

The Ontario Energy Board Public Hearing

EB2016-0276

Documents that may be referred to
in regards to Intervenor status or oral status
by the elected members of the
Orillia Water Light & Power
and/or Frank Kehoe

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To Provide for the Election of Water, Light and Power Commissioners.

The Municipal Corporation of the Town of Orillia, hereby enacts as follows :

1. That for the year 1913, and thereafter, there shall be elected Four Commissioners, who, with the Mayor of the said Town of Orillia, for the time being, shall together constitute a Board of Commissioners, who shall exercise and enjoy all the powers, rights, authorities and immunities conferred upon the Corporation of the said Municipality by the "Municipal Waterworks Act," and all amendments thereto, and by the "Municipal Light and Heat Act," and all amendments thereto, except that the Sewerage system shall remain as heretofore under the control of the Council of the said town.

2. That the said four Commissioners for the year 1913, shall be JAMES BROCKERT TUDHOPE, of the Town of Orillia; ERASTUS LONG, of the Town of Orillia; WILLIAM SWORD FROST, of the Town of Orillia, and CHARLES HAROLD HALE, of the Town of Orillia. And this appointment shall constitute the election of the said Commissioners for the year 1913, and of the two having the largest assessment, Commissioners for the year 1914.

3. After the year 1913, two Commissioners to replace those whose term shall have expired shall be elected annually at the same times and in the same manner as the Mayor of the said town, except where a vacancy from any cause occurs on the said Board, when a Commissioner who shall hold office during the remainder of the term for which his predecessor was appointed, shall be immediately appointed by the Municipal Council of the said Town.

4.—That the vote of the electors of the Town of Orillia will be taken on this By-law by the Deputy-Returning Officers hereinafter named on Monday, the Sixth Day of January, 1913, commencing at Nine o'clock in the morning and continuing until Five o'clock in the afternoon, at the undermentioned places :

- (1) For the First Polling Subdivision at A. H. Bowen & Son's Store, on Mississauga Street.
- (2) For the Second Polling Subdivision at John Ralston's Shop, on Mississauga Street.
- (3) For the Third Polling Subdivision at the Fire Hall, Peter Street.
- (4) For the Fourth Polling Subdivision at John Kerr's Office, Mississauga Street.
- (5) For the Fifth Polling Subdivision at Council Chambers, West Street.
- (6) For the Sixth Polling Subdivision at E. F. Cooke & Son's Office, West Street.
- (7) For the Seventh Polling Subdivision at Andrew Clark's House, Mary Street.

The following persons shall be Deputy-Returning Officers and Poll Clerks for taking such votes :

- At Polling Subdivision No. 1. Charles Morrison, Deputy Returning Officer, and Josephus Watson, Poll Clerk.
- At Polling Subdivision No. 2. Ohas. G. Hatley, Deputy Returning Officer, and Andrew McNabb, Poll Clerk.
- At Polling Subdivision No. 3. F. W. Webber, Deputy Returning Officer, and A. E. S. Webber, Poll Clerk.
- At Polling Subdivision No. 4. John Reardon, Deputy Returning Officer, and R. T. Smith, Poll Clerk.
- At Polling Subdivision No. 5. William Teekey, Deputy Returning Officer, and R. C. Hipwell, Poll Clerk.
- At Polling Subdivision No. 6. W. T. Y. Lee, Deputy Returning Officer, and Joseph Gibbons, Poll Clerk.
- At Polling Subdivision No. 7. Charles Powley, Deputy Returning Officer, and Wm. G. Richardson, Poll Clerk.

5.—That on the 4th day of January, A. D., 1913, at the office of the Town Clerk in the Town of Orillia at the hour of 10 o'clock in the forenoon, the Mayor shall appoint in writing signed by himself, two persons to attend at the final summing up of the votes by the Clerk, one person to attend at each Polling Subdivision on behalf of the persons interested in and desirous of promoting the passing of this By-law, and a like number on behalf of the persons interested in and desirous of opposing the passing of this By-law.

6.—That the Clerk of the Municipal Council of the Town of Orillia shall attend at his office at the Council Chamber, in the Town of Orillia, at the hour of eleven o'clock in the forenoon, on the 7th day of January, A. D., 1913, to sum up the number of votes given for and against this By-law.

This By-law shall come into operation and be of full force and effect immediately after the passing thereof, and shall remain in force until duly repealed.

Dated this day of A. D., 1913, Town of Orillia.

TAKE NOTICE, that the above is a true copy of a proposed By-law, which has been taken into consideration and will be finally passed by the Council of the Town of Orillia in the event of the assent of the electors being obtained thereto, after one month of the first publication in THE TIMES, the date of which publication was Thursday, December 12, 1912, and that the votes of the electors of the said Municipality will be taken thereon on the day and the hours and places therein fixed.

C. E. GRANT,
CLERK, TOWN OF ORILLIA.

DECEMBER 12TH 1912

1



CHAPTER 41.

An Act respecting the Construction and Operation of Works for supplying Public Utilities by Municipal Corporations and Companies.

Assented to 6th May, 1913.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Public Utilities Act.*

2. In Parts III., IV., V. and VI. of this Act, "Public Utility" or "Public Utilities" shall mean water, artificial or natural gas, electrical power or energy, steam and hot water.

PART I.

MUNICIPAL WATERWORKS.

3.—(1) The corporation of a local municipality may, under and subject to the provisions of this Part, acquire, establish, maintain and operate waterworks and may acquire by purchase or otherwise and may enter on and expropriate land, waters and water privileges and the right to divert any lake, river, pond, spring or stream of water within or without the municipality, as may be deemed necessary for waterworks purposes, or for protecting the waterworks or preserving the purity of the water supply.

(2) No land, water or water privilege which is not situate



An Act respecting the Construction and Operation of Works for supplying Public Utilities by Municipal Corporations and Companies.

Assented to 6th May, 1913.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Public Utilities Act.*
New.

Interpretation. "Public Utilities."
2. In Parts III., IV., V. and VI. of this Act, "Public Utility" or "Public Utilities" shall mean water, artificial or natural gas, electrical power or energy, steam and hot water.
New.

PART I.

MUNICIPAL WATERWORKS.

Establishment of works and expropriation of land, etc.
3.—(1) The corporation of a local municipality may, under and subject to the provisions of this Part, acquire, establish, maintain and operate waterworks and may acquire by purchase or otherwise and may enter on and expropriate land, waters and water privileges and the right to divert any lake, river, pond, spring or stream of water within or without the municipality, as may be deemed necessary for waterworks purposes, or for protecting the waterworks or preserving the purity of the water supply.

Limitation of power to expropriate.
(2) No land, water or water privilege which is not situate within or within 15 miles of the municipality shall be expropriated under the powers conferred by subsection 1, and no water shall be taken from any lake or river except within or within 15 miles of the municipality, or in either case so as to interfere with the waterworks of any other municipal corporation or the supply of water therefor then in actual use. R.S.O. 1897, c. 235, ss. 2-5, *redrafted.*

PART III.

ALL MUNICIPAL PUBLIC UTILITIES.

Application
of Part.

25. This Part shall apply to all municipal corporations owning or operating public utilities. *New.*

Power to
make by-
laws for
mainten-
ance and
manage-
ment of
works

26.—(1) The council may pass by-laws for the maintenance and management of the works and the conduct of the officers and others employed in connection with them, and for the collection of the rates or charges for supplying the public utility, and for the rent of fittings, machines, apparatus, meters or other things leased to consumers, and for fixing such rates, charges and rents, and the times and places when and where the same shall be payable; and for allowing for prepayment or punctual payment such discount as may be deemed expedient. R.S.O. 1897, c. 234, s. 9, *amended.*

Discretion
of corpora-
tion as to
rates to be
charged.

