

# The Ontario Energy Board Public Hearing

## EB2016-0276

### Book 2

The major page material reference pertaining to the documents previously forwarded to the Energy Board by the elected members of the Orillia Water Light & Power and/or Frank Kehoe

**Preamble to the Alleged Sale of the Orillia Hydro Distribution Arm  
to Hydro One  
that works in tandem with the former documents submitted  
EB2016-0276**

**#1**

The appeal group is comprised of the last legally elected members of the disbanded Orillia Water Light & Power Commission. The last elected commission members have a fiduciary obligation to appeal on behalf of Orillia citizens for their constitutional right to vote on the matters before the board. The appellants are lifetime citizens of Orillia and loyal Canadians that were taught and strongly believe in Canadian democracy that may now have been usurped by alleged illegal legislation.

The appeal group recognize that the distinguishing feature of a Canadian democracy is that all Canadian governments derive their authority from the citizens.

**Direct democracy is clearly defined as government in which its citizens vote on laws. The common version of this process is done for the most part in the legal form of duly called referendums or plebiscites to decide and entrench a legal issue or question. The result of a duly called peoples referendum voted upon by its citizens is then binding and law.**

A binding referendum issue can however be changed or amended at any time as long as the process used is the same manner as it was enacted (a vote of the eligible electorate) and if the people vote against such change or amendment the original referendum law stands.

The 1913 Orillia referendum is contained on **pages 1A and 1B** and the advertised published preamble is contained on **page 1** December 12, 1912.

**The substance of the referendum forms two distinct purposes:**

1. The total removal of the peoples owned electricity asset from any and all council involvement or control.
2. The responsible Board of Directors shall be elected using the same process used for municipal elections and the tenure of such directors will be decided by an appropriate electoral vote. *The aforementioned referendum could be changed or called a number of appropriate names be they Commission, Board of Electors, Utility Management or a number of other appropriate names but the intent of the referendum remains in tact.*

### **Canadian Democracy**

In a democratic society lawmakers must recognize that the electorate in a referendum has rights which are guaranteed. Government representatives must always clearly recognize that they have responsibilities which are not to be evaded and always recognize and protect appropriate legal referendum outcomes. The experience of a century and a half of Canadian democracy has demonstrated that our system of free government functions best when the maximum degree of information is made available to the people. In fact free and candid discussion of vexing problems is the bedrock of democracy and may be the surest safe guard for our electricity solutions.

## **The only thing wrong with the democratic process is the failure to use it.**

The visionary men of the past always had rigid democratic convictions, while we now in this day and age appear to be just considered moderns with many opinions that do not fit into appropriate democratic practice.

**Local government is the foundation of democracy. If it fails, democracy will fail.**

### **Council Sale to Hydro One**

Six of the nine members of the Orillia City Council in 2016 felt that they had the authority to usurp the referendum democratic process by using a draconian piece of legislation where an elected member of the legislature on his/her own interest

inserted a paragraph in an inconspicuous 225 page document of legislation described as an act to achieve fiscal savings and promote economic prosperity through public sector restructuring. The short title of this act was called Savings and Restructuring Act 1996 (see page 328). This single paragraph put an amending clause that would appear to allow a municipal council to undemocratically wave the assent of the electors. By over-riding the previous electoral vote of the electors that at the time pre-dated the former Public Utilities Act. Section 67.(1) this clause was in itself a total undemocratic violation related to Canada's electoral democratic process.

The Public Utilities Act had in the past permitted citizens in untold number of municipalities to vote to create numerous electrical commissions across the province. It is impossible to note how many electors this single clause affected but the figure could vary from 10,000 voters to upwards of 300,000 voters in the province that now disguisingly with this new legislation gave Ontario Hydro, the provincial owned utility, the rights to now approach municipal councils across the province to sell their public utilities or commissions to Ontario Hydro or in the future to Hydro One. This inconspicuous amendment clause buried in a massive piece of legislation was at the time completely overlooked by the public press. Hydro One was then able to purchase many of these utilities and place them into the government owned utility without any published knowledge of most of the affected citizens. The Public Utilities Act which included 67(1) was repealed on January 1, 2003. All other municipal electrical utilities were then forced to incorporate and act under the Provincial Corporations Act.

**The Orillia referendum of 1913 however pre-dated the very first provincial Public Utilities Act and the alleged legislation could not in any case be retroactive. The new Public Utilities Act was assented on the 6<sup>th</sup> of May 1913. The original Act is included on (pages 2 to 9).**

The appellant, Orillia Water Light & Power, was in itself already a corporation. The appellants clearly state that the Orillia city council did not have the authority to over-ride their own Orillia citizen's referendum hence the sale to Hydro One must not be considered, until such time as the citizens electorate has an opportunity to vote to amend the referendum in place.

