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MEMORIAL

OF THE

SCHUYLKILL NAVIGATION COMPANY

TO THE

COUNCILS OF THE CITY OF PHILADELPHIA.

September, 1869.



PHILADELPHIA:

E. C. MARKLEY & SON, PRINTERS, 422 LIBRARY ST., OPPOSITE POST OFFICE.

1869.

To the Select and Common Councils
of the City of Philadelphia.

The Memorial of the President, Managers and Company of the Schuylkill Navigation Company, respectfully represents :

That by the contracts of the said Company with the City of Philadelphia, for the use of the water-power created by the erection of the dam in the river Schuylkill, near Fairmount, it is among other things in effect stipulated, that whenever, by the use of the water of the river at that point for the purposes of navigation and for water-power, the water is drawn down to the top of said dam, then and in such case the city shall stop using said water for water-power, until the water rises again level with the top of said dam, thereby leaving the whole of the water under such circumstances, to be used for the purposes of the navigation, and only granting to the city the right to use as water-power any surplus of water that may then be left.

For the express words of these contracts, your memorialists respectfully refer to copies thereof herewith presented.

Towards the close of the month of July and the beginning of August of the present year, it became necessary for the company to call on the city for a compliance with these contracts, in the same way and to the same extent as have for many years been customary during the periods of summer drought.

The agents of the city accordingly stopped the use of the water as water-power from time to time, so that the navigation of the river was only partially interfered with. But on the 11th day of August the agents of the city having at

that time drawn the water considerably below the top of the dam, positively and persistently refused to shut off the water from their machinery, thereby stopping the navigation of the river for loaded boats, and greatly damaging your memorialists.

On the 14th of August, while this state of things, in violation of the contracts, continued, the Chief Engineer of the Water Department made an application to your memorialists (a copy of which, and the reply thereto, is herewith sent), requesting that the navigation of the river should be wholly suspended, and that the city should be permitted to use the whole of the water of the river for supplying water for the use of the city of Philadelphia, until a crisis which then perilled the city—by a famine for water, and the great loss that might ensue from conflagrations—was passed.

In said application, while said Chief Engineer stated he had no power to bind the city to indemnify the company for the loss and damage which might occur by such stoppage of the navigation, he yet expressed the conviction that under circumstances so peculiar, and of such great public peril and emergency, a full indemnity would be accorded by the city.

In answer to this application, the Navigation Company at once ordered their locks to be closed, and several of their upper dams to be drawn, so that the whole of the water of the river was placed at the disposal of the city for the use of its inhabitants.

This arrangement was, on the 23d day of August, communicated to your bodies in a message from the Hon. Daniel M. Fox, Mayor of the city, at a special meeting convened by him for taking this important matter into consideration.

At said meeting of Councils, the action of the Chief Engineer of the Water Department, and of the Committee on Water, was approved of, the liability of the city for indemnity was recognized, and an appropriation of Twenty-five

Thousand Dollars was made, to be paid on account of said indemnity, and to be applied to the relief of the boatmen, who were suffering greatly by the stoppage of their business.

It was hoped that the stoppage of navigation would be but for a short period of time, but it has continued now for more than a month, and has been lately only partially removed, by an experimental arrangement agreed upon, on the 4th instant, between the Navigation Company and the Chief Engineer of the Water Department.

From the above statement of facts, it will be seen to what extent in time the city is liable to make payment for the entire obstruction of the navigation, and the object of this memorial is to secure an immediate payment from the city on account of the indemnity, and to arrange for the final ascertainment and payment thereof in full.

It must be borne in mind that the river Schuylkill is a great public highway, entrusted by the state to the care and control of the Navigation Company, and that they are bound at all times to keep it in navigable order.

In their contracts for a supply of water-power, they have at all times and with all parties, stipulated—as by their Charter they were bound to do—that the use of the water of the river for water-power should cease whenever it was required for the purposes of the navigation, and hitherto these contracts have been enforced against all the water-tenants, the city included. -

It is susceptible of the clearest proof, that if the city had, in compliance with her contract, stopped using the water-power of the river, when so requested by the Navigation Company, there would have been an abundant supply for all the purposes of navigation.

The only question, therefore, that remains as between the city and the Navigation Company, is the amount of the

indemnity to be paid, and in what manner it shall be ascertained.

And first in the consideration of this claim, we put the case of the suffering boatmen, who are entitled to your deepest sympathy and most liberal dealing.

Without in any way waiving their legal rights against all who are liable for the stoppage, we have proposed to them that the demurrages named in their bills of lading shall be the measure of their claim, and that the basis of a settlement with them should be as follows :

First. To estimate that according to the regular running of their boats, it would take five days for them to reach the locks at Fairmount from the date of the bill of lading, and that for every day beyond five days from the date of their bills of lading, they were prevented from passing the outlet lock at Fairmount, they should be allowed demurrage at the rate of Six Dollars per day for the first four days, and Twelve Dollars per day thereafter.

Such a measure of compensation for detention, resting on a long and well-established practice of dealing with their customers, and not made with any reference to a great public necessity, to overcome which their rights, interests and comforts were without any notice to them sacrificed, seems to be the very least that should be allowed to them, and we trust it will be promptly and cheerfully granted.

Second. As to the claim of the Navigation Company itself for indemnity, we propose, also without prejudice to our legal rights, that the following rules shall be adopted :

That the tonnage of coal and of miscellaneous articles carried over the works of the company for the month immediately preceding the stoppage of navigation, shall be taken as the measure of business of which the company has been deprived, and that compensation shall be made therefor at the rates of toll charged thereon at the time of the stop-

page—less the amount that the company would have paid thereon for the expenses of lateral railroads, for shipping coal, and for drawbacks—these being the only deductions that should be made, as all the other current expenses of the company have remained unchanged.

By the contract between this Company and the Philadelphia and Reading Railroad Company, relative to the leases and working of certain lateral railroads in Schuylkill county, it is stipulated that if the anthracite coal trade is not by working under said contracts, divided between them in certain proportions, the party having an excess shall pay to the other Twenty-five cents per ton for such excess. But that if the work of either company during that period of the year which runs from the 1st of April to the 15th of December shall not be in use, the computation of the coal trade for the ascertainment of the respective portions of the parties shall, while such suspension of use continues, be suspended also.

By the stoppage of the business of the Navigation Company by the city, this suspension of computation of tonnage is now in force, and the loss thereby caused is considered a fair and legitimate item in the matter of indemnity.

We therefore ask that immediate measures shall be taken by your bodies for a settlement based on the foregoing principles, and that payment shall be made for the time that has already been lost by the boatmen and the Navigation Company, and that if the stoppage shall be continued for a longer period, weekly settlements shall be made, and payment thereof be accorded on the same basis.

Adopting the principles above suggested, it is estimated that the present claim against the city amounts to upwards of Four Hundred Thousand Dollars, which would be about equally divided between the boatmen and the Navigation Company, and on this large sum only Twenty-five Thousand Dollars have yet been paid.

In conclusion, your memorialists will state that, in making out their claim for indemnity, they have endeavored to place it on the most favorable ground for the city, and they feel that your bodies will be cheerfully and cordially sustained by the public, in a settlement that will be characterized by its just as well as equitable features.

By order of the Managers.

F. FRALEY,

PRESIDENT.

OFFICE SCHUYLKILL NAVIGATION Co., }
September 15th, 1869. }