(2) In fixing the rents, rates or prices to be paid for the supply of a public utility the corporation may use its discretion as to the rents, rates or prices to be charged to the various classes of consumers and also as to the rents, rates or prices at which a public utility shall be supplied for the different purposes for which it may be supplied or required. 6 Edw. VII. c. 39, s. 1, *redrafted.*

Power to
shut off
supply

(3) In default of payment the corporation may shut off the supply but the rents or rates in default shall, nevertheless be recoverable. R.S.O. 1897, c. 235, s. 21 (2). *part, redrafted.*

Rates to be
lien on lot
or building.

27. The sum payable by the owner or occupant of any building or lot, for the public utility supplied to him there, or for the use thereof, and all rents, rates, costs and charges by this Act to be collected in the same manner as rents or rates for the supply of a public utility shall be a lien and charge on the building or lot, and may be levied and collected in like manner as municipal rates and taxes are recoverable. R.S.O. 1897, c. 235, s. 20 (2), *amended.*

Protection
and powers
of officers.

28. The officers of the corporation, when acting the discharge of their duties under this Act, shall *ex-officio* be constables. R.S.O. 1897, c. 235, s. 24. *part.*

Limitation
of actions.

29. No action shall be brought against any person for anything done in pursuance of this Act, but within six months next after the act committed, or in case there is a continuation of damage, within one year after the original cause of action arose. R.S.O. 1897, c. 235, s. 25, *amended.*

30. Materials procured under contract with the corporation, and upon which the corporation has made advances in accordance with such contract, shall be exempt from execution against the person who supplied or contracted to supply such materials. R.S.O. 1897, c. 235, s. 27, *amended*.

Property exempt from execution.

31. The public utility works and the land acquired for the purpose thereof, and the property appertaining thereto, shall be specially charged with the repayment of any sum borrowed by the corporation for the purposes thereof, and for any debentures issued therefor, and the holders of such debentures shall have a preferential charge on such works, land and property for securing the payment of the debentures and the interest thereon. R.S.O. 1897, c. 235, s. 36; 3 Edw. VII. c. 24, s. 1, *amended*.

Money borrowed to be a charge on works.

32. The revenues arising from supplying any public utility or from the property connected with any public utility work, after providing for the expenses of the maintenance of the works shall, subject to section 31, form part of the general funds of the corporation. R.S.O. 1897, c. 235, s. 38; 3 Edw. VII. c. 24, s. 3, *redrafted*.

Application of revenue.

33.—(1) The corporation may sell, lease or otherwise dispose of any property which is no longer required for the purpose of the undertaking, and any property so sold shall be free from any charge or lien on account of any debentures issued by the corporation, but the proceeds of the sale shall be added to and form part of the fund for the redemption and payment of any debentures constituting a charge thereon, or if there are no such debentures the proceeds shall form part of the general funds of the corporation.

Power to sell any property when no longer required.

(2) If credit is given for any part of the purchase money of real property the corporation may take security, by way of mortgage to secure the same and every such mortgage, and the proceeds thereof, shall stand as security for any debentures constituting a charge on the real property, at the time of the sale. R.S.O. 1897, c. 235, s. 30, *amended*.

Power to take security.

PUBLIC UTILITY COMMISSION.

34.—(1) The council of a municipal corporation which owns or operates works for the production, manufacture or supply of any public utility or is about to establish such works may by by-law passed with the assent of the municipal electors provide for entrusting the construction of the works and the control and management of the same to a commission to be called "The Public Utilities Commission

Formation of Public Utility Commission for management of works.

of

of the (*naming the municipality* ") or to a commission established under this Part.

(2) A Commission established under *The Municipal Waterworks Act* or *The Municipal Light and Heat Act* or under a special Act for the construction or the control and management of works for the manufacture, production or supply of any public utility shall for the purposes of this section be deemed to be a Commission established under this Part and the provisions of this Part shall apply to it.

One Commission for several public utilities.

(3) Where a commission has been established under this Part as to any public utility and the corporation desires to entrust the control and management of any other public utility works to a commission, subject to subsection 5, such control and management shall be entrusted to the commission so established, or if there is more than one commission so established to one of them, or the by-law may provide for placing under the control and management of one commission all public utility works owned by the corporation.

(4) Where the construction of any other public utility works and the control and management of them is entrusted to any of the commissions mentioned in subsection 2, such commission thereafter shall be called "The Public Utility Commission of the (*naming the municipality*)".

Special provisions as to Hydro-Electric Commission

(5) Where the corporation of a city or town has entered into a contract with The Hydro-Electric Power Commission of Ontario for the supply of electrical power or energy a commission shall be established under the provisions of this Part for the control and management of the construction, operation and maintenance of all works undertaken by the corporation for the distribution and supply of such electrical power or energy, or such control and management shall be entrusted to an existing Public Utilities Commission, and, where the commission is not entrusted with the control and management of any other public utility, it shall be called "The Hydro-Electric Commission of the (*naming the municipality*)".

Special Act not affected.

(6) Subsection 5 shall be subject to the provisions of any Special Act providing for the control and management of such works.

Certain by-laws not to be repealed.

(7) A by-law of the council for the purposes mentioned in subsection 4 shall not be repealed without the consent of "The Hydro-Electric Power Commission of Ontario."

(8)

(8) If no commission has been established under this Part to which the control and management of a sewerage system, to which paragraph 11 of section 406 of *The Municipal Act* applies, may be entrusted, a Commission may be established under this Part, for the control and management of such sewerage system, and the provisions of this Part shall apply to it. *New. See R.S.O. 1897, c. 235, s. 40 (1); 10 Edw. VII. c. 93, s. 1.*

35.—(1) Subject to subsection 3, upon the election of the commissioners as hereinafter provided, all the powers, rights, authorities, and privileges which are by this Act conferred on the corporation shall, while such by-law remains in force be exercised by the commission and not by the council of the corporation.

(2) The officers and employees of the corporation shall be continued until removed by the commission unless their engagement sooner terminates.

(3) Nothing contained in this section shall divest the council of its authority with reference to providing the money required for such works, and the treasurer of the municipality shall, upon the certificate of the commission, pay out any money so provided. *R.S.O. 1897, c. 235, s. 40 (2-4); 3 Edw. VII. c. 24, s. 4, redrafted.*

36.—(1) A commission established under this Part shall be a body corporate and shall consist of three or five members as may be provided by the by-law, of whom the head of the council shall *ex-officio* be one and the others shall be elected at the same time and place and in the same manner as the head of the council.

(2) One-half of the elective members shall hold office for two years and the other one-half for one year, and shall continue in office until their successors are elected and the new commission is organized.

(3) At the first meeting of the commission after the first election the members who are to hold office for two years shall be chosen by lot.

(4) Except where otherwise expressly provided, the provisions of Parts 2, 3 and 4 of *The Municipal Act* which are applicable to members of the council of a local municipality shall apply *mutatis mutandis* to the commissioners to be elected under the provisions of this Part. *6 Edw. VII. c. 40, s. 2; 7 Edw. VII. c. 45, s. 1, redrafted.*

Filling of vacancies

37.—(1) Where a vacancy in the commission occurs from any cause the council shall immediately appoint a successor who shall hold office during the remainder of the term for which his predecessor was elected. 6 Edw. VII. c. 40, s. 2, *amended*.

