

POWER COMPANY MAY GO TO THE EXCHEQUER COURT

Settlement of Disputes over Apportionment of Power for Munition Factories in Ontario is Referred to Judicial Body.

Believing that time would be saved and a fair and judicious method provided for the settlement of disputes arising out of the apportionment of power to munitions factories by Sir Henry Drayton, controller of the production and distribution of electrical energy, Hon. Arthur Meighen, Acting Minister of Justice, has had passed an Order in Council referring the matter to the Exchequer Court. Action was made necessary because the Toronto Power Company, Limited, claim to have delivered, since October, 1917, by order of Sir Henry Drayton, large quantities of electrical energy to the Ontario Power Company, and the value of this energy is in dispute between the two companies. The Toronto Power Company, Limited, takes the position that the Government of Canada is responsible for payments, and has applied for a reference to the Exchequer Court.

Whereas His Excellency the Governor General in Council has had under consideration a report from the Acting Minister of Justice submitting as follows:—

By Order in Council (P.C. 2531), dated the 11th September, 1917, Sir Henry L. Drayton, chairman of the Board of Railway Commissioners, was appointed a commissioner to investigate into the matter of the exportation of electricity by the Ontario Power Company, the Canadian Niagara Power Company, and the Electrical Development Company, in reference to the actual and full needs of the Canadian consumers and also in reference to all circumstances which might justify further reduction of the exportation of electricity.

By Order in Council (P.C. 3142), dated the 6th November, 1917, the said Sir Henry L. Drayton was appointed controller of the production and distribution of electrical energy by companies generating or distributing electrical energy in the province of Ontario, and was empowered among other things, to determine preferences and priorities in the supply of such electrical energy to the end that a sufficient supply should, "be furnished to factories and users engaged, directly or indirectly, in munition work or work for any of the Allied Governments, and also for municipal and public utility requirements", and all companies governing or distributing electrical energy in Ontario were by said order required to supply to the fullest capacity of their plant and equipment such energy to users thereof entitled to preferences or priorities in the quantities and as and when from time to time directed by the said controller;

By said last mentioned Order in Council the said controller was further empowered, in the event of a dispute arising between any users of electrical energy supplied under such order and any company so supplying, to fix and determine the price which should be paid for such electrical energy. Penalties for disobedience to such order were also provided.

By Order in Council (P.C. 939), of the 17th April, 1918, the said controller was further empowered to require delivery of electrical energy to be used by any munition plant requiring such energy, although such plant was not situated on the line of the company so delivering, and was further empowered to oblige companies to operate steam plants which they might possess or which might be under their control, to meet the requirements of munitions manufacturers and to apportion the extra cost of generating such electrical energy by steam among such users;

The said Sir Henry Drayton had before his said appointment as controller required the delivery of electrical energy

by the Toronto Power Company, Limited, to the Ontario Power Company by telegram, dated 26th October, 1917, addressed to the said company as follows:—

"Ottawa, Ont., Oct. 26, 1917.

"At a meeting of the sub-committee of the cabinet appointed to deal with the power question I was to-day directed to wire your company that the thirteen thousand five hundred horse power supplied by your company to the Ontario Power Company and used by the Union Carbide Company must be continued until further notice. Union Carbide Company willing to pay at rate of twenty dollars per horse power as against present rate of sixteen. Committee has not considered price but supply must be maintained.

(Signed) H. L. DRAYTON."

Afterward by written order of 20th April, 1918, Sir Henry L. Drayton directed the Toronto Power Company to furnish from that date forward approximately 11,000 horse power extra to the Ontario Power Company as required to carry out its contract with the American Cyanamid Company, and moreover from and after the following Saturday that 6,666 additional horse power was to be furnished in like manner, and for the like purpose to the Ontario Power Company.

The Toronto Power Company claims to have duly complied with the aforesaid orders or directions.

