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ONTARIO ENERGY BOARD

**The Ontario Energy
Board**

Public Hearing

**Written Required
Appeal Document
with Attachments
(April 19th, 2017)**

EB2016-0276

Frank Kehoe
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Orillia, ON
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April 19, 2017

Ontario Energy Board
P.O. Bcx 2319
2300 Yonge Street
27th Floor
Toronto, ON
M4P 1E2

ATTENTION: KIRSTEN WALI, BOARD SECRETARY
RE: ENERGY BOARD PUBLIC HEARING, E.B. #2016-0276

Consider this to be our appeal dealing with the aforementioned Ontario Energy Board hearing that is now to be a disappointing written appeal as opposed to a oral public hearing.

After reading Mr. John Pickernell's letter of November 21st, 2016, I was of the opinion that this was to be a public oral hearing. As there is limited time to copy pertinent documents, the appellant will address the key issues of our appeal. The appellant is totally dismayed that the Orillia City Council, by a small majority vote, have chosen to sell the Orillia electrical consumers' proudest asset without the approval of their own electorate which is illegal without an amended referendum.

In the Ontario Energy Board public hearing submissions, the appellant, Frank Kehoe, have included a book of the pertinent documents comprising 351 pages and a 14-page additional document entitled "Book Two". These includes the referendum documents (solicitors' opinions), letters to council and other documents that are all meant to be appeal exhibits and not just correspondence.

DEMOCRACY AND LAW

It is necessary to include sections of our Energy Board Book Two to highlight a major portion of our appeal, namely:

The appeal group recognize that the distinguishing feature of our Canadian democracy, that contains the rights and freedoms of Canadians, that all Canadian governments derive their authority from their citizens.

Direct democracy is clearly defined as government in which its citizens, under certain circumstances, are permitted to vote on laws. The common version of this process is done, for the most part, in the legal form of duly called referendums 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 substance of the Orillia citizen's 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 nominated or eligible people 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.

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 options that do not fit into appropriate democratic practice.

The Orillia Peoples' Referendum is not unlike the great published decision in support of Brexit, Britain's June 23rd, 2016 decision by referendum to leave the European Union. The appellant Frank Kehoe can clearly recall other referendums relating to prohibition, conscription, conservation lands, the famous Charlottetown Accord of 1992, and even the naming of Thunder Bay – all set by plebiscite or referendum.

Of the many law firms and lawyers that are involved in Energy Board 2016-0276, the appellant would expect that none have found a legal precedent nor law that can override a legal referendum voted on by the people. The council of the City of Orillia have ignored the legality

of Orillia's referendum and chose to only use a single elected person insertion of a draconian amendment that was put in as a single paragraph in a 225-page piece of legislation. This Act was described as one to achieve fiscal savings and promote economic prosperity through public sector restructuring, streamlining, and efficiencies, and to implement other aspects of the government's economic agenda. The short title of this Act is The Savings and Restructuring Act (1996). This was where Section 67(1), a new section which was inserted without knowledge of many of the utility staff that were formerly set up under the Public Utilities Act. This single section was initiated at, or close to, the legislature Christmas break and was possibly pushed through without an explanation of its impact on other utilities that were set up using the Public Utilities Act.

In doing research on the origin of the Public Utilities Act pertaining to electricity, the appellant discovered that no copy of the original Public Utilities Act was available at the legislature library. However, in doing an up-to-date search at the University of Toronto Law Library, the librarian discovered a somewhat fragile copy of the original act and she delicately made a copy which was included in pages 2 – 9 of the documents previously forwarded to the board.

The result of this extensive search clearly showed that the 1913 referendum of the people **pre-dated** the new Public Utilities Act. Two years after the passing of the Public Utilities Act the provincial legislature, in order to further protect the peoples' referendum included, as part of the 1915 Town of Orillia Act, included the following: ***"Section 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 bylaw appointing such commission remains in force, be exercised by the Orillia Water, Light and Power Commission, and not by the council of the corporation.***

On October 9th, 1996, after the city engaged their law firm Russell, Christie, Miller, Koughan to see if there was a process to revoke Bylaw #557 – **the Referendum of the People**. On page 18 of our submission, it reads, in part: ***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.*** This is supported by our attorney who is a renowned published municipal lawyer.

SOLUTION

The appellant clearly recognizes that the Ontario Energy Board must operate under the rule of law and does not have the legislative authority to make laws. In dealing with the sale of Orillia Power's distribution to Hydro One the board must recognize, and take into consideration, that Orillia City Council does not have the authority to override its own by-law that created the People's 1913 referendum without first going back to its electorate for their approval. To do otherwise thwarts the law in place. Hence, the appellant feels that the

decision of the board should be stayed until the city council can show, to the board, that they have obtained the legal authority, from their people, to sell - or not sell - the distribution arm of the Orillia Power Corporation.

HYDRO ONE ABILITY TO COMPETE

It is the appellant's well-informed view that Hydro One, even in the best of circumstances, could never financially compete with Orillia's power distribution. When the former Ontario Hydro broke up and the legislature passed the Energy Competition Act of 1998, Ontario Hydro, that had just over 35,000 employees, broke up the organization into multiple companies, later to become corporations that could operate paying corporation taxes to the province, together with dividends from their operation going to the province. The corporations that were formed were called Ontario Power Generation (OPG), Ontario Hydro Services Company, now renamed Hydro One, and the Independent Electricity Market Operator (later named the Independent Electricity System Operator), the Electricity Safety Authority, and the Electricity Financial Corporation. Some of these corporations formed additional corporations. For example, Hydro One Inc. incorporated Hydro One Networks Inc., Hydro One Remote Communities Inc., and Hydro One B2M Holdings Inc. Hydro One B2M Holdings Inc. further incorporated Hydro One B2M LP Inc. and B2M GP Inc. which formed the B2M Limited Partnership and Hydro One Brampton Inc. So, you can see that it is next to impossible to obtain exact debt figures from all of these corporations.

When Hydro One, or the province, introduced solar and wind power contracts, they did so using the private sector. Many of the solar contracts were given for 20 years at prices close to 80 cents per kilowatt hour with the province agreeing to buy all the energy that solar and wind produced. When Hydro One had an over-abundance of electrical energy, they had no choice other than to dump the surplus electrical energy to the U.S.A. at figures close to 0.02 cents per kilowatt hour.

In referring to Bonnie Lysyk, the provincial Auditor General's report in 2015, she stated that Ontarians have paid \$37 billion more than the market price of electricity over 3 years and will pay another \$133 billion extra by the year 2032. She also stated that Hydro One is in rough shape with ever-increasing numbers of power outages and aging equipment "at a very high rate of failing" that needs \$4.472 billion worth of repairs.

This situation has had a horrendous impact on the electrical consumers and there isn't any way that the Orillia consumers could possibly benefit from a sale of their distribution arm to Hydro One.