Quorum

(2) A majority of the commissioners shall constitute a quorum of the commission. R.S.O. 1897, c. 235, s. 41 (2).

Salary of commissioners

38. The salary, if any, of the commissioners shall from time to time be fixed by the council, and no member of the council, except the head thereof, shall at the same time be a member of the commission. R.S.O. 1897, c. 235, s. 42.

Repeal of by-law.

39.—(1) The council may by by-law passed with the assent of the municipal electors repeal any by-law passed under section 34.

Apportionment of salaries.

(2) Where a by-law is repealed the council shall apportion the current year's salary of the commissioners and any officer or employee of the commission shall be continued until removed by the council unless his engagement sooner terminates. R.S.O. 1897, c. 235, s. 44; 3 Edw. VII. c. 24, s. 6, *redrafted*.

Book of accounts.

40.—(1) Separate books and accounts of the revenues derived from every public utility under its management shall be kept by the commission and such books and accounts shall also be kept separate from the books and accounts relating to the other property, funds, or assets connected with such public utility, and such books and accounts shall be open to inspection by any person appointed for that purpose by the council. R.S.O. 1897, c. 235, s. 45 (1), *redrafted*.

Regulation of system of book-keeping.

(2) Subsection 1 shall be subject to section 58 of *The Ontario Railway and Municipal Board Act*. *New*.

Returns to Council.

41.—(1) The commission shall on or before the fifteenth day of January, in each year, or upon such other day as the council may direct, cause a return to be made to the council containing a statement of the affairs of each public utility work, showing,—

(a) the amount of the rents, issues, and profits, arising therefrom and the number of persons supplied with each of the public utilities during the previous calendar year;

(b) the extent and value of the property connected with each public utility work;

(c)

- (c) the amount of all outstanding debentures and the interest thereon, due and unpaid, and the state of the sinking fund;
- (d) the expenses of management, and all other expenses;
- (e) the salaries of officers and servants;
- (f) the cost of repairs, improvements and alterations;
- (g) the price paid for any land acquired for the purpose of such public utility work and such a statement of revenue and expenditure as will at all times afford full and complete information of the state of its affairs.

(2) The commission shall also furnish such information Information for council as from time to time may be required by the council.

(3) The accounts of the Commission shall be audited by Audit of accounts the auditors of the corporation, and the commission and its officers shall furnish to the auditors such information and assistance as may be in their power to enable the audit to be made. R.S.O. 1897, c. 235, s. 45, *redrafted*.

42. A book wherein shall be recorded all the proceedings Records of proceedings of the commission shall be kept and shall be open to inspection by any person appointed for that purpose by the council. R.S.O. 1897, c. 235, s. 46, *part redrafted*.

43. The revenues after deducting disbursements shall, Revenues to be paid to municipal treasurer quarterly, or oftener if the council so directs, be paid over to the treasurer of the municipality, and shall be by him placed to the credit of the account of the public utility work, and if not required for the purpose of the work shall form part of the general funds of the corporation. R.S.O. 1897, c. 235, s. 47, *redrafted*.

PART IV.

ALL MUNICIPAL AND COMPANY PUBLIC UTILITIES.

44. This Part shall apply to all municipal or other cor- Application of Part porations owning or operating public utilities. *New*.

45.—(1) Any person authorized by the corporation for Inspection of premises that purpose shall have free access, at all reasonable times, and upon reasonable notice given and request made,

to



35 WEST STREET N.
P.O. BOX 340
ORILLIA, ONTARIO
L3V 6J1

TELEPHONE
(705) 325-1311
FACSIMILE
(705) 325-5178

OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER

November 15, 1996

RECEIVED

NOV 13 1996

Mr. W. D. Russell,
Russell, Christie, Miller, Koughan,
Barristers and Solicitors,
P.O. Box 159,
Orillia, Ontario.
L3V 6J3

ORILLIA, WATER, LIGHT &
POWER COMMISSION

Dear Mr. Russell:

Re: Council Meeting - December 9, 1996

This letter is to request your presence at the Committee of the Whole meeting on December 9th to discuss matters relating to the OWLP. Gord Davidson will also be in attendance.

Please confirm your attendance with my assistance Lori Blunt at 329-7230.

Yours truly,

Ian C. R. Brown,
City Manager.

ICRB/lb

cc: Mayor French
Gord Davidson, OWLP



CITY ON THE LAKES - BIRTHPLACE OF CENTRAL ONTARIO



PRINTED ON RECYCLED PAPER



MEMO

TO: Gord Davidson, Chief Executive Officer
Orillia Water, Light and Power Commission

FROM: Ian C. R. Brown, City Manager *(ICRB)*

DATE: October 16, 1996

SUBJECT: O.W.L.P. Assets

RECEIVED

OCT 17 1996

ORILLIA, WATER, LIGHT &
POWER COMMISSION

Further to your conversation with Mayor French, I am enclosing a copy of Mr. Russell's opinion on the sale of assets of the O.W.L.P. for your comments.

ICRB/lb
encl.

Russell, Christie, Miller, Koughan

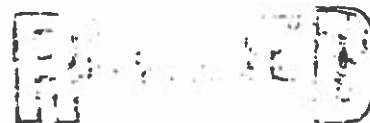
76 COLDWATER STREET EAST, P.O. BOX 158, ORILLIA, ONTARIO L3V 6J3

TELEPHONE (705) 325-1326

FAX (705) 327-1811

October 9, 1996

City of Orillia
P.O. Box 340
ORILLIA, Ontario
L3V 6J1



OCT 17 1996

Attention: Mr. Ian Brown, C.A.O.

Dear Mr. Brown:

ORILLIA WATER LIGHT &
POWER COMMISSION

Re: Water Light and Power Commission

Researching your question as to who would receive the proceeds of the sale of any assets of the O.W.L.P., and who owns the assets of the utility, required a review of all applicable legislation back to "day one". That took us to the Town of Orillia Act passed on April 1, 1899.

The O.W.L.P. is unique. It has the power to construct hydro-electric generating facilities, to operate transmission lines, and in some areas, the power to control water levels for these purposes - and all this OUTSIDE the Municipal jurisdiction of the City.

This subject of "JURISDICTION" both geographically and internally vis-a-vis the City and O.W.L.P. are the matters that turn blue litmus red.

In SUMMARY, our opinion is as follows:

1. Statutory Agent

The O.W.L.P. is a statutory agent of the City, and holds its assets in trust for the City.

2. O.W.L.P. - Legal Authority

The legal authority for the existence of the O.W.L.P. and its jurisdictional powers are found in the following:

- a) The Town of Orillia By-law 557 (1913)
- b) The Town of Orillia Private Act, Bill No. 5, 1915.

.../2

W.D. (RUSTY) RUSSELL, Q.C.
DOUGLAS S. CHRISTIE, B.A., LL.B.
MICHAEL M. MILLER, B.Sc. in Comm., LL.B.
WILLIAM S. KOUGHAN, LL.B.

DAVID M. WINNITTOY, LL.B.
LISA M. BOWLIN, B.A., LL.B.
JESSICA A. DUNCAN, B.A., LL.B.

3. Procedure For City To Recover Assets

How and by what procedure the City could take back all, or part of, the powers given to the O.W.L.P. by By-law 557 is a fuzzy area. It could be argued that the consent of Ontario Hydro and the consent of the electors is required.

4. Full Circle

After searching through the background material of Provincial and Local legislation from 1899 to 1996 (copies attached) one has to ask if we have not come full circle.

