



REPORT
OF THE
BOARD OF COMMERCE AND NAVIGATION

IN THE MATTER OF THE

Dundee Water Power and Land Company

Pursuant to Joint Resolution No. 4
approved March 4th, 1918, and
Re-enactments thereof

IN THE LEGISLATURE, SESSION OF 1921

TRENTON, N. J.
MACCULLISH & QUIGLEY CO., STATE PRINTERS.

1921

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Report of Board of Commerce and Navigation.

IN THE MATTER OF THE DUNDEE
WATER POWER AND LAND COM-
PANY. }

To the Senate and General Assembly of the State of New Jersey:

The Board of Commerce and Navigation, pursuant to Joint Resolution No. 4, approved March 4th, 1918, entitled "Joint resolution to authorize the Board of Commerce and Navigation to enter into agreement with the Dundee Water Power and Land Company, subject to the approval of the Legislature, with regard to the improvement of the Passaic River and the surrender by said company of some of its charter rights," and re-enactments thereof, respectfully submits herewith its report in order that the Legislature may consider the two drafts of the agreements, Exhibit "A" and Exhibit "B", as prepared by the Board of Commerce and Navigation and the Dundee Water Power and Land Company, respectively, and accept the report and recommendation of this Board or approve the draft submitted by the Dundee Water Power and Land Company.

Respectfully submitted,

BOARD OF COMMERCE AND NAVIGATION,

J. SPENCER SMITH,

President.

REPORT OF COMMITTEE.

IN THE MATTER OF THE DUNDEE
WATER POWER AND LAND COM-
PANY. }

To the Board of Commerce and Navigation:

Your committee respectfully reports in the above-entitled matter as follows:

1. That at a session of the Legislature of the State of New Jersey a resolution was adopted, designated as "Joint Resolution No. 4," approved March 4th, 1918, which resolution reads as follows:

"Joint Resolution to authorize the Board of Commerce and Navigation to enter into agreement with the Dundee Water Power and Land Company, subject to the approval of the Legislature, with regard to the improvement of the Passaic River and the surrender by said company of some of its charter rights.

"WHEREAS, On the recommendation of the Board of Commerce and Navigation of this State, Senate Bill No. 244 was introduced at the present session, to repeal the charter of the Dundee Water Power and Land Company, a corporation of this State, organized and existing under and by virtue of an act of the Legislature entitled 'An act to incorporate the Dundee Manufacturing Company,' passed March fifteenth, eighteen hundred and thirty-two, and the several acts supplementary thereto, because of the failure of said company to improve the navigation of the river Passaic, between the mouth of the Weasel Brook and a convenient point within the corporate limits of the city of Paterson; and

"WHEREAS, There appeared at the public hearing on said bill representatives of said company and of the persons and corporations engaged in manufacturing, who hold leases for water rights from said company; and

"WHEREAS, Said Dundee Water Power and Land Company, at said public hearing, through its representatives, expressed its willingness to co-operate in making said river navigable and to contribute such sum as shall be equitable and just toward the cost thereof, and to surrender certain rights claimed to have been granted to it under its charter and the supplements thereto, as aforesaid, in such manner and at such times as may be just and equitable; and

"WHEREAS, Said bill was withdrawn in order that opportunity may be given the said company to enter into agreement as aforesaid;

"BE IT RESOLVED by the Senate and General Assembly of the State of New Jersey:

"1. The Board of Commerce and Navigation is hereby authorized and empowered to enter into agreement with said Dundee Water Power and Land Company in behalf of the State of New Jersey, subject to the approval of the one hundred and forty-third Legislature of this State, sitting in the year nineteen hundred and nineteen, as to the sum or sums of money said Dundee Water Power and Land Company should contribute towards the cost of making said river navigable, and as to what rights, if any, granted to said company by the State of New Jersey, should be surrendered by it. Said Board of Commerce and Navigation is hereby authorized to incorporate in said agreement such other provisions as may be equitable and just in order to expedite and assist in making said Passaic River navigable.

"2. Said Board of Commerce and Navigation shall give to all of the persons and corporations engaged in

manufacturing, or otherwise engaged, holding leases for water power from said Dundee Water Power and Land Company, an opportunity to be heard before the conclusion of the agreement aforesaid.

"3. This resolution shall take effect immediately.

"Approved March 4, 1918."