## **The 1916 Orillia Referendum**

In 1915 the Hydro Electric Power Commission approached the Town of Orillia council to purchase the people's total Orillia Electricity arm. This initiated a second referendum and the electorate, in a strong majority, voted to reject the sale proposal and the by-law 557 law stood (**page 339**).

## **#2**

### **The True Value of the Citizen Owned Distribution Arm**

The subject of said sale to Hydro One cannot be evaluated without complete access to the appropriate records. The alleged Orillia Distribution Corporation is now a secret organization barring any disclosure of any items, records or even the minutes and supporting documents of the former alleged Orillia Water Light & Power Commission which the appellants were previously the party in complete charge. A valuation cannot be appropriately arrived at without full access to all information. Any sale of the people's ownership of the distribution arm cannot be seen or even close to being accurate without proper access of outside professional electrical and accounting people being involved. **The appellants are emphatically positive that the evaluation of \$26,350,000.00 (twenty-six million three hundred and fifty thousand dollars) does not even come close to its true dollar value.** The ill-informed people that have arrived at such a figure are attempting to possibly use the artificial book value as its true valuation. The visual minimum value of a small segment of the Distribution Arm using a considerably less than true value calculation arrives at a figure of **\$55,755,000.00 (fifty-five million seven hundred and fifty-five dollars)**. (See **page 321** and the full document contained on **pages 318 to 326 and pages 349 to 351**.) The maps of some of the distribution arm will be presented at the hearing.

During the time that some of the appellants, who were elected commission members, the Orillia Distribution Arm alone included almost 90 miles of right-away, the majority of which was 66 feet wide. A large majority of this right of way included poles, cross-arm insulators and appropriate hardware together with

conductor. In addition there were extremely valuable other properties separate from right of ways, the most important of these properties was the property subjacent and adjacent to the trans-canada pipeline which had set aside a dedicated high pressure link to the OWLP for a future combined cycle gas turbine generation. This would make Orillia again totally self-sufficient in electrical energy and free of being dragged down by the provincial owned utility. The OWLP had been totally free of Ontario Hydro from the period 1898 to 1954.

The appellants are of course aware that a large portion of the distribution corridors were previously transferred to Ontario Hydro with firm contracts that included that the generation produced by two of the plants would be metered at the plants and full credit of this metered electricity would be given at the Orillia Transmission Station. This single item is of course critical to the Orillia electrical consumers as Hydro One are no doubt aware of these executed agreements and are possibly looking at the possibility that these agreements could be then extinguished if they were able to purchase Orillia's distribution arm. **It is imperative that these contracts be made public and the agreements in place be honoured in accordance with the contracts. The difference in price to Orillia consumers represents a huge saving on their electricity bill.** The Orillia generation plants always operated at minimum during the peak hours and since this metering is designed as a credit to the consumers they are now forced to take a huge loss by now having to sell its power to the grid at **7.3 cents per kWh** and buy that same power back at **18 cents per kWh**.

### **Historical Background Information Directed to the Board**

The year is 1995 and the legislature after receiving untold number of complaints directed at the provincially owned utility (**Ontario Hydro**) that was at the time looked at by the public as being totally mismanaged and out of control. The province in recognition to this public outcry set up an advisory committee on competition in the Ontario Electricity System. This advisory committee was chaired by the Honourable Donald S. MacDonald PC CC. The committee was referred to by the Municipal Electricity Utilities as the **MacDonald Commission**.

The committee scheduled meetings across the province and received positive input from all utilities and in 1996 published its report to the legislature.

The Orillia Water Light & Power Commission as part of the process met with all utilities in District 2 of the Municipal Electric Association as well as playing an active part in the Toronto and Peterborough meetings. The substance of many of the recommendations of the MacDonald Report is covered in part in the OWLP Report dated January 24, 1996 (pages 332 to 336) and with an attached letter published in most weekly newspapers (page 234). When the legislature received the MacDonald report a massive provincial lobby group comprised of senior management of Ontario Hydro, the Power Workers Union, as well as other unions including CUPE objected strongly. The Unions threatened action and work to rule and it became clear that if the MacDonald Commission Report were implemented there would be a serious downsizing of employees in the provincial owned utility.