Let me explain. The City is the owner of the assets and O.W.L.P. only holds them as Trustee for the City. Therefore, any Provincial legislation involving these assets (whether for hydro distribution or generation) must be directed against the City, not the O.W.L.P.

If this analysis is correct, then the methodology of how to cancel the O.W.L.P. Trust is academic. Future Provincial legislation would also need to provide the Statutory means by which Trust Arrangements between Municipalities and their Hydro Commissions are more easily terminated.

Having said this, let us analyze the building blocks leading to the above conclusions.

BACKGROUND RESEARCH

The historical background of where the City and the O.W.L.P. stand, and how they got to this point, is important.

A noted Washington correspondent recently made the statement that you could have no understanding or control without knowledge, particularly historical knowledge.

She added - "Without historical knowledge you don't know where you are, or why you are, much less where or why anybody else is.... you are easily taken in....and even more easily fooled".

With this philosophy in mind, let us proceed.

SUBJECT NO. 1 - MUNICIPAL JURISDICTION

Section 101(1) of the Municipal Act states:

"except where otherwise provided, the jurisdiction of every Council is confined to the Municipality that it represents and its powers shall be exercised by By-law."

This provision is not new. It has been in the Municipal Act since the early 1850's.

14

When and by what means you may ask, did Orillia get the power to buy land and construct hydro-electric generating facilities OUTSIDE of its Municipal jurisdiction?

STEP 1

THE TOWN OF ORILLIA ACT OF 1899 (Exhibit 1) (Ragged Rapids)

This Private Act permitted the Town to purchase land in the Township of Matchedash, and to build, maintain and operate a hydro-electric generation station at Ragged Rapids, operate transmission lines and furnish electric power to the Town of Orillia and elsewhere within a radius of "5 miles thereof". The Act also approved of Debentures in the amount of \$75,000.00.

STEP 2

TOWN OF ORILLIA ACT, MARCH 17, 1902 (Exhibit 2) (Radius 25 miles)

It was realized that the radius of "5 miles" was in error. In addition, the Town was having problems with their construction financing, so this new Private Act was the next step.

This Act extended the "service area" for electrical purposes, to 25 miles, and also approved \$100,000.00 in Debentures.

STEP 3

TOWN OF ORILLIA BY-LAW 557 - (Exhibit 3) TO ESTABLISH A COMMISSION

By 1912 it became apparent to the Town Fathers that Council and staff could not handle the complexities of this mushrooming development, and the next step was to form a Commission and transfer these powers to the Commission.

TOWN OF ORILLIA BY-LAW 557, 1913 (The O.W.L.P. is born.)

This By-law was passed on the 23rd day of January, 1913 establishing a Water, Light and Power Commission effective in the year 1913. This was done under the provisions of the "Municipal Light and Heat Act" and the "Municipal Water Works Act" of 1897 as amended.

As a prerequisite to the passage of this By-law it had to be submitted to the electors for approval. This was advertised in a local newspaper on December 12, 1912 and the electors went to the poll on Monday, January 6, 1913. A favourable majority was announced on January 7, 1913, and with the passing of By-law No. 557 on January 23, presto, O.W.L.P. was in business.

STEP 4

PRIVY COUNCIL COMMITTEE REPORT (FEDERAL) - (Exhibit 4)
ON THE SEVERN WATERWAY CANALIZATION
(Relocation - Ragged Rapids to the Swift)

In 1913 the Federal Government was investigating the feasibility of canalization sections of the Severn River for the purpose of the Trent Severn System. This resulted in a Report dated the 9th of February, 1914 which was approved by the Privy Council. It provided for the relocation of the Orillia Ragged Rapids dam and hydro facilities to the Swift Rapids.

COMMENT: I was not provided with any documentation which:

- a) indicated approval of Council or the Commission to the relocation of their hydro facility from Ragged Rapids to the Swift Rapids, but this need not detain us.
- b) the "25 mile service area" provision approved in the Town of Orillia Act of 1902, does not appear to have been the subject of an amendment.

STEP 5

TOWN OF ORILLIA ACT, BILL NO. 5, 1915 (Exhibit 5)
(O.W.L.P. Operating Powers)

By 1914 the Town Fathers had several concerns which they felt could only be corrected by a further Town of Orillia Act. These were:

- a) the question as to whether the Town could "off-load" to the Commission its powers to operate generation stations and transmission lines OUTSIDE THE JURISDICTION of the Town of Orillia, also
- b) there was a requirement to reorganize a Debenture debt of \$85,000.00, and
- c) the Town had made an application to annex certain waterfront properties still held by the Township of Orillia (approved). This resulted in....

TOWN OF ORILLIA ACT, BILL NO. 5, 1915

Section 11 of the Act clears up the issue as to the legality of Town Council off-loading their Special Act powers to a Commission. It states as follows:

Section 11 of the Town of Orillia

Act, 1915

11. - (1) Subject to subsection 2, all the powers, rights and privileges with regard to the government of the Orillia Power Transmission Plant or the generation, distribution and sale of electrical power and light heretofore or hereafter granted by any special Acts to the Council or Corporation of the Town of Orillia shall, while the by-law appointing such Commission remains in force, (this refers to By-law 557 passed 23rd of January, 1913) be exercised by the Orillia Water, Light and Power Commission, and not by the council of the corporation.

(2) Nothing contained in this section shall divest the council of its authority with reference to providing the money required for such works, and the treasurer of the municipality shall, upon the certificate of the Commission, pay out any money so provided."

COMMENT NO. 2

Mr. Hayhurst at the O.W.L.P. has been most helpful in providing me with copies of these Town of Orillia Private Acts and he noted that on page 4 of the Act (Exhibit 5) Section 11, which is in different print, has been xeroxed onto the bottom of the page. The reason is a mystery, so I proceeded on the assumption that Section 11 as typed above is the same as that in the original Private Act.

STEP 6

TOWN OF ORILLIA ACT, APRIL 3, 1934, c.87 (Exhibit 6)
(Minden Project)

In 1933 the Town Fathers took a further step. Council authorized an application to the legislature for a further Town of Orillia Act which would permit them to extend their hydro-electric generation and transmission powers to the Minden area.

This Private Act allowed the Town with "all the powers now possessed", to acquire lands, construct, maintain, operate and transmit electrical power in the Townships of Minden, Anson, Lutterworth, Digby and Dalton. It also authorized the Town to sell power to the Hydro-Electric Power Commission of Ontario.

COMMENT NO. 3

Referring back to the Town of Orillia Act of 1915, you will recall that the Town was authorized to transfer these hydro-electric powers given to the O.W.L.P. in the Special Acts, with the statement

"...all privileges...heretofore or hereafter granted by any special Acts to the Council of the Corporation of the Town of Orillia shall....".

Therefore Town Council could down load these new legislated powers to the O.W.L.P.

STEP 7

TOWN OF ORILLIA ACT - APRIL 9, 1941, c.71 (Exhibit 7)
(Minden Extension)

In 1941 a further application was made to the legislature for a further Private Act. To support their Minden operation, the Town required construction of additional dams and works to improve the plant's efficiency. This was granted for the Townships of Sherbourne, Havelock, Eyre, Stanhope, Guilford, Harburn and Dysart.

STEP 8

TOWN OF ORILLIA ACT - APRIL 5, 1946, c.132. (Exhibit 8)
(Mathias Facilities)

In 1946 the Town's "JURISDICTION" was extended to Muskoka.

This Act stated that all the powers possessed by the Town of Orillia with respect to the acquisition of lands and water powers and construction and maintenance were extended to the Townships of Oakley, McLean and Draper in the District of Muskoka.

