

DEPARTMENT REPORTS

OF THE

STATE OF NEW YORK

CONTAINING THE

DECISIONS, OPINIONS AND RULINGS

OF THE

**State Departments, Officers, Boards
and Commissions**

OFFICIAL EDITION

J. BUCKLEY BRYAN, Director of the Budget

VOLUME 62

PUBLISHERS PRINTING COMPANY
NEW YORK, N. Y.

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, et al, 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. MODIFYING DECISION

Water Supply Application No. 1136

(February 27, 1940)

Decision of September 9, 1936, modified to permit change in location of supply main and to extend date for completion of construction.

BY THE COMMISSION.—On September 9, 1936, this Commission approved of a water supply application of the city of Niagara Falls and certain other municipalities in the towns of Lewiston and Porter, Niagara county, involving the furnishing of water for all purposes by the city to that portion of Niagara county **fronting on the Niagara river** and extending from the northerly limits of the city to Lake Ontario and easterly as far as Eighteen Mile creek. The city proposed to construct the supply mains necessary to make such service possible. This application was approved subject to several conditions, one of which required that all work be completely constructed within three years of the date thereof.

On December 19, 1939, the city, through its City Manager, filed a supplementary application in which it was stated that the project had not yet been entirely completed due to the insufficiency of the proper type of labor for the project and to the desire on the part of the petitioner to modify to some extent the

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route of the proposed pipe line between Lewiston and Youngstown and asking for a modification of our original decision of September 9, 1936, so as to permit the change in route suggested and to extend the time for the completion of the work for an additional period of not less than two years.

After due notice, published in *The Niagara Falls Gazette*, the *Lockport Union Sun and Journal* and *The Wilson Star*, a hearing on this supplementary application was held in the City Hall in the city of Niagara Falls on February 1, 1940, at ten o'clock in the forenoon. The city was represented by Clarence W. Greenwald, its Corporation Counsel, and by William D. Robbins, City Manager. The town of Lewiston appeared at the hearing through Glen R. Bedenkapp. Objections were filed by Ansley Wilcox, 2nd, and five others, taxpayers in the town of Lewiston and residents of Ridge Road or River Road Water Districts in that town, and these objectors were represented at the hearing by Mr. Wilcox.

There is no objection to the extension of the time limit for the completion of this project nor to the proposed change in the location of the pipe line between Lewiston and Youngstown. In the latter case no formal action is needed other than to approve of the change as suggested. In the matter of the extension of the time limit, it will be necessary suitably to modify *Condition 7* of the original decision.

Mr. Wilcox and the other objectors, while not opposing the project, wish the Commission to adjudicate the question of the rates to be charged by the village of Lewiston to the water districts in the town of Lewiston. In their objections it is stated that subsequent to our decision on this matter the city entered into a contract with the village of Lewiston, in which contract the city and the village agreed on a schedule of rates to be charged the village by the city and also agreed on a provision whereby the city divests itself of any right to sell water directly to any water district in the town of Lewiston below the Niagara es-

carpment. The objectors claim that this contract is prejudicial to their interests because it compels these water districts to obtain water through the village, if Niagara Falls water is to be used, and that that is definitely in variance with the spirit of our approval of September 9, 1936, even if it does not directly violate the conditions of that decision.

The objectors claim that the village of Lewiston can charge the water districts any rate that it may desire for the water thus obtained without redress by the districts, although they believe that *Condition 4* of our decision was designed for the purpose of providing an avenue for adjudication of such a point. The condition reads as follows:

“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.”

Objectors claim that it primarily was inserted in the decision to prevent the city from doing the various things of which the village is now accused.

The particular points raised by objectors are not properly before the Commission at this time. The way is open for the districts by direct application to bring them before us when desired and when that happens they will be considered on their merits.

Wherefore, the Water Power and Control Commission hereby finds and determines that the decision of September 9, 1936, should be and it hereby is modified as follows:

The proposed change in the location of the Niagara Falls supply main is approved.