VALUATION OF ORILLIA POWER DISTRIBUTION

The appellant has devoted a great deal of time to attempt to arrive at a more realistic valuation of the Orillia Power Distribution Corporation. This valuation is next to impossible to assemble a complete document as the Orillia Power Distribution Corporation has refused to supply the distribution values that we, as a commission, had full and ready access to. The excuse for their refusal to provide us with this strategic information is based on the fact that there is no Freedom of Information applicable to a corporation operating under the Provincial Corporations Act. Hence, the valuation that is included on pages 349 through 351 and pages 260 through 266 that we have assembled in our previous submission (Book One) is but a fraction of its true value. This partial evaluation, I'm sure you can appreciate, has taken many days to assemble and is based upon factual information and expert submissions.

To best give the board an indication of the complete lack of cooperation from the Orillia Power Distribution Corporation, Interim President Grant Hipgrave, the gentleman gave a statutory declaration to the Ontario Energy Board, under a letter dated November 8th, 2016 (as shown on the Ontario Energy Board website) declaring the following:

- 1. A copy of the Notice, the application and evidence, and any amendments thereto, are available for public review at the office of Orillia Power Distribution Corporation and is in a prominent place on the Orillia Power Distribution website.**

Based on this posting, I attended the office of the Orillia Power Corporation on the morning of April 13th, 2017 to view three documents that are included as Items 12, 13 and 15 as shown as Attachment #5, page 71 of 84 of Schedule 3.1(0) – Material Contracts filed on September 27th, 2016. These documents were the Swift Wheeling Agreement dated June 23rd, 1993 with Ontario Hydro, as amended by amending agreement dated May 9th, 2005; and the Minden Wheeling Agreement dated January 2nd, 1990 with Ontario Hydro, as amended by amending agreement dated May 5th, 2009; and the Independent Electricity Market Operator Participation Agreement dated January 3rd, 2002. Both the Swift and the Minden Wheeling Agreements were at a time when I was either the chairman or vice-chairman of the Orillia Water, Light and Power Commission. The viewing of this material was categorically denied me by Mr. Hipgrave, as well as Mr. Hurley, Interim President of Orillia Power Corporation. This material was part of the questions previously asked of the Ontario Energy Board by myself as well as our attorney Stanley M. Makuch that we never received.

MONIES FLOWING TO ORILLIA CITY COUNCIL

It is indeed sad that the electrical consumers, in Orillia, without their knowledge, have been contributing close to \$44 million in dividends and interest payments - over a 16-year period - not shown on their hydro bill directly to the City of Orillia. Although this is probably legal, it is, in the same sense, morally wrong. No wonder the hydro rates in Ontario are so high and no longer competitive with most other provinces.

The provincial Chamber of Commerce has published the fact that one out of five industries are either going out of business or moving out of the province, their decisions related directly to increasing hydro rates.

The citizens of Orillia, and all of the electrical consumers have, in the past, put their trust in the writer. And with this trust, the writer has a fiduciary obligation to work in the consumer's best interest, as a previously elected chairman and commissioner, who served for 19 years on the Orillia Water, Light and Power Commission.

Respectfully submitted,



Frank Kehoe
Attachments:

- Orillia Power Corporation letter dated November 8th, 2016 (3 pages)
- The Ontario Energy Board Public Hearing EB2016-0276 Book Two (previously submitted – 14 pages)
- A submission from Stanley M. Makuch regarding status of the Orillia Water, Light and Power Commission (3 pages)
- A letter from Frank Kehoe dated September 29th, 2016 along with Conductor Survey (11 pages)
- Request for Stated Case by Stanley M. Makuch (1 page)
- Letter from Frank Kehoe to Kirsten Wali (2 pages)
- Letter dated November 21st, 2016 from J. Mark Rodger (3 pages)
- Letter dated February 24th, 2017 from J. Mark Rodger (2 pages)
- Letter dated November 22nd, 2016 from Stanley M. Makuch (1 page)
- Letter and attachments dated November 19th, 2015 from the elected commissioners of the Orillia Water, Light and Power Commission (11 pages)



Energizing Our Community[®]

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November 8, 2016

Ontario Energy Board
2300 Yonge St., 27th Floor
P.O. Box 2319
Toronto ON
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Letter of Direction, Ontario Energy Board File No. EB-2016-0276
Share Purchase Application and Related Approvals**

As directed in your letter of November 7, 2016, Orillia Power Distribution Corporation has made a copy of the Notice, the application and evidence, and any amendments thereto, available for public review at the office of Orillia Power Distribution Corporation and is in a prominent place on the Orillia Power Distribution Corporation website.

The Affidavit to the above is attached.

Yours truly,

Grant Hipgrave, CPA, CMA
Interim President & CEO
Orillia Power Distribution Corporation

GH:ht
Attach.

cc: Mrs. Gayle Jackson, CAO, City of Orillia
Mr. Patrick Hurley, Interim President & CEO, Orillia Power Corporation



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EXECUTION VERSION

SCHEDULE 3.1(O) – MATERIAL CONTRACTS

1.	Infrastructure Ontario Financing Agreement dated June 15, 2009
2.	General Security Agreement dated October 31, 2000
3.	Liabilities Assumption Agreement dated November 1, 2000
4.	Infrastructure Ontario Debenture dated May 3, 2010
5.	Promissory Note due to the City of Orillia dated December 1, 2000
6.	TD Operating Line dated July 21, 2014
7.	TD Credit Facility dated November 2, 2014
8.	TD IESO Letter of Credit dated April 15, 2002
9.	TD General Security Agreement dated April 15, 2002
10.	Harris Licence Maintenance Agreements dated February 25, 2010 and July 29, 2010
11.	Harris Escrow Agreement dated February 23, 2010
12.	Swift Wheeling Agreement dated June 23, 1993 with Ontario Hydro as amended by an amending agreement dated May 9, 2005
13.	Minden Wheeling Agreement dated January 2, 1990 with Ontario Hydro as amended by an amending agreement dated May 5, 2009
14.	Services Agreement between Orillia Power Distribution Corporation and Orillia Power Generation Corporation dated January 1, 2001
15.	Independent Electricity Market Operator Participation Agreement dated January 3, 2002
16.	Smart Metering Agreement for Distributors dated April 26, 2013 with Independent Electricity System Operator
17.	CHEC Group Mutual Assistance Agreement revised February 27, 2013
18.	Group of Seven Emergency Mutual Assistance Plan revised dated September 25, 2013
19.	Emergency Mutual Assistance Plan for Use with Ontario's LDCs dated March 2004
20.	OWLP/OPP Joint Use 200' Communications Tower Agreement with Her Majesty the Queen in Right of the Province of Ontario as represented by the Ministry of the Solicitor General and Correctional Services on behalf of the Ontario Provincial Police dated

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

PROBITIONS

NAMING OF THUNDER BAY
AND OTHER LAWS SET
BY REFERENDUM.

