Submission on Behalf of the Orillia Light Water and Power Commission Regarding the Status of
the Commission Pursuant to Procedural Order # 1
EB-2016-0276

The purpose of this submission is to set out the basis for granting status to the Orillia Water
Power and Light Commission with respect to the above matter in accordance with Procedural
Order #1, EB-2016-0276.

That status is based on the following submissions:

1. The Commission was established pursuant to assent of municipal electors by municipal
   referendum.
2. Thus a referendum must be held authorizing its dissolution in order for the City to assume
   ownership of its assets. and transfer them to the Orillia Power Distribution Corporation or
   any other body.
3. No such referendum has been held.
4. The City's Bylaw authorizing the dissolution of the OLWPC and transfer of its assets to the
   City is invalid.
5. Therefore the Commission continues to own the assets subject to these proceedings.They
   are not owned by the City of Orillia or the Orillia Power Distribution Corporation.
6. The legality of the bylaw authorizing the sale is a preliminary matter of law to be determined
   initially by the Board.
7. There is no prejudice to the City if the Commission is found to exist as the Commission is an
   agent of the City and holds all assets as a trustee for the City. The City can proceed
   appropriately and hold a referendum.
   Each of these issues is dealt with in detail below as necessary.

A legal opinion prepared for the City by Mr. W.D. Russell, one of Canada's foremost experts in
municipal law, dated October 9, 1996, confirms that a referendum was held authorizing the
establishment of the Commission. At page 3 of that opinion he states:

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.

                                                        .../4

     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.

 Mr. Russell continues in his opinion at page 8, " There is a general rule of law that, the method
by which something was done, in the absence of specific provision to the contrary, must be "

undone" by the same procedure." In other words, the same method to repeal a law must be used as was used to enact it. Since the Commission was established pursuant to a referendum, it can only be dissolved pursuant to a referendum. He further opines that, in addition, to this general law requiring a referendum for dissolution that in 1996 a referendum was required prior to dissolution by virtue of sections 37 and 45 of the Public Utilities Act (PUA).

It should be noted that the PUA was amended to remove the statutory requirement for a referendum in order to dissolve a Commission. This deletion of a requirement for a referendum, however, was limited and does not apply to the OWLPC for three reasons.
Firstly the PUA applied only to Commissions which were for "the control and management, production and supply of any public utility". The OWLPC is not within the purview of that description as it is not merely a body for "the control, management, production, supply of" electricity. Indeed, its mandate and purposes are much broader- to have all powers to acquire lands, transmit, generate, maintain, distribute, and sell electrical power as set out in the bylaw establishing it.
Secondly, the exemption from the requirement to hold a referendum does not apply to the OWLPC because it does not specifically delete the general rule of law requirement to use the same method to undo an enactment as was used to enact it.
Thirdly, in order to delete the requirement for a referendum the Council must be exercising a power under the PUA. The PUA stated regarding deletion of the need for a referendum:

67. (1) A municipal corporation may pass a by-law to eliminate the requirement to obtain the assent of the electors before the corporation exercises a power under this Act.

The bylaw authorizing the dissolution of the Board and the transfer of its assets, submitted by Mr. Rodger on November 21, 2016, makes no reference to exercising a power under the PUA. Indeed, it specifically states that power is to be exercised under sections 142 and 145 of the Electricity Act 1998. The City's own bylaw is unequivocal evidence that the requirement for the deletion of a need for a referendum was not met.

It is clear from the same bylaw submitted by Mr. Rodger that no referendum was held.
As a result the OLWPC continues to exist and owns the assets to be transferred.

The agreement to transfer should be with the Commission or with the City after a referendum authorizing dissolution of the Commission has occurred. The current members of the Commission met and formally authorized this representation before the Board. The Commission has serious and legitimate concerns regarding the terms of the agreement between the City and Hydro One and should be granted status for the above reasons.

At a time when more and more citizens are becoming disillusioned with government agencies failing to respond to ordinary citizens concerns it is imperative, in my submission, that the Board respond positively to a request for a referendum of the citizens of Orillia regarding the above matter.

Submission on Behalf of the Orillia Light Water and Power Commission Regarding the Status of
the Commission Pursuant to Procedural Order # 1
EB-2016-0276

All of which is respectively submitted on behalf of the Orillia Light Water and Power
Commission,

Stanley M. Makuch