2. Pursuant to the provisions of said resolution, a meeting was held at Paterson, New Jersey, on September 25th, 1919, and on October 6th, 1919, at Passaic, notice of which meeting was given to the Dundee Water Power and Land Company and to such other persons and corporations as your committee considered might be interested in the question, as well as public notice through the newspaper. These meetings were attended by representatives of the Dundee Water Power and Land Company, by merchants of Paterson and Passaic and others who were interested in this question of navigation. An opportunity was given for all parties interested to be heard, and while there seems a great variance in the manner in which navigation could be procured as contemplated by the resolution, there seemed to be no doubt but what navigation was desired.

3. Various interviews have occurred between the members of the committee and the engineer of the Board on one side, and the representatives of the Dundee Water Power and Land Company on the other, and considerable correspondence, finally resulting in a communication from the Dundee Water Power and Land Company, written by John Cook, its Secretary, of which a copy follows:

"The Dundee Water Power & Land Co.,

"158 Ellison Street, Paterson, N. J.,

"December 20, 1918.

"Mr. B. F. Cresson, Jr.,

"Consulting Engineer, Board of Commerce and Navigation.

"Dear Sir:

"In answer to the questions propounded in your letter of December 14th touching The Dundee Water Power and Land Company, in reference to Joint Reso-

lution No. 4, approved March 4th, 1918, I beg leave to say:

"First: We have caused to be made a detailed estimate of the actual cost to this company to fulfill the provisions of its charter concerning navigation, and we find this sum to be \$76,500. A detailed estimate of this cost is now ready for delivery. The plans requested will be ready shortly and will be forwarded to you.

"Second: The Dundee Water Power and Land Company is willing to surrender its right to collect tolls upon condition that navigation be effected by the State of New Jersey or the Government of the United States and upon the further conditions set forth below.

"Third: The Dundee Water Power and Land Company will agree to surrender all its rights to control or supervise the locks, if navigation be effected by the State or general government, provided no charge be made in any way against the Company for the maintenance, control or operation of the locks and no taxes imposed upon the Company for this purpose, and provided, further, that an agreement be made by the State or the general government with the lessees of this Company that is satisfactory to such lessees as to such supervision and operation and releases this Company from any liability to them.

"Fourth: Concerning our contribution toward navigation, it should be borne in mind that our right to collect tolls under our charter is a valuable right. In a report made by the Paterson Board of Trade through the late Congressman William Hughes to the Board of Engineers for Rivers and Harbors September 20th, 1909, it was stated that based upon the freight delivered to Passaic by water, there should be within a short time 400,000 tons of freight per annum brought to Paterson, if navigation were effected. If we assume that this statement of the Paterson Board of Trade is too large and we, accordingly, take one-half of the quantity, that is to say, 200,000 tons, the Dundee Water

Power and Land Company would be under its charter entitled to charge 4 cents per ton per mile for a distance approximately of four and one-half miles. This would create an income of \$36,000 per annum. If we deduct from this sum the cost of maintenance and operation of the locks, which is estimated at \$16,000 per annum, the net sum of \$20,000 remains. This amount capitalized at 6 per cent. is equal to approximately \$333,000. This company has given very serious consideration to the whole problem in an earnest effort to reach an agreement with the State and now offers to relinquish its right to collect such tolls and offers still further as a contribution toward navigation the sum of \$50,000, when appropriations have been made by the State or general government for the purposes and the work has been advanced upon the locks to the extent of \$50,000.

"It should be remembered that this Company has no power, of course, to effect the rights of its bondholders. It should be further said that if you refer to our letters dated October 5, 17, and 31, you will note that during the last few years it has been very clearly shown that the low flow of the river for a considerable period of time has not been adequate to provide our lessees with water for manufacturing purposes. They have not been able to have water for power, and of course, this means that there is no water available for navigation. We should add that when the trunk sewer is in use the amount of water will be very seriously diminished.

"Yours very truly,

"THE DUNDEE WATER POWER AND LAND COMPANY,

"By JOHN H. COOK, *Secretary.*"

4. Your committee thereupon caused a draft of agreement to be prepared accepting, so far as your committee could, the suggestions made by the Dundee Water Power and Land Company in its letter above set forth, a copy of which draft is annexed

hereto as "Exhibit A". A copy of this draft of agreement was sent to the Dundee Water Power and Land Company, to which the company replied by submitting a draft of agreement prepared by it, a copy of which draft so submitted by the Dundee Water Power and Land Company, together with the letter accompanying the same, is annexed hereto as "Exhibit B".