**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**



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 6th 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 Arm 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 16th 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 16th 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.

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 "

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

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.

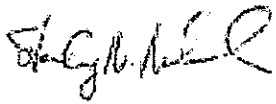
It is clear from the same bylaw submitted by Mr. Rodger that no referendum was held. As a result the OLWPC continues to exist and owns the assets to be transferred.

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,

A handwritten signature in black ink, appearing to read "Stanley M. Makuch". The signature is written in a cursive style with a large, stylized "R" at the end.

Stanley M. Makuch

**YOUR FORMER ELECTED O.W.L.P. COMMISSION MEMBERS
CLEARLY STATE THAT A REFERENDUM VOTE BY THE CITIZENS OF ORILLIA
MUST TAKE PLACE TO APPROVE OR REJECT
THE SALE OF ORILLIA'S HYDRO DISTRIBUTION ARM TO HYDRO ONE**

September 29th, 2016

A great deal of time has been spent to try to put together a more realistic value of the Orillia Electrical Distribution that is the subject of the sale. The figures, prices, and location maps are available to support the accuracy of the former commission findings.

1. Orillia in the calendar year 2015 had 13,400 metered hydro customers.
2. On August 15, 2016 the city council called a special council meeting to consummate the sale of the Distribution Arm of the former utility. The price announced to the public was 26.35 million dollars.
 - a. There was no public input dealing in any way with the true value of this asset nor were there any chances for outside people knowledgeable in the utility distribution to give input. For the most part the entire process was done in secretive negotiations. Some members of council interpret that with the two open meetings where the council would highlight what they called the major pluses presented by Hydro One was what they considered input which was certainly never the case. Some members of the negotiating team attempted to try to give rationale for considering a sale of this nature.
 - b. No member of the negotiating team ever considered the serious effect that a sale would have on future electricity rates for this and future generations. The negotiating team at all times outlined to the public that this sale would have a major influence on creating many jobs and that the Hydro One promises were a deal of a lifetime. There was no mention what so ever that a sale of this nature would close all opportunity for any future benefit of Orillia creating additional generation or even introducing a link to other provincial distributors or even purchasing ties to Hydro Quebec and/or Manitoba Hydro.
In a recent article by A. Raymond he outlined that based on the use of 1000 kw the average bill for Ontario customers was \$226.03. Based on a monthly use of 1000 kw in the Province of Quebec this would be \$67.89, that is 70% lower than in Ontario. If you lived in Manitoba and consumed the same 1000 kw your bill would be \$81.09, that is 64% lower than Ontario. Both provinces have the capacity, within their systems, to service distribution customers in Ontario.

This misguided process prompted the last elected commission to try to take action to prevent or delay the sale until the citizens could, by referendum, reject or support a sale of this nature. The former commission depended somewhat that the legislature would side on democracy and support a vote of the people but this was never the case.

The local news media sided on the side of the City of Orillia revenue advertising stream and refused to publish anything that might negatively affect this ongoing revenue. So the people of Orillia were kept in the dark on many hydro matters – except for press releases from the city.

IN ORDER FOR THE FORMER ELECTED COMMISSION TO ATTEMPT TO PULL TOGETHER WHETHER THE 26.35 MILLION DOLLAR SALE WAS REALISTIC WE HAD TO DEPEND A GREAT DEAL ON MEMORY.

Poles and Equipment:

One member of the former OWLP remembered that within the corporate boundaries of Orillia we had just over 5,700 hydro poles at the time of dissolution. In the sixteen years following dissolution there had to be at least 300 more so we used the figure of 6,000 as our guide. We then used the figure of \$2,000 as a realistic price for each pole in the system to round the price out at **12 million dollars (\$12,000,000)**. The cost range for just the poles, using for the most part western cedar, ranges from a low of \$964.00 for a 40' class 3 pole to a high of \$7,000.00 for an 80' (HI) pole plus the manpower and equipment required for installation. In addition, one must consider the cost of polymer insulators, inline switches, disconnects, mid span openers, SNC load interrupter switches, isolator special, air break switches on the 44 kVa, etc.

Conductors (Wires):

To arrive at an accurate figure, it was necessary to use Google Maps to plot the circuits in order to arrive at 22.3 miles or 36.3 km of wire and divide that process into the amount of 3/0 triplex accompanying the circuits equaling 5.4 km (3.3 miles) and the possible kilometer of single phase primary in the city 16.5 km (10 miles). This was an item that we knew would be challenged so we calculated the majority of the meterage to number 336 conductor at a present day cost of roughly \$3.50 a meter and tried to get a realistic count on the location of 556 conductor which a little more than \$5.00 a meter. In other locations we knew there were 500 MCM copper in a great deal of the underground together with a smaller percentage of 1/0 copper and 1/0 aluminum. The total arrived at was somewhat downsized to **\$11,715,000**.

Transformers:

The transformers in residential areas were again low-balled in price to show a mix of 60 (kVa) and 75 (kVa) transformers for a rough total of 1,676 at \$2,500 and \$3,000 each FOB Orillia. We did not put a labour figure related to this item as the pole-mounted transformers could be erected and wired in a matter of hours. But the pad mounted transformers would be wired taking approximately three days. The pad-mounted transformers were roughly the same cost, however, there was a civil component requiring the concrete pad supporting the transformer. So the figure of **\$5,000,000** covered the cost for residential areas only. However, throughout the city in commercial, industrial, and schools, there is higher capacity pad-mounted transformers. Estimated in the range of **\$500,000** total.

Sub-Stations:

In the Orillia distribution we have nine sub-stations (one now under re-construction) which includes property, civil component, metal clad, breakers, transformer and underground each with a minimum value of 1.5 million dollars for a total of **\$13,500,000**.

Smart Meters:

There are 13,400 meters Smart Meters installed with a value of **\$8,040,000**.

Inventory:

As the former commission had no access to this dollar value we had to make an educated guess which included all equipment: trucks, Bombardiers, pole trailers, special line equipment, chipping machinery, saws, line equipment, protective gear, poles, transformers, conductors, buildings and landholdings and a multitude of other equipment and spare parts - so our realistic guess has a possible error upwards or downwards of \$1,000,000 for a total of **\$5,000,000**.

With the lack of freedom of information there was no way that former commission members could gain access to what is still remaining and the value associated with the former 90 miles of transmission lines to know what portions have been previously sold and what ownership is still included and forming part of the sale. It is not possible to arrive at the value nor is it possible to obtain what buildings and land holdings are also included in the sale to Hydro One.