The Act further provided that before the Town commenced construction, a By-law authorizing the undertaking had to be submitted to the electors of the Town for Debenture purposes (which I presume, did occur).

CONCLUSION NO. 1 - HYDRO ELECTRIC GENERATION POWERS

It would therefore appear that if the City Council were to revoke all or part of By-law 557 (January 23, 1913) they could recover to themselves those hydro-electric generating powers given to them by the previously mentioned Special Acts of the legislature.

The interesting question is, this. Could Council revoke the hydro generation part of By-law 557, leaving with the Commission its electrical distribution powers.

SUBJECT NO. 2 - HOW TO REVOKE BY-LAW 557 (1913)

The procedure for revoking all or part of By-law 557 is interesting. From what we know now, it would appear that the By-law could only be revoked (in whole or in part) in the same manner in which it was instituted, namely, by a By-law approved with the consent of the electors (Public Utilities Act, Sections 39 and 45).

Under the Ontario Municipal Board Act, the O.M.B. has certain powers to waive the need of putting a subject to the vote of the electors, but this appears to be only in cases which concern the issuance of Debentures for financing purposes.

SUBJECT NO. 3 - LEGISLATIVE STATUS - PUBLIC UTILITIES

Current Legislation - (Exhibit 9)

The current legislation which permits a Municipal Council to pass By-laws for the establishment of a Public Utility is Section 38, Public Utilities Act, R.S.O. 1990, c.P. 52.

It still has a provision that the By-law establishing such a Commission must be passed with the assent of the Municipal electors. There is a general rule of law, that the method by which something is done, must, in the absence of specific provisions to the contrary, be "undone" by the same procedure.

Section 39 of the Public Utilities Act gathers in those Commissions established under the legislation of 1897, and amendments, (and which captures the O.W.L.P.), stating that they shall be deemed a Commission established under Part III of the Public Utilities Act, entitled:

"PART III ALL MUNICIPAL PUBLIC UTILITIES"

Section 40(5) of the Act states as follows:

- (5) "A By-law of the Council for the purposes mentioned in subsection 40(3) shall not be repealed without the Consent of Ontario Hydro"

This leads us to Section 40(3):

- (3) "Where the corporation of a city or town has entered into a contract with Ontario Hydro for the supply of electrical power or energy, a commission shall be established under this Part for the control and management of the construction, operation and maintenance of all works undertaken by the corporation for the distribution and supply of such electrical power or energy, and for the purposes of this subsection it is NOT NECESSARY that the by-law receive the assent of the electors or such..."

When By-law 557 was passed in 1913, it was not passed for the purpose of entering into a contract with Ontario Hydro which (3) above suggests. I understand the first purchase agreement for power from H.E.P.C. was in 1952. There exists the possibility that a partial revocation of By-law 557 with respect to "hydro electric generating and operating powers" does not require the consent of Ontario Hydro.

I spoke to the law department of Ontario Hydro and they were of the opinion (admittedly based on a brief discussion) that any Municipal Utility purchasing power from Ontario Hydro would be required to get Hydro's permission before it could terminate the By-law. From our conversation, I gather that this is one of the issues in the present Ontario Hydro litigation in London, Ontario.

SUBJECT NO. 4 - THE COMMISSION - AN AGENT OF THE MUNICIPALITY

- JUDICIAL DECISIONS (EXHIBIT 10 HEADNOTES ONLY)

By a number of judicial decisions it has been well established that a Commission is a "mere agent" of a Municipal Corporation, and its assets are "held in trust" for the Municipality. My references were:

1. Young vs. Town of Gravenhurst (1911) 24, O.L.R., 467
2. Collins vs. The Hydro-Electric Commission of Renfrew, 1948, O.R. 29
3. Sudbury Hydro-Electric Commission for interpretation of Section 50(3)(5) of the Planning Act, 1996, 29 O.R. (3d), 23

The Collins Case - 1948

The Chief Justice made some interesting statements in this case and since it is from the Great White Fathers in the Court of Appeal, they are worth mentioning.


It was argued before the Court that since there was reference in the Public Utilities Act to a Commission being a CORPORATION, that reference was to a Corporation as defined under the "Companies Act" (now the Business Corporations Act), and therefore the Commission had all the powers of a Corporation.

Chief Justice Robertson responded as follows:

"In my opinion the appellant (Mr. Collins) has misconceived the relation of the respondent (the Hydro Commission) to the Municipal Corporation (the Town of Renfrew). The Respondent (Commission) is a mere agent of the Municipal Corporation exercising whatever powers it has for and on behalf of the Municipality.

I am aware that in some of the legislation passed in recent years the relationship has become somewhat confused, and it seems to have been considered that a hydro-electric Commission established in a Municipality had some independent status other than that of an agent and trustee of the Municipality. In my opinion the true relationship is still the same as it was when Young and Town of Gravenhurst (1911) 24 O.L.R. 467 was decided."

CONCLUSION NO. 2

 The O.W.L.P is an "agent" of the City of Orillia, and it holds its assets "in trust" for the City. The absolute control of those assets remains with the Commission until the revocation of By-law No. 557. (Council has always had sole jurisdiction for certain monetary matters of the Commission.)

SUBJECT NO. 5 - BACK TO THE FUTUREProvincial Review of Electrical Power in Ontario

The current Provincial reassessment of electrical power matters in Ontario, and particularly the future of Ontario Hydro, has provoked much discussion but as yet there are "no cigars". One thing is certain. The City has four special "Town of Orillia Private Acts" in its favour which extends to it electric generation and transmission powers. Any contrary legislation by the Province would need to revoke these Special Acts.

SUBJECT NO. 6 - PUBLIC-PRIVATE OWNERSHIP

This is an interesting topic these days. Can the City enter into arrangements with other Utilities outside its jurisdiction by way of some Municipal-Municipal, or public-private partnership?

These questions send us back to the Municipal Act and the limitations imposed on "Municipal Jurisdiction". The Province has recognized certain of these limitations and attempted to give some flexibility by the passage of the Community Economic Development Act, 1993, c.26, but this flexibility has never been adequately tested.

The Crombie "Who Does What" Commission

As you are aware, Mr. David Crombie has been commissioned to recommend new procedures which would give flexibility to the Municipal Act. Time will tell.

Some writers believe that Municipal Corporations should have the flexibility allowed under the Business Corporations Act.

SUBJECT NO. 7 - THE CITY OF CORNWALL SITUATION

The City of Cornwall is often referred to when one speaks of a Municipality holding shares in a Business Corporation which distributes hydro-electric power. This fact is true.

These comments raised my curiosity so I contacted the C.A.O. for the City of Cornwall and also the law firm which was involved in this somewhat unique transaction.

The story goes something like this (I may not be precisely accurate, but in general terms this will give you the picture).

Cornwall has always received its electrical power from Quebec Hydro under a contract which has been in existence for many years, and expires, I believe, near the end of this century. Cornwall does not take power from Ontario Hydro.

SunLife Insurance Company owned several hydro distribution companies in the Cornwall area, two of which were Stormont Electric and St. Lawrence Power Company. These were subsequently merged. I believe SunLife also had an interest in Mohawk Electric Company which distributed power on the American side, its largest customer being Alco, U.S.A.

Each of these independent companies got their power from transmission lines owned and operated by Quebec Hydro.

When the Alco plant closed in New York State, and similarly certain plants closed in the City of Cornwall, SunLife expressed an interest in getting out of the business. The City was interested.