By Order in Council of 3rd June, 1918, representing that the Toronto Power Company was pressing for immediate settlement for power delivered to the Ontario Power Company it was directed that "in view of the circumstances and the intricacies surrounding the question, and the further fact that ever since this power was ordered to be supplied by the cabinet other power has been ordered to be supplied by the power controller,.... the whole question should be left in the hands of the power controller, and that he be required to fix the compensation to be paid the Toronto Power Company for power supplied under the order of the said committee."

That the Toronto Power Company, Limited, claim to have delivered in pursuance of the requirements of the said controller, large quantities of electrical energy to the Ontario Power Company, inclusive of quantities of electrical energy generated by steam, and that such deliveries have continued since the receipt of the said telegram on the 26th October, 1917, up to and including the 28th day of February, 1919, and accounts have been rendered to the Government through the said controller for what the said company claimed to be the value of electrical energy so delivered, inclusive of interest on overdue accounts at the rate of 6 per cent.

The said company further claims that no moneys whatever have been received on account of the said deliveries or in respect of services performed in pursuance of the above orders and the said controller reports that the Ontario Power Company dispute the value claimed for such power and services by the Toronto Power Company, Limited, and that he has been engaged in an endeavour to arrive at a sum which in his opinion would represent a fair and reasonable value therefor.

The Toronto Power Company, Limited, takes the position that the Government of Canada is responsible for payment therefor and have applied for a reference to the Exchequer Court of Canada under the provisions of section 7 of the War Measures Act, 1914, to determine the value of the energy and services so supplied.

By the said section 7 of the War Measures Act, it is provided as follows:

"Whenever any property or the use thereof has been appropriated by His Majesty under the provisions of this Act, or any Order in Council, order or regulation made thereunder, and compensation is to be made therefor

and has not been agreed upon, the claim shall be referred by the Minister of Justice to the Exchequer Court, or to a Superior or County Court of the province within which the claim arises, or to a judge of any such court."

The powers exercised as above set out and the powers conferred upon Sir Henry Drayton by the Orders in Council above referred to were exercised and conferred under the provisions of the War Measures Act, 1914, and the Acting Minister of Justice submits with the concurrence of the Committee of the Privy Council appointed by Order in Council of the 15th November, 1918, to which all matters arising from time to time concerning questions of power shall be referred, that if or in so far as the taking of the power or the action of the said sub-committee or of Sir Henry L. Drayton in pursuance of his duties under said orders in ordering deliveries of such electrical energy, was in the nature of an expropriation, the proper tribunal to adjudicate as to the value of what deliveries may have been made in pursuance of such orders, was and is the Exchequer Court of Canada.

It seems indeed questionable that the Government acted within its powers in directing the price to be fixed by Sir Henry Drayton, and he himself in a letter of 14th December, 1918, to the Acting Minister of Justice, says that:—

"In a sense the taking of this power has been expropriation. All claims for expropriation in which the Dominion is interested are settled by the Exchequer Court, which has a very large experience in dealing with such matters.

"If it becomes necessary, as I have no doubt it will, for a recommendation of the matter, you might perhaps consider referring the matter of an appeal by any of the parties to the controversy from any decision that I may have made, to the Exchequer Court."

In any case all questions of quantity, value and amount, as well as liability, may be conveniently determined upon reference to the Exchequer Court, and any question as to the competency of the tribunal would by such a reference be avoided.

The Toronto Power Company, Limited, urge very strongly that they have been put to a very great inconvenience in being compelled to deliver the said power to the Ontario Power Company without remuneration over so long a period of time during which they were under the necessity of making large expenditures for coal and other requirements in the production of such power, and urge that an injustice is being done them by the Government in so long withholding payment from them.