The one thing that we are however positive about is that any sale at 26.35 million dollars is an absolute betrayal of the peoples' ownership of this electrical asset that has been such an integral part of our heritage serving Orillia for 118 years. The six council members who voted for discarding this Orillia heritage asset at a fraction of its value will, if the sale cannot be reversed, forever carry this guilt with generations to come now forcing Orillians into sky-rocketing electricity costs after the province instructs Hydro One to sell to the private sector.

To summarize the true value with only a portion of the true costs available we arrive at:

12,000,000.00	Poles
11,715,000.00	Conductors (Wires)
5,000,000.00	Transformers (Residential)
500,000.00	Transformers (Industrial, Commercial, Schools, etc.)
13,500,000.00	Sub-stations
8,040,000.00	Smart Meters
<u>5,000,000.00</u>	Inventory
55,755,000.00	(Fifty-five million, seven hundred and fifty-five thousand dollars)

For the mass of equipment purchased during the period that HST came into existence the total of some of those items above would increase by 13%, which may possible extend the total to approximately \$57,000,000.

It's unbelievable to note that our grossly incomplete estimate of \$55,755,000.00 (Fifty-five million, seven hundred and fifty-five thousand dollars) is \$29,405,000.00 (Twenty-nine million, four hundred and five thousand dollars) more than the council's sale price to Hydro One of \$26,350,000.00 (Twenty-six million, three hundred and fifty thousand dollars) that six draconian members of council approved.

This City of Orillia had hired a top municipal law firm to give them a legal opinion on how to revoke Bylaw 557 (1913). To quote this legal opinion, it reads: "The procedure for revoking all or part of Bylaw 557 is interesting. From what we know now, it would appear that the Bylaw could only be revoked (in whole or in part) in the same manner in which it was instituted, namely by a Bylaw approved with the consent of the electors (Public Utilities Act, Sections 39 and 45). Under the Ontario Municipal Board Act, the OMB 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 issue of debentures for financing purposes."

However, the 2016 Council chose to ignore this legal opinion and not put the question directly to the electorate who, by referendum in January 1913, put the question to the electorate who voted to remove the management and control from council to the then, OWLP separately elected commissioners. Regardless of any legislation, the Council were duty-bound to respect the legal standing of Bylaw 557 of their own citizens. They did not have the right to sell any portion of their proud asset without a majority referendum vote approving it. The elected commission feel that they have a fiduciary obligation to act on behalf of the electorate.

Mayor Clarke in the four-page advertisement in the local daily makes mention that the distribution charge is to be reduced by 1% for a five-year period. To put this in perspective people have to look at their hydro bill under Delivery, the average of which on the customer's bill is in the range of \$35.00 per month. So a 1% saving is equal to 35 cents per month times 12 months is a yearly savings of \$4.20. Don't spend it all in one store!!

When dealing with a full distribution asset the purchaser should be paying the full related cost – related to the distribution asset - and the “so-called” double-book value should not enter the picture as this is strictly an internal accounting document generally by accountants used for tax purposes. The assets of the utility, for the most part, appreciate yearly in relation to the cost increases of materials, labour, etc.

ELECTRICITY IN GENERAL

Our provincial governments are off the chart in dealing with electricity matters. Democracy is no longer headed with a now attitude of “my way or the highway”. Provincial Auditor General Bonnie Lysyk, in her December 2015 report, gave a scathing report relating to an ill-conceived disaster and the huge waste of taxpayers' dollars, chasing industry out of Ontario and creating now non-competitive electricity rates - which are now the highest in North America. Her report is only the tip of the iceberg.

It is time to now look at the situation from the standpoint of a small utility of 13,400 customers owned by the citizens of Orillia. This utility came into existence in 1898 with a vote of the electors. For the record, this is eight years before the Province created their own utility called Hydro Electric Power Commission Ontario (H.E.P.C.) under the brilliant leadership of Adam Beck. The Provincial utilities model was power at cost to the citizens of Ontario and, certainly within Adam Beck's reign, the utility lived up to this model, up to and including the early 1960's.

Orillia, however, built its first hydro generation plant on the Severn River some 18 miles away from Orillia which, at the time, pioneered long distance transmission. This was a model that soon would be copied across the continent. From its inception Orillia industrialists agreed to back the borrowing debentures. The electricity rates alone were meant to pay off the borrowed money. It was discovered however that the municipality started to now-dip and divert contingency and maintenance funds of the power project to fund other municipal projects.

Provincial Promise #1:

The industrialists and key citizens, which included the father of Premier Frost, set up a meeting with the Premier and Adam Beck and received an absolute commitment that if the Orillia Council would establish a by-law that would be voted on as a referendum (plebiscite) and if carried by a majority of its eligible voters to create an elected commission, separate and apart from Council control, then the province would support it.

This vote of the people (referendum) January 1913 approved the complete separation and the setting up of an electrical commission to be elected by the citizens to now administer the hydro generation, distribution and sale of electric power. This referendum did not extinguish the right of a future council to make amendments nor try to sell the utility, **but no such maneuver could ever happen without calling another referendum for the people to approve or reject any such move.**

Provincial Promise #2:

The Province of Ontario in the **Town of Orillia Act, 1915** brought in legislation and under Section 11 of The Act which included the following:

“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 bylaw appointing such commission remains in force, be exercised by the Orillia Water, Light and Power Commission, and not by the council of the corporation.

11(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 to the municipality shall, upon the certificate to the Commission, pay out any money so provided.”

This section has never been repealed. Now comes a sad day for democracy with an absolute betrayal of the citizens of Orillia and many other like municipalities when one or more provincial elected members secretly uses a brand new 225 page document of legislation described as an act to achieve fiscal savings and promote economic prosperity through public sector restructuring, streamlining and efficiencies and to implement other aspects of the government’s economic agenda (the short title of this act is the Savings and Restructuring Act 1996).

Our provincial leadership elite may still want to believe in abiding by democratic principles - they certainly profess that they do. In the case of electricity legislation, a small minority have shown themselves all too willing to violate their principles to gain or retain a certain power. So, in this new conspicuous act, certain draconian elected people secretly inserted a single clause to try to reverse the electoral power of the people of Orillia and other like municipalities who democratically cast their vote in a dually called and legal referendum to keep the people’s ownership by their elected representatives free of council involvement.

This oligarchy insertion into the new Savings and Restructuring Act Schedule M, Chapter 1, Item 33, page 172 introduces the following:

33. The Public Utilities is amended by adding the following section:

By-law waiving the assent of the electors **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.**

Exception **(2) Subsection (1) does not apply to a municipal corporation exercising its power with respect to natural gas.**

The insertion of this clause is a certain slap in the face and betrayal of the rights and freedoms of its citizens and represents a serious breach of democracy. This single clause is a betrayal of the absolute commitment and promise given Orillians and the legislation that was put in place to protect their utility.