Application to the Ontario Municipal Board
(Exhibit 11 - The O.M.B. Order)

In 1977 the City of Cornwall made an Application to the Ontario Municipal Board (under Sections 63 and 64, O.M.B.A., R.S.O. 1970) to purchase all the shares of Cornwall Electric for the sum of 4,800,000.00, and to issue the necessary Debentures for this purchase.

I gather that the O.M.B. found this a rather unique Application, and after a Hearing, the Board granted the power to purchase these shares, pass all requisite By-laws, and to issue the required Debentures.

Mr. Pierre Guindon, solicitor for the City, sent me a copy of the O.M.B. Order - (Exhibit 11).

There are two aspects of this Application which should be kept in mind:

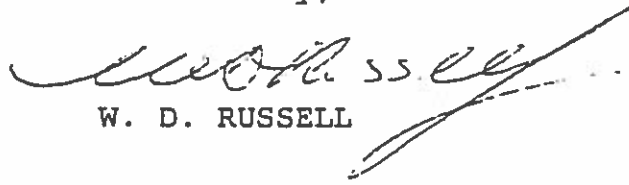
- 1. Cornwall had no contractual relations with Ontario Hydro.
- 2. The companies whose shares the City purchased, operated wholly within the jurisdictional limits of the City of Cornwall.

CONCLUSION NO. 3

There is no current legislation which would permit the City to participate with other Municipalities in a Corporation type share structure.

This therefore completes our research on the subject you asked us to address. We await your further instructions.

Yours truly,



W. D. RUSSELL

WDR/adm
Encl.

P.S. Having waded through all this documentation, I thought it prudent that we gather all our research into one booklet to avoid "sawing sawdust" when the subject receives future consideration. Attached is a BLUE BOOK of these Exhibits.

**Re: Open Public Meeting Sept 14th 1999
Concerning Bill 35 and the transfer of the Orillia Water, Light & Power**

This is a preliminary meeting, which has been scheduled months in advance of the complete guidelines of this legislation. Due to a conflicting scheduled event, I am unable to attend and comment on this important issue in person. I send my regrets.

I have read the report of the transition committee and although it addresses what we know of the legislation at this time, there are several flaws. The portion of the report that deals with the value of this asset is incorrect. In addition, the consideration of the sale of this well run commission as the answer to solving the heavy debt issue of the City should be approached as a very serious issue requiring input from all concerned parties.

Firstly, let us give credit to this organization. The OWLP from the past to the present, is Orillia's proudest asset and we owe a debt of gratitude to all the commissioners and staff up to the present day. At present there are 48 dedicated professional employees that make this utility work. The outside workers are among the best trained and efficient crews in the province and it is not possible to put a value on their worth to the utility and the community at large.

The OWLP have built this asset and it has been completely funded through electrical rates with no money coming from the general revenue of the municipality. At this time, the commission is debt free with a working capital and insurance contingency fund of approximately 7 million dollars.

Over the years OWLP have subsidized the Orillia tax revenue in many ways. The commission purchased and operated the old arena until the construction of the arena at the Oval. At council's insistence, the OWLP transferred the largely paid for asset of the water works and sewage treatment facility to the city. With a dire need of a larger city hall, the commission were persuaded to sell the OWLP building to the City at less than a third of its actual cost and a quarter of its market value at that time. We are still awaiting the final report on the sale of this now unused asset. In all these and many other projects, the commission, through its electrical customers, contributed heavily to the City's purse.

Competition

The concept of allowing competition for the old Ontario Hydro is a good one for most electrical consumers of Ontario. The benefits derived from this move did not however create a level playing field for those utilities having generation. The legislation states that generation assets can no longer subsidize the rates for Orillia's electrical customers. Bill 35 enacted legislation that changed drastically the role of a utility and with the passing of this bill gave new powers over to elected councils, namely the ownership and control of the OWLP.

In the case of Orillia, there is need for council to have an understanding of the inner operation, the magnitude and importance of this asset to the community.

When the transition committee, without the input of the full elected commission, include statements in their report for council's considerations such as sell or retain the utility, they have, in my opinion, overextended their mandate.

I am sure that no council would seriously consider selling as an option. However if they do not get a positive message from the people, they could very well pursue this.

Within the report before council, the transition committee appointed by the Mayor shows a net book value of 27.5 million dollars (total assets less liabilities). Within the formal press this is extended to approximately 30 million dollars. Both of these figures seriously undervalue its worth.

Since the OWLP by legislation is to be placed into a newly formed public corporation operating under the business corporation act by at the latest Nov 7th 2000. The generation portion of the utility must be in one corporation and the distribution (wires company) in another corporation. The telecommunications segment is still undecided. (No policy as yet)

To show a lack of understanding of this utility's true worth and bandy a figure of a book value of 27.5 million dollars is opening the door to a number of prospective purchasers who are knowledgeable of its true value.

With council dictating the rules and appointing the board of directors for each corporation then council should be conversant with the facts.

I feel that the following exercise arrives at a more realistic figure of its true market value.

The Wires Company (Distribution)

To arrive at market value for this asset the general rule for an urban electrical asset is equal to \$1,500.00 per customer. Orillia has approximately 12,000 customers.

12,000 X \$1500.00	=	18 million dollars
Cash - working capital and insurance contingency		7 million
Buildings, Lands Equipment and Inventory		5 million
	Total	30 million dollars

Generation

For example, if one were fortunate to own a generation site with all legislation and environmental issues completed and there was a dam in place, the rule of thumb for the installation of the civil and mechanical portion of a hydraulic installation is between \$3000.00 and \$3,200.00 a kilowatt. These prices were the normal as of about five years ago and anyone owning a site that could sell the energy would jump at the chance to develop it. Now let's look at Orillia's plants using the lesser figure of \$3,000.00 per kw.

Swift Plant	7800 kw X 3,000.00 = 23,4 million
Minden Plant	3900 kw X 3,000.00 = 11,7 million
Matthias Plant	2900 kw X 3,000.00 = 8,7 million

Total 43.8 million dollars

Other Generation to Be Developed

In addition to above plants, the OWLP owns three yet undeveloped sites, Cooks Falls, Crozier Chute and Minden # 2. These sites are approved by private members bill in the legislature and bylaws of the townships in which they are located. In addition to the three approved sites there are two more sites on the Musquash that are pre engineered and require environmental studies and an approved hook up to the transmission grid.

Over the years, the OWLP has purchased or in the case of the Crown land received approval of the flood rights over a vast number of properties that would cover the development of the sites in question. For the sake of arriving at a ballpark figure of the value, a figure of **3 million dollars** would be appropriate.

The diesel generators that are in place are covered under inventory of the control centre under distribution.

Wires and Distribution	30 million
Generation in place	43.8 million
Underdeveloped Sites	3.0 million

Total 76.8 million dollars

So we now have a utility with a market value of over 75 million dollars. If you relate this figure to Orillia's householders and industrial and commercial property owners, the true shareholders each own an investment in the newly formed corporations of approximately \$5,000.00.

This council needs to hear the view of Orillians in order to make to the right decisions. It is also important for council to appoint the right people that can make this asset grow as well as return a dividend to the community.

This is a preliminary evaluation compiled by myself for presentation at the meeting on September 14th 1999.

Respectfully submitted,

Commissioner Frank Kehoe

PART XI
TRANSITION — MUNICIPAL ELECTRICITY UTILITIES

Interpretation, Part XI

141. (1) In this Part,

“transfer by-law” means a by-law made under section 145; (“règlement municipal de transfert ou de mutation”)

“transferee” means the corporation incorporated under the *Business Corporations Act* pursuant to section 142; (“destinataire”)

“transferor” means the municipal corporation, commission or other body whose employees, assets, liabilities, rights or obligations are transferred pursuant to a transfer by-law. (“auteur”) 1998, c. 15, Sched. A, s. 141 (1).