5. Changes made in the draft submitted by the Dundee Water Power and Land Company are:

First: The requirement that one hundred thousand dollars (\$100,000) must be expended in the construction of locks before the contribution of fifty thousand dollars (\$50,000) shall be made by the Company. (See paragraph 3.)

Second: Freedom from all taxation or assessment for the maintenance, control or operation of the locks. (See paragraph 4.)

Third: Frees the Dundee Water Power and Land Company of the necessity of obtaining approval of any persons affected by the agreement other than its bondholders. (See paragraph 6.)

6. Your committee does not consider the change as made in paragraph 3 of importance.

The change made in paragraph 4 is of importance in that a question might arise as to a general tax imposed, some part of which is to be used for the maintenance of the locks constructed in connection with navigation, and by reason of being parcel of a general tax assessment might endanger the entire assessment. In your committee's draft the Company is being exempted from all tax or assessment for the maintenance of these locks except those imposed or assessed uniformly throughout a taxing district.

7. The change made in the sixth paragraph is of great importance.

The Dundee Water Power and Land Company, under a charter primarily provided for navigation, with the added right to use the water for commercial purposes, such use not to interfere with navigation, has completed certain works whereby the waters of the Passaic River have become available for and are used for power and other commercial uses, under contracts made by the Dundee Water Power and Land Company. The agreement provides only for a surrender of certain rights connected with navi-

gation and does not provide for any surrender of other rights. Your committee believed it equitable that the company should retain all of its charter rights so far as they could be retained in any wise interfering with the creation of a state of navigation as contemplated in its charter, in order that the United States Government or the State of New Jersey could undertake this work, and in taking this position your committee believed it was carrying out the intent of the Legislature. In order that entire freedom may be obtained in doing the work necessary to procure a state of navigation, and maintaining the same, it is necessary that all rights, or claimed rights, in the use of the water of the Passaic River by or through the Dundee Water Power and Land Company must be terminated or subordinated to the use of the water for navigation purposes. Paragraph 6 of the draft submitted by your committee provides that this shall be done by the Company. The Company definitely refuses to do anything in reference to the rights of its lessees holding leases carrying rights in the waters of the Passaic River.

Your committee cannot approve an agreement from which this provision is omitted.

8. Your committee therefore recommends that drafts of said agreements, Exhibit A and Exhibit B, be returned to the Legislature with a report in substance as reported by your committee.

The matter having been referred to this Board, for the purpose of entering into an agreement subject to the approval of the Legislature, the Legislature may then consider both drafts and accept the report and recommendations of this Board, or accept by approving the draft submitted by the Dundee Water Power and Land Company.

Respectfully submitted this 20th day of December, 1920.

(Signed) HENRY C. BROKING, Chairman.

(Signed) RICHARD C. JENKINSON.

Committee.

The above report was unanimously adopted at the regular stated meeting of the Board of Commerce and Navigation of New Jersey, held December 20th, 1920.

VICTOR GELINEAU,

Director and Secretary.

EXHIBIT A.

THIS AGREEMENT, dated the day of December, 1920,

BETWEEN the Board of Commerce and Navigation of the State of New Jersey for and on behalf of the State of New Jersey, hereinafter called the Board, party of the first part, and Dundee Water Power and Land Company, a corporation of New Jersey, hereinafter called the company, party of the second part;

WHEREAS, The Dundee Manufacturing Company was chartered by special act of the Legislature of New Jersey, approved March 15th, 1832 (chapter 32, P. L. 1832), as a company authorized and empowered, among other things, to buy, rent and hold lands, tenements and water power for manufacturing purposes; and

WHEREAS, By a supplement to said act approved February 12th, 1858 (chapter 31, P. L. 1858, page 53), said company was, among other things, authorized and empowered to do such work necessary to improve the navigation of the river Passaic between the mouth of Weasel Brook and some convenient point within the corporate limits of the city of Paterson by canal, or canals, or by creating a slackwater navigation, or by both, as might, from time to time, be deemed necessary or useful, and acquire such lands and construct such canals, dams, locks, works, devices, wharves, toolhouses, etc., necessary or proper for the improvement of the navigation of said river as aforesaid; and demand and receive toll for the transportation of persons and property on such canal and slackwater navigation, the said company, its grantees and lessees, to have the right to use the waters of said canals and Passaic River at their mills and works, provided that navigation of said canals or river should not be thereby hindered or obstructed; and

WHEREAS, The name of said company was changed by act of the Legislature to Dundee Water Power and Land Company; and

WHEREAS, An act to repeal the charter of said Dundee Water Power and Land Company for failure to improve the navigation of the river Passaic between the mouth of the Weasel Brook and a point within the corporate limits of the city of Paterson has been heretofore introduced; and

WHEREAS, Said bill was withdrawn in order that an agreement might be made pursuant to the provisions of Joint Resolution No. 4, approved March 4, 1918 (P. L. 1918, p. 1194).