Pursuant to Section 485, Section 482 came into force on January 1 2003 and that is the date on which **section 67 of the Public Utilities Act was repealed.** This was after, of course, all the damage was done and the Electricity Act 1998 received royal assent.

The legislature as a whole must recognize that the distinguishing feature of a democracy is that government derives its authority from its citizens.

The word democracy comes from two Greek words “demos” (the people) and “kratos” (authority or power).

Direct democracy is defined as government in which citizens vote on laws. It is the writers' opinion that the provincial legislature, on its own, lacks the authority to alone discard legal referendums of its citizens.

With this single clause asserted in legislation and given royal assent it is the greatest distortion of fact that heads up as a background in the next piece of government legislation.

The Electricity Act 1998

Section 142 of the Act forces all municipal electric commissions to now incorporate and act under the Provincial Corporations Act. **The legislation appears to now give back the power to municipal councils and sadly corporations can now act in complete secrecy so there is no longer municipal transparency as the corporations do not fit into the legislation of freedom of information.**

New Ownership

The municipal corporation (**council**) or corporations that incorporate a corporation pursuant to this section shall subscribe for all of the initial shares issued by the corporation that are voting securities. 1998, c.15, Sched. A, s. 142 (4). The municipal council may, if not challenged, 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. (*See Legislation attached*).

Not a local board, etc.

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).

This appears to now take away the people's democratic ownership and place it in the hands of some draconian members of council.

This legislation now gives the provincial utility Hydro One a simple opportunity to deal with municipal corporations (**councils**) to purchase the people's electrical corporations and merge them into Hydro One or package them up for an outside sale. This process has now been used to purchase multiple municipal utilities across the province.

The Drastic Financial Effect on Orillia's Electrical Consumers

As these former utilities are now corporations, the province has permitted them to create an alleged debt where no debt existed that will now pay alleged interest to the municipal council at a high rate of interest. The municipality can now dictate that they pay this interest over an exorbitant length of time before the electrical customers have any opportunity to pay off any of the principle. In the private sector, this is referred to as "loan sharking".

The second form of the municipal council benefits are now derived from the peoples' electricity bill of its consumers is a new corporation; dividends now payable to the municipality. For Orillians this amounts to \$1.1 million per year.

The third benefit to a municipal council is that they can derive an additional revenue of non-taxpayers from electrical customers who are renters and are required to pay their separate metered electricity.

Study of Orillia Electrical Customers

In the nineteen years that the writer was Chairman and Commissioner of Orillia's Public Utility I can say, with certainty, at the time of the alleged transfer to city council and their appointment their own selected Board of

Directors, the Orillia utility (O.W.L.P.) had close to \$7.2 million dollars in the bank and receivables and was absolutely free of all debt. The province allowed the newly formed corporations to create a debt payable to the municipal corporation of \$14,796,000 (fourteen million, seven hundred and ninety-six thousand dollars). \$9,762,000 of this figure related to distribution and \$5,034,000 was for generation. The initial borrowing rate was 7.5% which has now been reduced to, I believe, 6.5% - which is almost twice the borrowing rate of the city. The due date on this debt, where the utility customers can start to repay this alleged debt, is December 31, 2030 with no right to pre-pay any of the principle in whole or in part.

Corporation Dividends

The new corporations can now pay a dividend as part of the customers' electrical rates to the municipal corporation (city) equal to approximately \$1.1 million dollars yearly. The writer was able to obtain the following figures from a power corporation presentation to city council on April 13, 2015. In the report they show that Orillia council, over the fifteen-year period 2000 to 2015, received **\$37,100,000** dollars together with paying the city share to the hospital and university for an additional **\$4,325,000** dollars for a total of **\$41,425,000** dollars. As there are 13,400 Orillia customers identified, the math to arrive at an average is \$41,425,000 dollars divided by 13,400 customers is therefore equal to \$3,091.42 per customer. This is of course for 15 years so we divide \$3,091.42 by 15 years and arrive at \$206.09 per electrical customer per year. However, some will be higher and some will be lower based on their electrical consumption. Of course, the \$206.09 that the electrical customer pays to the City in interest and dividends is subject to HST.

Where is the democracy in our political system?

Electricity is in a Crisis

The majority of Orillia's population is made up of seniors, young families, people in low wage jobs, unemployed people and indigenous people. The horrendous increases that have happened in the Hydro One billing includes on peak, mid peak, off peak, regulator charges and other charges now representing close to a 300% increase over and above that which the customers were paying before the province forced the utility to incorporate. This is a serious situation for the people. Many in our community now have to sacrifice food for hydro, especially in the cold winter months.

The appropriate course, of initial action, is for the provincial government to recognize that this situation is directly related to the mismanagement in the Ontario Hydro family of corporations, as well as the drastic mistakes made by the legislature on hydro matters. **As six members of Orillia council have chosen to sell the people's distribution arm of the citizen owned utility, the only apparent avenue open is full litigation to thwart this inappropriate sale until the electorate can exercise their democratic right to vote on another referendum on this important issue.**

Respectfully submitted,



Frank Kehoe
On behalf of the elected members of the former
Orillia Water Light & Power Commission
fm.kehoe@rogers.com

Attachment: Section 142 of the Electricity Act

Section 142 of The Electricity Act 1998

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.

CONDUCTOR SURVEY

349

NOTES:

- Total Meterage for 44K.V. and 3 PH (13.8 K.V. or 4 K.V.) Circuits:
36,300 Meters or 36.3 kms (22.3 miles)
- Possible amount of 3% triplex accompanying the circuits: 5.4 km (3.3 miles)
- Possible kms of single phase primary in the city: 16 km (10 miles)

1. West St. N., 47-49 West St. N. to 490 West St. N.: 2.2 km x 7 conductors = 15 km 400m
2. West St. S. to Colborne St.: 4x290m = 1 km 160m
3. West St. S. at King St. to James St. and West St. S.: 7x 800m = 5 km 600m
4. From James and West St. S.: 4x1.2 km = 4 km 800m
5. Skyline Drive to West St. and to Lift Station on Commerce Road: 7x500m = 3 km 500m
6. Fittons Road and West St. to Murphy Rd.: 7x 2.1km = 14 km 700m
7. Murphy Rd & Hwy 12 across West Ridge Blvd. to University Ave. to Old Barrie Rd: 7x3 km = 21 km
8. Monarch Dr. - Hwy 12 to West Ridge Blvd. 7x 800m = 5 km 600m
9. From Metering on Uthoff Line across Hwy 11 = 7x 650m = 4 km 550m
10. Progress Pk. Sub. - West on Memorial Ave. to Forest Home, up 15th Line North to Old Barrie Rd, to Harvie Settlement Rd. at Water Tower: 7x6 km = 42 km
11. Harvie Settlement Rd. (Water Tower) to University Avenue: 7x1.1 km = 7 km 700m
12. Hunter Valley Rd.: 7x190m = 1 km 330m
13. Mulcahy Court: 7x160m = 1 km 120m
14. Westmount Dr. N. to Coldwater Rd., including Highwayman Inn Run-off: 4 km. 830m
15. Westmount Dr.; Coldwater Rd. to Barrie Rd.: 7x1.7km = 12 km
16. Harvie Settlement Rd. at Water Tower, across Hwy 11 to Barrie Rd. & Walker Ave: 7x1350m = 9 km 450m