Same

(2) For the purposes of this Part, a municipal corporation generates, transmits, distributes or retails electricity indirectly if it carries on any of those activities through,

(a) a commission established under the *Public Utilities Act* or any other general or special Act; or

(b) any other body, however established. 1998, c. 15, Sched. A, s. 141 (2).

Incorporation of municipal electricity businesses

142. (1) One or more municipal corporations may cause a corporation to be incorporated under the *Business Corporations Act* for the purpose of generating, transmitting, distributing or retailing electricity. 1998, c. 15, Sched. A, s. 142 (1).

Holding companies

(1.1) A corporation that one or more municipal corporations caused to be incorporated under the *Business Corporations Act* after November 6, 1998 and before May 2, 2003 to acquire, hold, dispose of and otherwise deal with shares of a corporation that was incorporated pursuant to this section shall be considered to be a corporation incorporated pursuant to this section. 2004, c. 31, Sched. 11, s. 7.

Conversion of existing electricity businesses

(2) Not later than the second anniversary of the day this section comes into force, every municipal corporation that generates, transmits, distributes or retails electricity, directly or indirectly, shall cause a corporation to be incorporated under subsection (1) for the purpose of carrying on those activities. 1998, c. 15, Sched. A, s. 142 (2).

Two or more municipal corporations

(3) Two or more municipal corporations may incorporate a single corporation for the purpose of complying with subsection (2). 1998, c. 15, Sched. A, s. 142 (3).

Ownership

(4) The municipal corporation or corporations that incorporate a corporation pursuant to this section shall subscribe for all the initial shares issued by the corporation that are voting securities. 1998, c. 15, Sched. A, s. 142 (4).

Same

(5) A municipal corporation may acquire, hold, dispose of and otherwise deal with shares of a corporation incorporated pursuant to this section that carries on business in the municipality. 2002, c. 1, Sched. A, s. 30.

Not a local board, etc.

(6) A corporation incorporated pursuant to this section shall be deemed not to be a local board, public utilities commission or hydro-electric commission for the purposes of any Act. 1998, c. 15, Sched. A, s. 142 (6).

(7) Repealed: 2004, c. 23, Sched. A, s. 57.

RECOMMENDATIONS
ON
THE FUTURE OF ORILLIA'S HYDRO UTILITY
BY
THE BILL 35 TRANSITION COMMITTEE

Transition Committee Members

Mayor Ken McCann – City of Orillia – Chair

Dan Valley, Commissioner – O.W.L.P.

Ian Brown, City Manager – City of Orillia

John Mattinson, General Manager – O.W.L.P.

Doug Christie - Russell, Christie, Miller, Koughan, Winnitoy

Don Gibson – McCarthy Tetrault

April, 2000

ADOPTED BY CITY COUNCIL – APRIL 17, 2000

RECOMMENDATIONS

1. That the City of Orillia retain ownership of the assets of the Orillia Water, Light and Power Commission by establishing a distribution company and a generation/services company.
2. That City Council select the holding company model to hold the City's investment in the two subsidiary companies.
That the shareholder direction for the holding company require Council approval for any proposed distribution of dividends received from the competitive subsidiary.
3. That a Board of Directors consisting of five members be appointed by City Council for the holding company.
That the shareholder direction encourage the holding company to minimize the size of the boards of its subsidiaries.
4. That City Council establish a policy that members of City Council and City staff not be eligible for appointment to the Board of the holding company or its subsidiaries.
5. That Council appoint a Committee to oversee the recruitment process, interview candidates, and make recommendations to Council regarding the Board of Directors of the holding company, and that such Committee consist of two members of Council, one member of the community at large, one representative of the existing Commission, and the City Manager.
6.
 - a) That the appointments to the initial Board of Directors be made for a combination of one-year, two-year, and three-year terms.
 - b) That, as each initial term expires, directors be appointed or re-appointed for a three-year term.
7. That no limit be placed on the number of times that a Director can be re-appointed.
8. That compensation levels of the Board of Directors be subject to Council approval, and that the recruitment committee be mandated to submit a recommendation to Council regarding the initial compensation structure.

9. That the City Solicitor be authorized to draft a shareholder direction for use by the recruitment committee, which minimizes the range of issues requiring shareholder approval beyond those listed in this report.
10. That the holding company be required to submit progress reports on its activities semi-annually to City Council.
11. That Council request the Board of the holding company to undertake a review of the telecommunications initiative on a priority basis in the first year of the Corporation's business plan.
12. That Council agree to a recapitalization of the generation company that would produce a commercial debt/equity ratio in the range between 60/40 and 70/30.
13. That, with respect to the generation company's operations, Council approve the principle of moving from a rate minimization approach to a profit maximization approach over a transition period of three to five years.
14. That Council agree to a recapitalization of the distribution company that would produce a debt/equity ratio of 50/50, as will be used by the OEB in its rate approval process.
15. That, with respect to the distribution company's operations, Council approve the principle of moving to the permissible rate of return on equity over a transition period of three to five years.
16. That the shareholder direction preclude the corporation from entering into new retail businesses, including commodity retailing, either directly or through a subsidiary, without the express approval of City Council.

1. BACKGROUND

- 1.1. The Energy Competition Act, 1998, is intended to end the monopoly of Ontario Hydro over electricity generation and transmission. It provides customers with the right to purchase their power from a competitive power supply market expected to develop over the next decade.
- 1.2. The Act requires that municipalities wishing to be in the business of generating, distributing, or selling electricity will have to incorporate companies under the Ontario Business Corporations Act (OBCA) to carry on these businesses. The deadline for these incorporations is November 7, 2000.

B.S.

- 1.3. The distribution of electricity within a municipality (as opposed to the competitive sale of the electricity commodity) will continue to be a monopoly business regulated by the Ontario Energy Board (OEB), and will have to be carried out by a company which is separate from any affiliate involved in competitive activities.
- 1.4. The local distribution company (LDC) will be obligated to arrange for the provision of electricity to those customers who do not choose a competitive retailer, known as "standard supply".
- 1.5. In 1999, Mayor McCann appointed a Transition Committee to investigate and report to Council on the implications, opportunities, and options for Orillia in the new electricity market. The Committee consists of the Mayor and City Manager, a commissioner and the General Manager of the Orillia Water, Light and Power Commission (OWLP), and the legal advisers for the City and the Commission.
- 1.6. In August, 1999, the Committee presented its initial briefing to City Council. A public forum was held in the Council Chamber on September 14, at which members of the public were provided with the opportunity to express their views. The Committee has continued to meet regularly during the intervening months to discuss the options presented to Council last fall. A final public forum was held on April 4, 2000, to receive feedback on a discussion paper issued by the Committee in March, 2000.
- 1.7. Although the Minister of Energy, Science, and Technology had indicated to City Council that the rules of the new marketplace would be clear by November, 1999, this regrettably has not occurred. Although the OEB has released some key decisions on issues such as LDC rates, according to press reports the Minister has indicated he will introduce legislation to overturn any OEB decision with which he disagrees.
- 1.8. Given this climate of uncertainty and the threat of governmental intrusion into the OEB's decisions, the Transition Committee's advice to City Council is to proceed with caution.