To offset this report the government of the day then caved in to the lobby group and their demands to ignore for the most part the MacDonald Commission Report. To somewhat quiet the lobbyists and the provincial crown employees and Unions the Ministers responsible agreed to now permit the provincial owned utility and unions to participate in the writing of a totally new *undemocratic* piece of legislation that would in part disguise the situation totally in favour of Ontario Hydro. The province then collectively created and passed the new Electricity Act 1998. A portion of this legislation had no tie whatsoever to electricity, however it was their means to alleviate the pressure of the press relating to the provincial owned utility as well as creating a means for the municipal electric utilities to sweeten up the pot to municipal governments. (see page 331).

There was no democracy within sections of the Electricity Act but it did dispose of the provincial lobby controversy and seriously created a massive hit on the municipal electric consumer. Sections of the Electricity Act closed the door on all openness or transparency in both Ontario Hydro and all of the Hydro Commissions in the province. This now forced municipal hydro commissions into complete secrecy. To accomplish this totally undemocratic process the legislation now forced all utilities to now create and incorporate corporations that would operate under the Provincial Corporations Act. Within the Electricity Act provincial and municipal utilities had absolutely and positively no reason other than eliminate all transparency for this totally undemocratic move.

The Orillia city council were quick to incorporate a confidentiality segment in their by-laws and required and instructed all staff that under no circumstances was any information of any kind be communicated or given to the public for any reason. The clauses in question are contained on **(page 76 and page 106)** of the city by-laws. The Orillia Water Light & Power up to this period had operated with complete freedom of information and all meetings were advertised and open to the public and the press. The public press attended most meetings and reported on all utility matters.

**The Municipal Act was amended to clearly state that corporations set up by municipalities were exempt from freedom of information.**

Corporations in the private sector that operated in a profit mode would of course have a need to eliminate some outside transparency but certainly not publicly owned Electricity Commissions. The legislature, once corporations were formed, then cancelled all sections of the Public Utilities Act related to electricity.

### **Moving to Corporations**

The move to corporations now created a new cash cow to municipal councils at the expense of all of their electricity customers (double taxation).

### **Declaring of Debt Where There was No Debt**

The next segment of non-disclosure created by the Corporations Act allowed the newly formed corporations to create and show a debt where there was no debt. When the commissions were allegedly dissolved Orillia had in the bank and other receivables approximately 7.2 million dollars (OWLP). **The council staff now implemented a corporation debt of \$14,796,000.00 (fourteen million seven hundred and ninety six dollars) at a borrowing rate of 7.5% payable to the city.** This of course now required a corresponding electricity rate increase to all Orillia customers on their electricity bill. The province permitted that this figure not be identified separately on the customers electricity bill so as to keep the customer uninformed. \$9,762,000.00 (nine million seven hundred and sixty two thousand dollars) was to be shown on the Distribution Corporation and \$5,034,000.00 (five million, thirty four thousand dollars) was shown against



generation for a total of \$14,796,000.00 (fourteen million seven hundred and ninety six dollars). In the report entitled Annual Shareholders Meeting Orillia Power Corporation dated Monday April 13, 2015 (**pages 112 to 157**) it covers the payments to city council. These payments are summarized on (**page 325**).

### **Corporation Dividends**

During good water years at the Orillia generation plants and when the commission was free of debt, the OWLP paid a dividend of this surplus money to its shareholders, the customers of the utility. This dividend was based on the consumption of electricity by its electrical customers and was generally in the range of \$1,000,000.00 (one million dollars) to \$1,050,000.00 (one million fifty thousand dollars) and was paid a number of times over the 83 year period up to the alleged transfer to corporations. The council and city staff now got on the band wagon and decided that the new corporations must, regardless of times of high or low water revenue, now receive a similar dividend.

The city did not care if this was a high revenue year related to high water so they decided high or low water that they would be entitled to \$1,100,000.00 (one million one hundred thousand dollars) yearly as a dividend. This dividend is, the appellant believes, the highest per customer dividend in the province.

When the appellant refers to a dividend that the council has taken from the electrical consumers for sixteen plus years of \$1,100,000.00 per year, council appear to be not satisfied with this amount so when a special budget committee October 28, 2015 in schedule B of this report, they show that this dividend will increase to \$1,500,000.00 starting in 2019 (**see page 191 and Schedule B page 192**).

Combination of dividend and alleged debt shown in the 2015 report amounted to \$41,425,000.00 (forty one million four hundred and twenty five dollars) but this of course was for 15 years. The report shows that there were 13,400 customers which now equates to \$3,091.00 (three thousand and ninety one dollars) per customer. However, this is for 15 years so that figure divided by 15 equates to **\$206.09 (two hundred and six dollars and nine cents)** per customer per year. This figure is the average as some will be higher and some will be lower based on their electricity

consumption. This material is shown on (page 325) of a report. Also on (pages 318 through 326) on a second report and (pages 327 to 330) on a third report. This money flowing from Orillia's electrical customer is but the tip of the ice berg as the revenue paid to the city comes from the electricity rate that the consumer is required to pay. In addition to these monies the government of course requires the consumer to also pay HST on this gift to the city. If the electricity customer is not a property owner, but is a renter paying metered electricity in Orillia they now technically are municipal taxpayers.