TOTAL KMS: 154 km 760 metres

17. North St. E.; West St. to 198 North St. E.: 7x1km = 7 km
18. Laclie St., Sundial Dr. to Laclie St., between North St. & Cedar St.: 7x2km = 14 km
19. Sundial Dr. to Hyundai & South to North St. E. = 7x1260m = 8 kms 820m
20. North St., West St. to Leonard: 4x450m = 1 km 800m
21. Park St., Fittons Rd. to Gerald Ave.: 4x850m = 3 km 400m
22. Rosemary Rd., Westmount Dr. to Water Reservoir: 4x230m = 920m
23. Mary St.; Westmount Dr. to Quinn Ave.: 4x800m = 3 km 200m
24. Coldwater Rd.; Westmount Dr. to First Baptist Church to Collegiate Dr.: 4x800m = 3 km 200m
25. Brant St. W., West St. to Patrick St., to Nottawasaga St.: 4x630m = 2 km 520m
26. West St.; Colborne St. to King St.: 4x280m = 1 km 120m
27. West St. S.; James St. to Olive Crescent: 4x1.2km = 4 km 800m
28. Barrie Rd., & Walker Ave. to Westmount Dr.: 7x870m = 6 km

- 29. Memorial Ave.; Woodland Dr. to opposite East Side Marios & A&W: 7x1.9km = 13 km 300m
- 30. Westmount Dr.; Barrie Rd. to Rear of East Side Marios & Hwy 12 Bypass: 10x800m = 8 km
- 31. United Dr.; Memorial Ave. to end: 4x260m = 1 km 100m
- 32. Progress Dr.; Memorial Ave., North end to Progress Dr. south end: 7x1150m = 8 km
- 33. Ontario St.: all of: 4x500m = 2 km

TOTAL KMS: 67 km 180 metres

- 34. Nottawasaga St.; Andrew St. to O'Brien St.: 4x500m = 2 km
- 35. O'Brien St.; Nottawasaga St. to Mississaga St.: 4x290m = 1 km 200m
- 36. Huronia Rd.; Hughes Rd. to Brammer Dr.: 4x740m = 3 km
- 37. Brammer Dr. off Hughes Rd.: 4x280m = 1 km 200m
- 38. Fittons Rd. E.; from West St. to Bay St.: 4x1.4 = 5 km 600m
- 39. North St.; From West St. to Bay Street: 4x1km = 4 km
- 40. Peter St. N.; Fittons Rd. to Borland St.: 4x950m = 3 km 800m
- 41. Borland St.; Peter St. to Matchedash St. N.: 4x180m = 720m
- 42. Matchedash St. N. from North St. E. to Brant St.: 4x600 = 2 km 400m
- 43. Matchedash St. N.; Brant St. to Mississaga St.: 4x550m = 2 km 200m
- 44. Circuits from North & Bay Sts. To Terminal Station (Atherley Rd.): 7x1850m = 13 km
- 45. Mississaga St.; Westmount Dr. to Albert St. N.: 4x1230m = 5 km
- 46. Dallas St.; Mississaga St. to Barrie Rd.: 4x600m = 2 km 400m
- 47. McKinnel St.; Dallas St. to Frederick St. to Medical Office Run-off: 4x210m = 840m
- 48. Colborne St. W.; Andrew St. to Hospital: 7x400m = 2 km 800m
- 49. Andrew St.; Colborne St. to Royce Ave.: 7x690m = 2 km 760m
- 50. Wyanandotte St.; Mississaga St. W. to Barrie Rd.: 4x450m = 1 km 800m
- 51. Dunlop St.; Mississaga St. W. to Elmer Ave.: 4x450m = 1 km 800m
- 52. Victoria St.; Andrew St. to Dufferin St.: 4x550m = 2 km 200m
- 53. Memorial Ave.; Barrie Rd. to East Side Marios: 4x700m = 2 km 800m
- 54. Dunn Ave.; Westmount Dr. to Carleton St. to down Glencoe Ave.: 4x510 = 2 km
- 55. Colborne St.; Andrew St. to Lakeview Ave.: 4x700 = 2 km 700m
- 56. Elgin St.; West St. to Peter St.: 4x180m = 720m
- 57. King St.; West St. to Cedar Island Rd.: 4x650m = 2 km 600m
- 58. Queen St.; West St. to Terminal Station: 7x1250 = 8 km 750m
- 59. Forest Ave.; Hwy 12 Bypass to Victoria Crescent: 4x1.5km = 6 km
- 60. Heyden Ave. and Victoria Crescent: 4x2250m = 9 km
- 61. Cochrane St.; West St to Matchedash St. and south to James St.: 4x630m = 2 km 520m
- 62. James St. W.; West St. to East Street: 7x1.1km = 7 km 700m
- 63. East St.; James St. to Terminal Station: 7x500m = 3 km 500m
- 64. Gill St.; James St. to Atherley Rd.: 4x550m = 2 km 200m
- 65. Gill St.; James St. to Victoria Crescent: 4x900m = 3 km 600m

TOTAL KMS: 59 km 890m

66. Shannon St.; West St. to Victoria Crescent: $4 \times 900 = 3 \text{ km } 600\text{m}$
67. Kitchener St.; West St. to Waste Water Treatment Plant: $4 \times 450\text{m} = 1 \text{ km } 800\text{m}$
68. 44 K.V. Circuit to Waste Water Treatment Plant from James St.: $3 \times 800 = 2 \text{ km } 400\text{m}$
69. Atherley Rd.; East St. to past Bayview Parkway: $4 \times 800 = 3 \text{ km } 200\text{m}$
70. Atherley Rd.; West to past Millard St. and up Millard: $4 \times 700 = 2 \text{ km } 800\text{m}$
71. Oxford St.; Forest Ave. to St. Bernard's School: $4 \times 350 = 1 \text{ km } 400\text{m}$
72. Raymond Ave.; James St. to past Franklin St.: $4 \times 140\text{m} = 560\text{m}$
73. Forest Ave. N.; Atherley Rd. to past Cedarmere Rd.: $4 \times 500\text{m} = 2 \text{ km}$
74. Forest Ave.; James St. to Hwy 12 Bypass: $4 \times 550\text{m} = 2 \text{ km } 200\text{m}$
75. Bayview Parkway; Atherley Rd. to Oxford St.: $4 \times 350\text{m} = 1 \text{ km } 400\text{m}$
76. Orchard Point Rd; Atherley Rd. to end: $4 \times 350\text{m} = 1 \text{ km } 400\text{m}$
77. From rear of Terminal Station east to Forest Ave.: $3 \times 315\text{m} = 1 \text{ km}$
78. From Forest Ave. to Broadview Ave.: $7 \times 1.8 \text{ km} = 12 \text{ km } 600\text{m}$
79. From Broadview Ave. to Bridge Port Marina: $4 \times 450\text{m} = 1 \text{ km } 800\text{m}$
80. Couchiching Point Rd. to Broadview Ave.: $4 \times 600 = 2 \text{ km } 400\text{m}$