2. RETAIN OR DISPOSE?

- 2.1. Municipalities are the legal owners of the municipal electrical utility (MEU) operating within their boundaries. The Act provides the municipality with

the right to sell its MEU, subject to OEB approval for any sale of the distribution system.

- 2.2. There will be a 33% transfer tax on the sale of MEU assets, based on their fair market value, with the exception that sales to another MEU or to Ontario Hydro Services Company (OHSC) will be exempt from the transfer tax until November 7, 2000.
- 2.3. As at December 31, 1998, OWLP held assets with a total net book value of \$27.6 million (total assets less liabilities). These assets include cash and short-term investments of approximately \$7 million. The 1999 year-end book value is projected to be only slightly higher.
- 2.4. To date, no sale of MEU assets has been approved by the OEB, so it is difficult to predict what criteria the regulator would apply in examining a sale. The Minister has indicated that the primary concern should be the impact on the rates paid by the consumer.
- 2.5. Those municipalities still exploring the possibility of a sale would appear to fall into three categories:
 - ◆ Those who need the cash proceeds to pay down municipal debt which has reached unsupportable levels.
 - ◆ Those whose corporate philosophy does not justify being in the electricity distribution business, and who wish to invest the proceeds in the core businesses of the municipality.
 - ◆ Those who do not expect to survive the current provincial preoccupation with municipal restructuring, and who wish to share the proceeds with their current citizens rather than see them distributed to their neighbours after amalgamation.
- 2.6. Although the cash proceeds from a sale would obviously be of benefit to the City of Orillia for debt retirement and infrastructure investment, there are other options available for earning a return on the municipality's assets which are potentially less likely to incur the disapproval of the OEB or the Minister. The history of Orillia is closely tied to a proactive and progressive electric utility promoting economic development, so electrical distribution and generation can justifiably be characterized as a core business of the municipality.

- 2.7. The only one of the above categories which could arguably apply to Orillia is the third one related to municipal restructuring. The conventional wisdom among local politicians and provincial representatives suggests that the City of Orillia will not survive in its current form beyond five years. For this reason, an argument could be made that the MEU assets should be distributed to Orillia taxpayers before the MEU's ownership is transferred to a larger municipal shareholder with a different geographic boundary.
- 2.8. The Transition Committee also notes that there has been hardly any official interest expressed by potential purchasers to City Council in the acquisition of any of the OWLP's assets or businesses, although it is recognized that the City has not been actively soliciting such interest.
- 2.9. There have been overtures by neighbouring municipalities, such as the City of Barrie and Severn Township, who have expressed interest in discussing strategic alliances, up to and including merger. OWLP is also part of the Upper Canada Energy Alliance. The future of that relationship, which has already produced many positive benefits, remains under discussion.
- 2.10. The Transition Committee is concerned that the City's ability to meet the incorporation deadline of November 7, 2000 will be seriously compromised if work is halted while these alliance/merger discussions proceed. It therefore suggests that these discussions continue, but that the City's timetable proceeds regardless.
- 2.11. The Committee believes that there are a number of factors that support the option of retention of the utility by the municipality:
- ◆ It has a high level of public support.
 - ◆ It retains the value of the business for the benefit of the shareholder.
 - ◆ It provides City Council, through the shareholder agreement and the appointment of directors, an opportunity to exert some influence over the utility's activities.
 - ◆ It presents the opportunity for a reasonable rate of return for the municipality as shareholder.
 - ◆ It recognizes the experience of OWLP's staff.

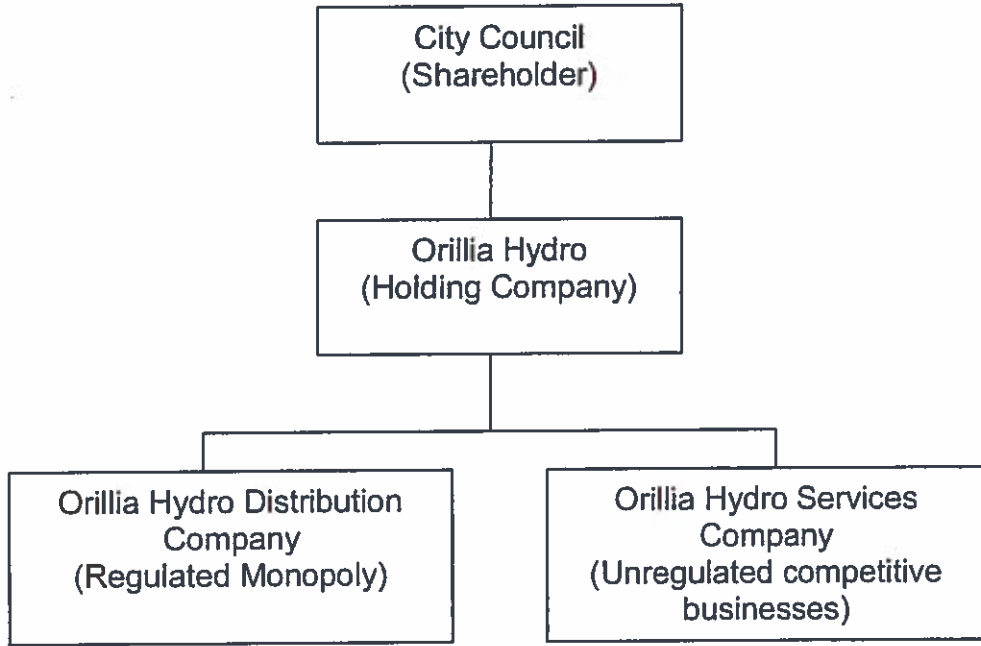
- ◆ The distribution business carries minimal risk for the shareholder.
- ◆ The generation business offers the opportunity for reducing customers' power bills.
- ◆ It does not preclude a sale of some or all of the utility's businesses, or a merger with another utility, at some point in the future, when the rules may be clearer and the transfer tax may be reduced.

Recommendation

That the City of Orillia retain ownership of the assets of the Orillia Water, Light and Power Commission by establishing a distribution company and a generation/services company.

3. CORPORATE STRUCTURE

- 3.1 If a municipality retains its electric distribution utility, it must incorporate a new company under the Ontario Business Corporations Act by November 7, 2000, to carry on the utility's distribution business. If, like Orillia, the utility is involved in businesses other than distribution, a separate company must be established to carry on these competitive activities.
- 3.2. As the initial shareholder, the City will have the normal rights of a sole shareholder under the OBCA, including:
- ◆ The right to appoint directors.
 - ◆ The right to restrict directors' powers under a "unanimous shareholder agreement".
 - ◆ The right to approve fundamental changes to the corporation, i.e. merger.
 - ◆ The right to receive dividends.
- 3.3. Of the three structures presented in the Committee's initial briefing, two merit serious consideration. The holding company approach is the one being favoured by most municipalities with both monopoly and competitive businesses:



- 3.4. In the holding company model, the City of Orillia would be the sole shareholder of a company established to hold the City's investment in both the regulated and unregulated businesses. The holding company would own the shares of the subsidiary companies and manage the subsidiaries' activities.
- 3.5. The advantages of this model include:
 - ◆ The City would only have to deal with one Board of Directors to establish the overall objectives for all businesses.
 - ◆ A directorship on a company dealing with both regulated and competitive businesses is more likely to attract high-calibre candidates.
- 3.6. Under the holding company approach, City Council would appoint the directors of the holding company, and the holding company would appoint the director(s) of the affiliates.
- 3.7. The disadvantage of this model is that any profits from the competitive operations such as generation flow to the holding company. The decision as to how to use such profits, i.e. to return them to the distribution