

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE REGULATION OF LAKE SUPERIOR AND THE ST. MARYS
RIVER (DOCKETS 6 AND 8)

SUPPLEMENTARY ORDER OF APPROVAL

July 23, 2010

WHEREAS

The St. Marys River is boundary water within the meaning of Article III of the Boundary Waters Treaty of 1909;

On May 26, 1914 (Docket 6) and May 27, 1914 (Docket 8) the Commission issued Orders of Approval for the regulation of Lake Superior and the St. Marys River whereby, in part, the predecessor in title to Brookfield Renewable Power, Inc. (hereinafter referred to as the Applicant) was granted approval for the diversion of certain waters for power purposes, subject to certain conditions, including the construction of the St. Marys Compensating Works, stretching between Sault Ste. Marie, Ontario and Sault Ste. Marie, Michigan, located on the St. Marys River;

Supplementary Orders of Approval were issued on September 27, 1978, October 3, 1979, April 18, 1985, August 19, 1985, October 17, 1985 and December 11, 1985 and additional Supplementary Orders have been issued by the Commission that have been satisfied and are no longer applicable to this matter;

On June 5, 2009, the Applicant submitted a letter informing the Commission of a four year refurbishment program at the St. Marys Compensating Works to ensure the continued safe and reliable operations of the flow control gates and detailing work on Gate No. 1, which provides water to the Fishery Remedial Works, planned to begin in 2010;

Applicant provided additional information to the Commission explaining alternatives considered to the closure of Gate No. 1 and detailing consultations that have occurred between Applicant and the Ministry of Natural Resources, Province of Ontario, Department of Fisheries and Oceans Canada, Michigan Department of Natural Resources and Environment, the U.S. Fish and Wildlife Service, and the Batchewana First Nations of Ojibways;

The Commission requested its International Lake Superior Board of Control (Board) evaluate the Applicant's request and to advise the Commission as to the consultations required and suitability of the requested suspension of the 1985 Orders of Approval to allow for the refurbishment of Gate No. 1 of the St. Marys Compensating Works;

By letter dated July 20, 2010 the Board expressed support for the Applicant's proposal and the July 16, 2010 request by Applicant detailing the receipt of written agreement from the Batchewana First Nations of Ojibways, Ontario Ministry of Natural Resources, Canadian Department of Fisheries and Oceans, Michigan Department of Natural Resources and Environment and the U.S. Fish and Wildlife Service on the approach and procedure for the refurbishment of Gate No. 1 and;

Following consultation with the Board and review of documentation submitted by the Applicant, the Commission finds that the request to temporarily suspend the conditions of the Supplementary Order of Approval dated December 11, 1985 to enable refurbishment of the St. Marys Compensating Works is consistent with the intention of the 1914 Orders of Approval, as amended by Supplementary Orders of Approval in 1978, 1979 and 1985, to provide for the better regulation of Lake Superior by providing continued safe and reliable operations of the gates to pass the flows required under the Orders of Approval.

NOW THEREFORE THIS COMMISSION ORDERS AND DIRECTS THAT:

1. Condition 3(a) of the Supplementary Order of Approval dated December 11, 1985 will be suspended for a period of time as is necessary to complete the refurbishment of Gate No. 1, from August 1, 2010 until September 15, 2010.
2. Applicant may close Gate No. 1 for less than one day at any one time during the period of August 1, 2010 to September 15, 2010.
3. Applicant will adhere to the gate opening and closing protocol approved by the Ministry of Natural Resources, Province of Ontario, Department of Fisheries and Oceans Canada, U.S. Fish and Wildlife Service, Michigan Department of Natural Resources and Environment, and Batchewana First Nations of Ojibways and will employ a very slow and gradual closing and opening of Gate No. 1, at rate of no more than 16 mm (5/8") every 10 minutes, in order to accommodate the lack of mobility and slow response of small fish in the channel to receding water and flushing water.
4. Applicant will conduct a program to ensure that, as the downstream water level recedes each time that Gate No.1 is closed, fish and other aquatic life trapped in pools or stranded on exposed river bed are returned to flowing water. A monitoring report of this program shall be prepared after the work is completed and copies provided to the Board and to the U.S. and Canadian federal and state environmental agencies
5. The Applicant shall be responsible for the disposition of claims and for the satisfaction of such claims which are valid for damage to persons or property other than losses to navigation and power interests occurring in the United States or Canada which are attributable to the refurbishment of the St. Marys Remedial Works.

6. Upon completion of the refurbishment project, the compensating works and the power canals shall be operated as directed by the Commission in accordance with the regime of levels and flows established by the 1914 Orders of Approval, as amended by Supplementary Order of Approval dated September 27, 1978, October 3, 1979, and December 11, 1985.
7. This approval shall terminate if Applicant does not commence work on the closure of Gate No. 1 during the time period August 1, 2010 to September 15, 2010.

AND IT IS FURTHER ORDERED that the Commission retains jurisdiction over the subject matter of this Request and after giving such notice and opportunity to all interested parties to make representation as the Commission deems appropriate, may make further Order or Orders relating thereto as may be necessary in the judgment of the Commission.

Signed this 23rd day of July.



Lana Pollack



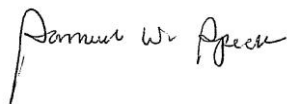
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