TOTAL KMS: 27 km 960m

TOTAL OVERALL KMS = 36.3 km or 36,300 metres

EB-2016-0276

Hydro One Inc. Orillia Power Distribution Corporation
Hydro One Networks Inc. Application for approval to purchase Orillia Power
Distribution Corporation
Request for Stated Case in Response to Board Procedural Order No.4

1. The Ontario Energy Board in Procedural Order No. 4, dated February 16, 2017, in the above matter denied the the request of Orillia Water Light and Power Commission to be granted intervener status in the above matter.
2. This is to request that the Board state a case to the Divisional Court under section 32 of the Ontario Energy Board Act asking whether the Board is correct in denying the intervener status.
3. The reasons for requesting that the Board state a case is as follows:
 - (a) The Board failed to address that section 145 of the Electricity Act is irrelevant to whether the Commission still exists.
 - (b) The Board failed to consider the submissions of Mr. Kehoe on this issue.
 - (c) Stating a case will avoid the possibility of an appeal to the Courts or a motion for judicial review by the Commission.
 - (d) The elected Commission continues to exist; believes it has a fiduciary duty to the citizens of Orillia; and its members formally met and formally authorized the request for the intervention.
4. The legislation should be interpreted in accordance with its plain meaning and democratic values which require a referendum to authorize the Commission's dissolution; all of which the Board ignored.

All of which is respectfully submitted,



Stanley M. Makuch

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
27th Floor
Toronto, ON
M4P 1E4

Attention: Kirsten Wali
Board Secretary
Subject: **Energy Board Public hearing E.B. 2016-0276**

As one of the appellants related to the above public hearing I would respectfully request a direct response from the energy board related to the board's appeal process.

Six days prior to the board issuing their decision (Procedural #4) Mr. Makuch, our legal council appealed to the board.

Prior to making this decision the board was in receipt of a document titled "**EB2016-0276- Book Two**". This document directly related to the Ontario Energy Board (OEB) decision-making process and highlighted the legality of the people's referendum by addressing a critical requirement of the people's referendum that has been disregarded in the board's decision.

The Orillia people's referendum initiated by the province and was included as part of Orillia Bylaw 557. This bylaw clearly defines the following.

1. The total removal of the peoples owned electricity asset from any an all council involvement or control.
2. The responsible bcdy (former OWLP commission) shall be elected by the municipal election process as used for all municipal elections. The tenure of such electricity people will be decided by an electoral vote.

This referendum is a law that the province fully supported years after the province initiated the public utilities act and is further outlined by the Town of Orillia Act 1915 (page 212, of our main submission)

This referendum is still a legal and binding law that can only be dissolved or amended by another vote of the Orillia people and it in our opinion can be supported legally.

In addition, it is our understanding that an OEB appeal on the above matter was a process of a public hearing where all evidence and related material would appear before the board for it's decision based on this countries democracratic requirement

This appears to be not the case as the board has ruled (Procedural #4) without a review of the factual documentation that has been provided.

Weeks before the procedural Board Decision #4, and as requested by the board, the appellant, through legal representation, submitted a document that detailed the sequential history related to this evidence that was to be put before the board at a formal hearing. The representatives of the OEB stated that in all cases the appellants would be given adequate notice of the hearing date and every effort would be made to accommodate the schedules of all people involved.

Six days ahead of the board's unexpected Procedural #4 decision, in addition an executive partial summary (Book Two) of the 351-page document was forwarded to the board as per the outlined process. It appears that the board may have decided that no prior notice in the issue of procedural number 4 was necessary or required, nor was this information acknowledged. It would also appear that the board never reviewed the executive summary or had never reviewed the original detailed 351-page document.

Our appellant group, vehemently objects to the board withholding our Book Two from being publically posted on the board website yet every other appellant involved (individuals and corporations) is included in the public website examination of the material presented to the board. This lack of transparency by the board is clearly undermining the due process that is our right as concerned consumers of electricity in Ontario.

As the representative of the last democratic duly elected electricity group where I served as chairman and commission member, and as a lifetime citizen of Orillia, I have a fiduciary obligation to act in the people of the City of Orillia's vested interest, and their right to vote on the sale of their electricity distribution arm.

I am once again attaching pages (204-214) that provide the sequential information of our appeal, previously submitted to the board.

On behalf of the Orillia electrical consumers who are seriously impacted, we are asking for the board to review the fairness of their process and to democratically request that the City Council initiate the required amending clause to the Orillia peoples referendum, prior to the board making it's decision approving or rejecting a sale of the people's owned electricity distribution arm.

Respectfully,



Frank Kehoe
304-95 Matchedash Street North
Orillia, Ontario
L3V 4T9 (fm.kehoe@rogers.com)

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blg.com



November 21, 2016

Delivered by Email & RESS

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2701
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Board File No. EB-2016-0276
Hydro One Networks Inc. MAAD Application to purchase the shares of
Orillia Power Corporation**

We are counsel to the City of Orillia (Orillia) in the above noted matter.

On November 17, 2016 we received a copy of a letter from Mr. Stanley Makuch who requests intervenor status for Mr. Kehoe, who we understand is a resident of Orillia, and the Orillia Water Light and Power Commission (the Commission). Mr. Makuch also requests an oral hearing in connection with this MAAD application.

Orillia objects to the granting of any status to the Commission and also objects to the request that an oral hearing be held in this case. Various statements contained in Mr. Makuch's correspondence are simply false. For example:

1. *"The distribution system is owned by the Orillia Water Light and Power Commission"* (Makuch, para. 2). The Orillia Water Light and Power Commission no longer exists given the fact that the Commission was dissolved on November 1, 2000. For your information we attach City of Orillia By-Law 2000-146, duly passed by Orillia Council, which dissolved the Commission. The Board will recall that in 2000 all former municipal electric distributors were mandated by the Province through the *Energy Competition Act, 1998* to reconstitute themselves as corporations pursuant to the Ontario *Business Corporations Act*.
2. Since the Commission does not exist, the statement in Mr. Makuch's letter that *"the Commission has authorized this intervention in these proceedings"* is also untrue (Makuch, para. 4).