In these circumstances the Minister is of opinion that time would be saved and a fair and expeditious method adopted, as well as one fully in accord with the intention of Parliament as set out in said Section 7 of the War Measures Act, 1914, if the entire question as to the amount which the Toronto Power Company, Limited, should receive be referred to the Exchequer Court of Canada with power to receive and act upon all and any evidence already taken and data compiled or obtained by the said controller, together with such data and information as may be furnished by the engineers or experts heretofore employed by the said controller, and with power to employ such engineers or experts as the said court may see fit and to receive and act upon either wholly or in part any report of any such engineer or expert and to take any evidence it may deem proper, and that the powers of the said controller in respect of the fixing and determining of the said price be withdrawn.

Therefore His Excellency the Governor General in Council, on the recommendation of the Acting Minister of Justice and with the concurrence of the above-mentioned Committee, is pleased, by virtue of the authority conferred on the Governor in Council by the War Measures Act, 1914, or otherwise existing, to order and it is hereby ordered that the powers of the said controller with respect to the fixing of the price or value to be paid, or which the Toronto Power Company is entitled to receive be withdrawn and terminated and the Honourable Arthur Meighen,

Acting Minister of Justice and Chairman of the above-mentioned Committee, is hereby authorized to refer the matter accordingly for the determination of the Exchequer Court of Canada.

His Excellency in Council is further pleased, on the recommendation of the Acting Minister of Justice and with the concurrence of the said Committee, to empower and doth hereby empower the said the Honourable Arthur Meighen to take such steps and make such other provisions as may be deemed necessary for the determination of the questions involved by the Exchequer Court of Canada and for the collection of said moneys from the Ontario Power Company or such other companies or persons as may be liable therefor.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

TRADE NOTES.

The Canadian Trade Commission is informed that owing to there being a heavy accumulation of wheat flours in Cuba, the Food Administration there has placed certain restrictions on flour imports. Importers must purchase two sacks of flour from the Cuban Food Administration for every sack they import. It is not known whether this regulation is to be of long duration. Exporters in Canada should consult with consignees in the Cuban Republic.

BRITAIN'S BEAN CROP.

Information reaching Ottawa from London shows that the extensive precautionary measures taken to build up the food reserve which was vital to the Allied cause as a countermove to the menace of the German U-Boat were so successful that there are temporarily, owing to the sudden ending of the war considerable surpluses of some classes of foods. The stock of beans on hand is very large. In reply to an inquiry as to the possibility of disposing of the Canadian bean crop in Europe it was stated that the supply in Great Britain was enough for three years. This will now be available for distribution in other countries, including Rumania, and until these supplies are liquidated the prospect for the export of beans from Canada does not appear bright. The demand for tonnage to move the Allied cereal crops is so great that the Royal Wheat Commission do not find it advisable to send ships long distances to carry foodstuffs which can be secured close at hand.

TIN TRAFFIC ALLOWED.

The British Colonial Office announces, according to a cablegram received by the Canadian Trade Commission, Ottawa, that no licenses are now required for the shipment of tin from the Straits Settlements to Canada direct. Tin, which is the chief export of the Straits ports and which is peculiar in being largely transit trade, was listed as follows: Tin ore, import value, \$43,000,000; tin, export value, \$49,600,000.

BRITAIN ADMITS EFFECTS.

The Canadian Trade Commission has received a cablegram amplifying the information on British regulations respecting entry of personal effects into Great Britain. When included as bona fide passengers' baggage, even goods classed as prohibited for war purposes will be admitted without license, subject to special directions regarding tobacco, tea and spirits. Commercial samples are admitted without license.

ENEMY TRADING ALLOWED.

The resumption of trade under general license is announced by the British Board of Trade through the Canadian Trade Commission, Ottawa, with Croatia, Slavonia, Bosnia and Herzegovina. The Commission is also notified that restrictions imposed by the proclamation on trading with the enemy (occupied territory) no longer apply to trading with Montenegro and Albania, consequently commercial transactions with the above countries may be resumed except insofar as Trading with the Enemy Legislation prevents. The general license does not remove certain existing restrictions in respect to the payment of pre-war debts and of the return of property held or managed before the war for persons in enemy territory.