### **The Ownership of the Utility (Corporation)**

Throughout the period 1898 to the year 2000 at the time of the new, forced incorporation, the utility corporation (OWLP) was owned by all the people that were the customers of the utility. These were the customers that received the dividend, and who voted for their Board of Directors (Commission). No money whatsoever came out of the general revenue of the Town/City of Orillia and major industrial electrical customers backed the debenture debt of the OWLP borrowing, the Town (City) could not in itself claim full ownership apart from their role as one of the electrical customers. The legislature and the lobby group inserted an incorrect ownership and included the following:

*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).*

*(See page 331)*

The appellant group strongly opposed this illegal undemocratic change of ownership. As from day one the ownership of Orillia's electricity arm is vested with its citizens free of any council control or interest. They alone are the only shareholder of this electricity asset. The legal vote of the electors stands ahead of all laws of the contrary. This is part of the fundamentals of democracy where the people alone by-election give governments their rights to make laws and act in the people's democratic interest.

**Advance the time to the year 2014** one of the former commission members in or about August 2014 was given a report called RECOMMENDATIONS ON THE FUTURE OF ORILLIA'S HYDRO UTILITY BY THE BILL 35 TRANSITION

COMMITTEE DATED APRIL 2000. This report was adopted by city council on April 17, 2000. This report is shown on **(page 28 through page 52)**. It is possible that a draft of this or similar report may have been seen previously, however no commission member ever saw, in any form, the addendum attached to the report re: financial modeling **(see page 23 and 24)**. We, as the last elected commission, could not conceive even in our dreams that any council in good faith could go against their own electors who are the electricity, industrial, commercial and residential customers, and penalize them in this manner **(see scenario 4 on page 52)** with an outlandish increase to Orillia electrical consumers approving a 15% rate increase effective 2001 and a 0.9% annually thereafter. No electric commission in the history of OWLP had ever in the past ever approved a power increase that exceeded 5% and even that type of increase was decreased when the money was no longer required.

Now starts the investigation to look at city documents which have never before been seen, let alone any commission member ever knowing of their existence. The first document is the Minutes of the Orillia City Council Meeting April 17, 2000 **(pages 57A through 57G)** and on **(page 57E and 57F item 2000-127 items 1 to 13)** and recorded votes on **(page 57F)** and the last item before by-laws that never went to the elected commission members in this format but could have been answered by OWLP staff. The aforementioned council meeting happened seven months before the alleged dissolving of OWLP and the commission should have, as a courtesy alone, be given this information.

**By-law 2000-145 dated 16<sup>th</sup> day of October 2000 (page 60)**

Where the council uses section 67(1) of the Public Utilities Act to now completely ignore its own citizens and include in paragraph 1 that any requirements to obtain the assent of the electors before the city exercises its power to dissolve the commission is hereby dispensed with. This by-law or even section 67(1) again was kept secret and totally withheld from the commission. In dealing with section 67(1) of the Public Utilities Act it is necessary to read from **(pages 327 to 330)**. **(On page 328)** it refers to how 67(1) was enacted.

**By-law 2000-144 revised October 16, 2000 (pages 61 to 93)**

This again is a by-law that no elected member of the commission was party to or had ever seen until 14 years after the alleged dissolution of OWLP. **(On page 84)** this refers to a promissory note in the amount of \$9,762,000.00 (nine million seven hundred and sixty two thousand dollars) and on **(page 89)** another promissory note for \$5,034,000.00 (five million thirty four thousand dollars). **Despite repeated requests, to both the council and the utility, the appellant has never been able to see these notes in question or who had the authority as well as who signed the notes in question.** The appellant certainly knows that they certainly did not originate nor were they approved or signed by the elected commission. The commission was certainly in power at the date of this by-law.

**By-law 2000-46 dated 16<sup>th</sup> day of October 2000 (page 94)**

At a time when the OWLP commission was still in power, this contains five items:

1. THAT the City is authorized to accept a General Conveyance, Assignment and Bill of Sale from the Commission with respect to any assets which it owns, has registered title to, or uses to provide public utility services on behalf of the City.
2. THAT any By-laws heretofore passed by the City or any predecessor thereof establishing the Orillia Water, Light and Power Commission are hereby repealed.
3. THAT Chapter 524 of the City of Orillia Municipal Code is hereby repealed.
4. THAT the Commission is hereby dissolved and ceases to exist.
5. THAT this By-law shall take effect 12:00 a.m. November 1, 2000.

