Skaneateles lake was used as a feeder of the old Erie canal. For that purpose the State acquired or was possessed of certain water rights, constructed a dam at the foot of the lake in Skaneateles village, used the lake as a storage reservoir and allowed water therefrom to escape down the outlet as needed for canal purposes. Section 18 of chapter 291, Laws of 1869, authorized city to take water not needed for canal purposes from the lake. This was amended by chapter 314, Laws of 1890 to provide that a thirty-inch conduit might be constructed and the dam at the outlet reconstructed or raised to store the ordinary flow from the watershed of the lake. The dam and outlet works were to remain under the control of the State Superintendent of Public Works as long as the water therefrom was needed for canal purposes. A later amendment, chapter 631, Laws 1906, authorized the construction of additional conduits and additional withdrawal of water not needed for canal purposes.

Syracuse built the first of these works in 1892-3-4. The first installation consisted of an intake, dam and cast iron pipe line to the city. The dam is in Skaneateles village some 400 feet below the foot of the lake. It was designed to raise the level of the lake by two feet, but as the city did not acquire the flowage rights, water is not allowed to rise to the spillway, but the flood gates in the dam are so manipulated as to keep the lake level at its former elevation. This dam is on land now owned by the State. The intake is a rivetted iron pipe fifty-four inches in diameter and about 6,200

feet long, the outer end under some thirty feet of water. It is laid on the lake bottom. The inshore end of the intake consists of 204 feet of sixty-inch cast iron pipe entering the gate house. This last structure is in the village, north of Genesee street and west of the outlet. From the gate house the thirty-inch cast iron No. 1 conduit extends to the city distribution reservoirs. The capacity of No. 1 conduit was about fifteen million gallons per day. In 1910, No. 2 conduit was built, consisting of 7,500 feet of forty-two-inch cast iron pipe from the gate house to Willow Glen and thirty-inch cast iron for the remainder of the distance. The combined capacities of the old intake and the two conduits is about thirty-two million gallons daily to the low service or twenty-eight millions to the high service. Conduit No. 3 was projected as a thirty-inch line and was partly built during the war period. At present about 34-38 million gallons daily can be drawn to the city.

Consumption of water in Syracuse has steadily increased as follows:

- 1900— 9 million gallons daily
- 1910—18 million gallons daily
- 1920—25 million gallons daily
- 1930—32 million gallons daily

In 1931 the average consumption is estimated at 32.5 million gallons daily and the summer average at thirty-five millions. Peak demands are higher, but are supposed to be carried by the reservoirs. Per capita consumption of water in Syracuse averages about 145 gallons per day, which is somewhat high for a fully metered system. This is perhaps due to the large industrial demand, which cannot well be met except with city water.

There seems to be no question but that more water is now needed by this city. This project, which con-

templates the taking of fifty-eight millions of gallons daily, should serve until 1960 or thereabouts.

Computations were introduced by the city which seem to show that during the last ten years a continuous draft of seventy million gallons per day could have been maintained without drawing the lake below elevation 458 or allowing it to rise above elevation 463.27, now fixed as high water mark.

The watershed of this lake and the lake itself are protected by sanitary rules and regulations, the pail system of sewage disposal is used over much of this area and the water is chlorinated. The water reaching the city seems to be of satisfactory appearance and quality.

Such plans as have been filed provide for suitable construction, but as they are not complete, we should not give final approval to them at this time.

Skaneateles lake has long been the source of water supply for the village of Skaneateles. It now so serves for Skaneateles water district No. 1, which covers the outlet from the village boundary nearly to Hartlots (Water Supply Application No. 316, approved by the Water Control Commission on June 28, 1923; completed works approved on May 26, 1925). This district purchases water from the village. In addition this lake is the natural and proper source of supply for such communities as are situated in the valley of the outlet stream, including Elbridge and Jordan. It is the primary duty of this Commission to see to it that due provision is made to meet the needs of all these communities for water. We believe that they have a right to be supplied from this lake with a reasonable amount of water which right is superior to that of the city and may not be infringed by that last municipality. To assure this we think we should reserve the right to permit them to use this lake as a source of supply and further, that we should retain control over the situation

to the extent of arbitrating such disputes as may hereafter arise.

Diversion of water from Skaneateles lake affects various riparian owners along the shore of the lake and along the outlet. The city claims to have obtained from the State the right to draw the lake down. It claims also to have extinguished the flowage rights of the owners of the numerous water power developments between Skaneateles and Hartlots. It claims to be uncertain as to the exact status of affairs as affecting ordinary riparian rights other than power rights.