Therefore, in consideration of the premises and mutual covenants herein contained, it is agreed:

1. The company hereby surrenders any right, power or authority it may have by virtue of any act of the Legislature of the State of New Jersey, or otherwise, to improve the navigation of the river Passaic between the mouth of Weasel Brook and the city of Paterson, provided the improvement of the navigation of said river between said Weasel Brook and the city of Paterson shall be undertaken by the State of New Jersey or the Federal Government.

2. The company further agrees to surrender any right it may have to collect tolls for the transportation of persons or property over said river, or any canal or canals, that may be constructed in the improvement of navigation as aforesaid, and further agrees to surrender any right it may have to control or supervise any locks, canals or other works or structures built or constructed, or that may be built or constructed in the improvement of navigation, as aforesaid, upon condition that navigation is effected.

3. The company hereby agrees to contribute the sum of fifty thousand dollars (\$50,000) towards the cost of said improvement, to be paid to the State of New Jersey at such time as the State or Federal Government has made appropriation for such improvement, and there has been expended for labor and material in the construction of necessary locks the sum of at least fifty thousand dollars (\$50,000).

4. The company shall not be liable to any charge, tax or other assessment for the maintenance, control or operation of such locks as may be constructed in effecting navigation as aforesaid,

except as to such taxes or assessments as may be imposed or assessed, uniformly throughout a taxing district.

5. The State of New Jersey shall have the right to construct such locks, canals and other structures as may be necessary to effect navigation of the Passaic River between the mouth of Weasel Brook and some convenient point within the corporate limits of the city of Paterson, or procure the same to be done by or with the aid of the Federal Government. The State shall have the right to build any such structure in connection with the Dundee dam and occupy with such structures any lands owned by the company without any cost or charge to the State for so doing.

6. The company undertakes to obtain the approval by its bondholders, or other persons or companies claiming any interest under or through the company which will be affected by the proposed work for the improvement of navigation as aforesaid, which approval shall be obtained within twelve (12) months from the date hereof, and upon failure to obtain such approval within the time so limited, this agreement shall become void, and the rights and obligations of the company shall be restored to the same position as though this agreement had not been made.

In witness whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands and seals, and the said Dundee Water Power and Land Company have caused these presents to be signed by its president, and it corporate seal hereunto affixed the day and year first above written.

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EXHIBIT B.

THIS AGREEMENT, dated the _____ day of Devenber, 1920, between the Board of Commerce and Navigation of the State of New Jersey for and on behalf of the State of New Jersey, hereinafter called the Board, party of the first part, and Dundee Water Power and Land Company, a corporation of New Jersey, hereinafter called the Company, party of the second part.

WHEREAS, The Dundee Manufacturing Company was chartered by special act of the Legislature of New Jersey, approved March 15, 1832 (Chapter 32, P. L. 1832), as a company authorized and empowered, among other things, to buy, rent and hold lands, tenements and water power for manufacturing purposes, and

WHEREAS, By a supplement to said act approved February 12, 1858 (Chapter 31, P. L. 1858, page 53.) said Company was, among other things, authorized and empowered to do such work necessary to improve the navigation of the river Passaic between the mouth of Weasel Brook and some convenient point within the corporate limits of the City of Paterson by canal, or canals, or by creating a slackwater navigation, or by both, as might from time to time, be deemed necessary or useful, and acquire such lands and construct such canals, dams, locks, works, devices, wharves, tollhouses, etc., necessary or proper for the improvement of the navigation of said river as aforesaid, and demand and receive toll for the transportation of persons and property on such canal and slackwater navigation, the said Company, its grantees and lessees to have the right to use the waters of said canals and Passaic River at their mills and works, provided that navigation of said canals or river should not be thereby hindered or obstructed, and

WHEREAS, The name of said Company was changed by act of the Legislature to Dundee Water Power and Land Company, and

WHEREAS, An act to repeal the charter of said Dundee Water Power and Land Company for failure to improve the navigation of the River Passaic between the mouth of the Weasel Brook and a point within the corporate limits of the City of Paterson has been heretofore introduced, and

WHEREAS, Said bill was withdrawn in order that an agreement might be made pursuant to the provisions of Joint Resolution No. 4, approved March 4, 1918 (P. L. 1918, p. 1194.)