**No elected member of the commission ever saw this by-law until it was obtained fourteen plus years after the alleged date of enactment.** Item 1, there was never any general conveyance, assignment or bill of sale originating from the elected commission or any other party with respect to any assets which the commission owns, has registered title to or uses to provide public utility services. No document of any nature was ever authorized or signed that would in any way initiate such transfer as this would be in direct contravention of all of the founding by-laws that the appellants have a fiduciary obligation to protect.

On October 26, 2000 Orillia Power Distribution Corporation was approved as a corporation #1446923 (**page 294**). The solicitor was Donald G. Gibson. The elected commission was not party to the setting up of this and to other corporations yet they, at the time, were in full charge of the OWLP. Did Mr. Gibson represent the City or the Commission in this regard and how and when was the alleged transfer made without the authorization of the elected commission?

Part of the application of the appellant to the board is to show from September 2014, the appellant has tried in vain to have the city council go back to the people to get approval to sell their prized electricity asset to Hydro One. Each time this is ignored – see letter to the Mayor and Council dated September 23, 2014 (**page 183 to 185**) and the reply from the city October 15, 2014 (**see page 186 and 187**). The second letter to the mayor is dated October 22, 2014 and was received October 28, 2014 (**pages 166 to 168**).

#### **Auditor Report 2014**

The independent Auditor Report for 2014 produced by Grant Thornton shows on (**page 127**) that the Distribution Arm net book value in 2014 is \$24,843,000.00 and the utilities cost alone is \$47,024,000.00. This is the cost shown excluding the generation stations. These assets although not representative as the true assets appreciate, based on cost and true life time expectation with things such as land never depreciating in value. The utility costs however do not include the assets paid for by developers related to their projects brought on line.

#### **By-law 2000-184 which amends By-law 2000-141**

It now clearly states that the interest rate on the alleged promissory notes be the maximum allowed by the Ontario Energy Board rate handbook (**see page 109**). The appellant is somewhat aware that the electricity arm has over the years been paying for other sundry items that are not at all related to electricity. A council committee on May 26, 2014 shows that OPCG is required to fund approximately \$200,000.00 on the cost of a roof replacement on Orillia's Teletec building etc. (**pages 300 to 302**). This figure in the auditor's report is now changed to \$300,000.00.

## **The Independent Auditor's Report 2014 (page 117 to 157)**

This Report shows the number of Orillia electrical customers as 13,400 (**page 139**). (**On page 150**) the dividend paid to the city was \$1,600,000.00 (one million six hundred thousand dollars). The accumulated interest paid to the city is \$925,000.00 (nine hundred and twenty five thousand dollars) and \$250,000.00 (two hundred and fifty thousand dollars) as the city's share to hospital construction and \$300,000.00 for an upgrade on the roof of the city owned building at 2 Hunter Valley Road. The total of these expenditures is \$3,075,000.00 (three million and seventy five thousand dollars). **Divide this by 13,400 customers which equates to all Orillia customers having to pay a average of \$229.48 yearly.** This dividend was always distributed to Orillia electrical customers, now it goes to the city.

To look at electricity costs in perspective one must make a comparison to what citizens in other provinces pay (**see page 318**).

Orillia power generation refinancing process so as to ensure an additional flow of funds to the city in the event of this sale going through (**pages 314 to 317**).

The former Electric Commission have tried for disclosure whether or not any RFP request (Request for Proposal) was considered or just Hydro One alone (**page 233**)

To have an understanding of the drastic effect that this as well as the wholesale cost of power it is necessary to look at Orillia's statistics to show that there are many people within Orillia that cannot afford electricity (**page 200**).

A freedom of information request to the city was made on September 6, 2016 (**page 303 and 304**). Access was denied by a letter dated October 21, 2016 and the two most important documents denied were:

- A. All documents used to determine the purchase price of the sale from the City to Hydro One.
- B. All correspondence and negotiation papers related to the Hydro Distribution sale to Hydro One including the offers and conditions related to the Hydro One sale (**page 307**).

This request was made knowing full well that there was never any correspondence. This was only verbal from the Mayor before his resignation as Mayor to accept his provincial appointment as a full time member of the Ontario Energy Board. The elected commission did not, at any time, formally or informally resign nor were they ever asked to resign.

It is worthy to note that the local newspaper's biggest customer is the city of Orillia. They are one of the largest purchasers of paid ads that contribute to the paper's revenue stream. Hence the local paper has chosen not to publish anything negative that might be related to this sale so as not to offend the city council.