Skaneateles village is sewered and the sewage therefrom, after tank treatment, is discharged into the outlet. Below, numerous mills discharge their wastes into the stream and there are added increments of sewage. Studies of this stream made by the Department of Conservation show that the most serious conditions of pollution are caused by the sewage from the village and by the milk plant therein. Were the flow in this stream to be cut off entirely, a condition of public nuisance would result. This would cause damage which would be difficult to evaluate or to compensate for. We think the best solution would be to require a certain minimum flow to be maintained in the outlet.

The State, through the Department of Health, has control over the discharge of sewage and wastes into the various streams of the State. We understand that, were this outlet in its natural condition, that Department would require tank treatment of the sewage from Skaneateles village. We further understand that a flow of seven cubic feet per second will adequately dilute the settled sewage of 1,000 persons. It is not possible to make definite and final determination of this question now and it should be left open for adjustment; for the present we should require the city to allow water from the lake to flow down the outlet in such quantity that the flow in the outlet just below

the outfall of the village sewage disposal plant shall never be less than seven cubic feet per second per thousand persons living in the village.

We should permit the city to save a portion of this water for its own use by making due provision for more effective purification of the sewage from this village, carrying it further down stream or in some other satisfactory manner eliminating the danger of local nuisance, but the cost of building and operating such works must be borne by the city.

Such other damages as may result from the carrying out of this project do not seem to be of unusual kind and the ordinary provisions of law seem to provide adequate means for their determination. This project was authorized by ordinance of the common council of the city of Syracuse on March 9, 1931, by which a bond issue of \$800,000 was also authorized. We think that reasonable provision has thus been made to pay for the works and for such claims for damage as may be upheld against the city.

There is some question as to just how much of this project is now before us and what parts, if any, should have been submitted to us or our predecessors in office before they were carried out. There is no question about the first installation or as to the right of the city to draw fifteen millions of gallons daily from the lake. The city had that right before the State assumed jurisdiction over such matters by creation of the State Water Supply Commission in 1905. There is doubt as to whether the project for the construction of the second conduit and diversion of an additional seventeen millions of gallons should not have been so submitted. There seems no point in discussing the matter at this late date. Such approval and ratification of this second stage of development as may be necessary should now be given. We now find that the present project and the further

diversion up to a total of fifty-eight millions of gallons daily, subject to the needs of Skaneateles and other places and the reserve flow required by sanitary considerations should now be approved. We also find that we should now approve of the acquisition by the applicant of such portions of State property necessary to give it control of the outlet works. We should not now authorize the acquisition or taking by the city of the flowage rights above the lake necessary to enable it to raise the level of the lake by two feet; when that right is desired, further application should be made to us.

Skaneateles village asks that we make it a condition of our approval that the city allow the village to connect the suction mains of the village pumps to the city conduits and take such water as is needed by the village and water district therefrom. We have stated that we should give both village and water district a preferential right to a supply of water from this lake. We think that we should require the city to supply these and other districts or villages further down the valley with water from its conduits. Skaneateles village has free access to the lake on which it fronts. It seeks the proposed connection, not on account of inability otherwise to obtain water, but to save the cost of maintaining and replacing its own intake, giving as a reason therefor that it has a paramount right to the use of the waters of the lake. We see no objection to the proposed connection. We think the village should be allowed to make it. The village by way of compensation offered its services to enable the city to acquire former canal lands which were formerly owned by the State and on which the outlet regulatory works now stand. During the pendency of this proceeding the village has acquired these lands from the State and is now willing to sell all or a portion of those lands

[Vol. 41] Water Power and Control Commission

to the city upon a price to be agreed upon between the parties.

The village and city should be able to work out a satisfactory arrangement as to price and the amount of lands desired to be purchased by the city. We believe that a provision should be inserted in the decision in this matter covering the proposed sale of lands; also, provisions as to tapping the Syracuse conduits, rights of way for the city's conduits and intakes on and through village property, release of the city for damages from raising the level of Skanateles lake, and the furnishing of water by Syracuse to the village and the water district. By the acceptance of our decision containing these conditions the city and village will thereby mutually agree upon the said terms and conditions.

In view of all of the above, we believe that a decision approving this application should be drawn in conformity with these views.

In the Matter of the Application of the CITY OF NEW YORK for the Approval of Its Plans for Securing a Water Supply from the Rondout Creek in the County of Ulster, State of New York

SIXTEENTH APPLICATION

Water Supply Application No. 611

(Water Power and Control Commission, September 18, 1931)

DECISION AND MEMORANDUM

Application approved as modified.

BY THE COMMISSION.—The city of New York, having on April 17, 1931, filed under the provisions of article XI of the Conservation Law, an application to the Water Power and Control Commission for approval