Therefore, in consideration of the premises and the mutual covenants herein contained, it is agreed:

1. The Company hereby surrenders any right, power or authority it may have by virtue of any act of the Legislature of the State of New Jersey, or otherwise, to improve the navigation of the River Passaic between the mouth of Weasel Brook and the City of Paterson, provided the improvement of the navigation of said river between said Weasel Brook and the City of Paterson shall be undertaken by the State of New Jersey, or the Federal Government.

2. The Company further agrees to surrender any right it may have to collect tolls for the transportation of persons, or property over said river, or any canal or canals, that may be constructed in the improvement of navigation as aforesaid, and further agrees to surrender any right it may have to control or supervise any locks, canals, or other works or structures built or constructed, or that may be built or constructed in the improvement of navigation, as aforesaid, upon condition that navigation is effected.

3. The Company hereby agrees to contribute the sum of fifty thousand dollars (\$50,000) towards the cost of said improvement, to be paid to the State of New Jersey at such time as the State or Federal Government has made appropriation for such improvement, and there has been expended for actual labor and material in the physical construction of the necessary lock the sum of at least one hundred thousand dollars (\$100,000).

4. The Company shall not be liable to any charge, tax or other assessment, for the maintenance, control, or operation of such locks as may be constructed in effecting navigation as aforesaid, or for the locks or other structures erected under this agreement.

5. The State of New Jersey shall have the right to construct such locks, canals and other structures as may be necessary to effect navigation of the Passaic River between the mouth of Weasel Brook and some convenient point within the corporate limits of the City of Paterson, or procure the same to be done

by, or with the aid of the Federal Government. The State shall have the right to build any such structure in connection with Dundee Dam and occupy with such structures, any lands owned by the Company without any cost or charge to the State for so doing.

6. The Company undertakes to obtain the approval by its bondholders, of this agreement, on or before April 1st, 1922.

IN WITNESS WHEREOF, the said Board of Commerce and Navigation have hereunto respectively set their hands and seals and the said Dundee Water Power and Land Company have caused these presents to be signed by its President, and its corporate seal hereunto affixed the day and year first above written.

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EXHIBIT B.

E. LeB. GARDNER, *President*. WHITNEY CONANT, *Vice-President*.

J. N. COOK, *Sec. & Treas.*

THE DUNDEE WATER POWER & LAND CO.

158 Ellison Street,

Telephone

975 Paterson.

PATERSON, N. J., Nov. 29, 1920.

Mr. Victor Gelineau, Secretary and Director, Board of Commerce and Navigation, 15 Journal Square, Jersey City, N. J.

DEAR SIR:

Your communication of November 19th, 1920, enclosing a draft of contract between the Board of Commerce and Navigation and the Dundee Water Power and Land Co., has been received.

I am enclosing herewith a draft which we have prepared, to cover the same agreement which your draft covers. The changes we have made are as follows:

In Section 3, we agree to contribute \$50,000 toward the cost of said improvements, provided \$100,000 shall have been actually expended in construction.

In the fourth section, we have stated that the Company shall not be liable to any charge, tax or other assessment, not only for the maintenance and operation of the locks, but for the locks or any other structure which may be erected under this agreement.

The sixth section I have changed to read as follows: "The Company undertakes to obtain the approval by its bondholders, on or before April 1st, 1922." The bonds, amounting to \$500,000, will come due March 1st, 1922, and I realize that we will have to put out new bonds to take the place of the old ones, or come into such close contract with the bondholders that it may be possible to get this agreement approved by them. The other part of this clause, which says that we will secure the approval of other persons or companies claiming any interest under or through the Company, we cannot, of course, agree to. This clause no doubt is intended to cover the lessees of the Company,

and I fancy if they had an opportunity to make trouble for the Company, they might void their leases, which would be very serious for the Company; therefore, I have left that out, because we cannot agree to it; but I would agree, that whenever the Board of Commerce and Navigation is prepared to bring the matter before the Company's lessees, we will join with them in making any application that they might think is necessary.

The draft of agreement as we have drawn it is in keeping with our letter of December 20th, 1918. In fact, it is much more liberal.

Yours very truly,

(Signed) EDMUND LeB. GARDNER,
President.