3. The reference in Mr. Makuch's letter that "*Orillia Power Distribution Corporation does not own the distribution system*" is also incorrect (Makuch, para. 1). On October 16, 2000 the City of Orillia passed transfer By Law No. 2000-144 which conveyed the Orillia distribution system to Orillia Power Distribution Corporation. The Board has licenced Orillia Power Distribution Corporation as the regulated electric distributor for the City of Orillia since that time. OPDC is owned by holding company which in turn is owned 100% by the City of Orillia as sole shareholder.

Accordingly, Orillia submits it would be confusing to the general public, misleading, and a falsehood to approve intervenor status to an entity, the Commission, which no longer exists and which has not existed for some 16 years.

Orillia also objects to the request for an oral hearing since the central grounds contained in Mr. Makuch's letter in support of an oral hearing (described above) are simply not correct.

Orillia has no objection to the Board granting to Mr. Kehoe intervenor or observer status as an individual private citizen. With respect to Mr. Kehoe seeking costs for his participation in this proceeding, Orillia will provide submissions on this matter at the conclusion of the proceeding.

Yours truly,

BORDEN LADNER GERVAIS LLP

original signed by Mark Rodger

J. Mark Rodger
Incorporated Partner*
*Mark Rodger Professional Corporation

Encl.

Copy to: Mayor Steve Clarke, City of Orillia
Michael Engelberg, Counsel, Hydro One

TOR01: 6584564: v1

BY-LAW NUMBER 2000-146 OF THE CITY OF ORILLIA**A BY-LAW TO DISSOLVE THE ORILLIA WATER, LIGHT AND POWER COMMISSION**

WHEREAS the Orillia Water, Light and Power Commission (the "Commission") was established by special legislation and is deemed to be a commission established under Part III of the Public Utilities Act (Ontario);

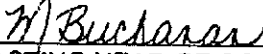
AND WHEREAS The Corporation of the City of Orillia (the "City") proposes to transfer the assets and undertaking under the control and management of the Commission and owned by the City to corporations incorporated pursuant to Section 142 and Section 145 of the Electricity Act, 1998 (Ontario);

AND WHEREAS upon the completion of the said transfer the Commission is no longer required.

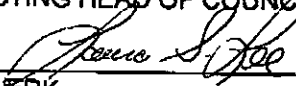
NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF ORILLIA HEREBY ENACTS AS FOLLOWS:

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.

BY-LAW read a first, second and third time and finally passed this 16th day of October, 2000.



ACTING HEAD OF COUNCIL



CLERK

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February 24, 2017

Delivered By Email & RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2016-0276 – Application for approval to purchase Orillia Power
Distribution Corporation
The City of Orillia and Orillia Power Distribution Corporation (“Orillia”)**

We have read Hydro One’s letter to the Board dated February 22, 2017 in connection with Mr. Makuch’s request that the OEB state a case to the Divisional Court regarding the Board’s decision not to grant intervenor status to the non-existent Orillia Water Light and Power Commission.

Orillia supports Hydro One’s submissions that Mr. Makuch’s request be denied.

Orillia is increasingly concerned that the strategy underlying Mr. Makuch’s client’s approach is simply to delay the adjudication of the MAAD application by whatever means possible. The Orillia – Hydro One MAAD application was filed with the Board on September 28, 2016, and interrogatory responses were filed with the Board and parties on January 20, 2017. Orillia respectfully submits that a written hearing should proceed as soon as possible.

Yours very truly,
Borden Ladner Gervais LLP

original signed by Mark Rodger

J. Mark Rodger*

Jonathan Rodger Professional Corporation

Copy to:

Michael Engelberg, Assistant General Counsel, Hydro One Networks Inc.
Mr. Grant Hipgrave, Interim President & CEO, Orillia Power Distribution Corporation
Mr. Patrick J. Hurley, Interim President & CEO, Orillia Power Corporation
Ms. Gayle C. Jackson, Chief Administrative Officer, City of Orillia
Intervenors

TOR01:6695169: v1

Stanley M. Makuch

BARRISTER AND SOLICITOR

52 Tranby Avenue • Toronto, Ontario • M5R 1N5

tel: 647-388-9192

email: smakuch@makuchlaw.com

November 22, 2016

Ms. Kirsten Walli,
Board Secretary,
Ontario energy Board
Suite 2700
2300 Yonge St.
Toronto ON
M4P 1E4

Dear Ms. Walli,

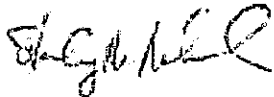
Re: Board File No. EB-2016-0276, Hydro One Networks Inc. MAADs 86
to Purchase all issued and outstanding shares of Orillia Power
Corporation

This is in response to Mr. Rodgers letter of of November 21 2016 in which he requests that there nct be an oral hearing in the above matter and that the Orillia Light, Water and Power Commission not be given status at the hearing. It is my submission that Mr. Rodgers requests should be denied.

Mr Rodgers requests are all based on the erroneous assumption that the bylaw dissolving the Commission is valid. Evidence will be brought that the bylaw is invalid; that the Commission still exists, and that it has acted properly in seeking status at this hearing. In my opinion, an oral hearing to deal with this issue is necessary and the Board has the jurisdiction and obligation to determine this matter.

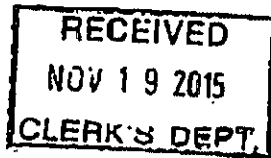
There are, as well, the other issues raised by Mr. Kehoe personally (and on behalf of the Commission) respecting the appropriateness of the sale of shares,, which require a full hearing.

Yours respectfully,



Stanley M. Makuch

*The Legally Elected People voted into Office in accordance with the
People's Bylaw 557, as enacted by a Binding Referendum of the Electors*



Gord Pye
37 Dancy Drive
Orillia, ON
L3V 7M1

Frank Kehoe
304-95 Matchedash St. N.
Orillia, ON
L3V 4T9

Ken McLaughlin
217 Barrie Road
Orillia, ON
L3V 2P6

Dan Valley
66 Maple Drive
Orillia, ON
L3V 3W4

November 19, 2015

Mayor Steve Clarke and Members of Council
Orillia City Centre
50 Andrew Street South
Orillia, ON L3V 7T5

Dear Mayor Clarke and Councilors,

This correspondence is meant to flag this council that they, in talking with Hydro One concerning a possible sale of the distribution arm of the people's owned utility, are in direct violation of the Peoples' Bylaw 557 and the referendum of the people that removed any and all control (for good reason) from council to a separately elected body only answerable directly to the people – the true owners.

This council, as mature adults, must recognize how democracy works:

- a) When a council formulates a bylaw, in this manner, and transfers the outcome (decision) to the electorate in conformity to the provincial requirements of the day this is called a referendum.
- b) The outcome of a referendum, duly voted upon by the people, is a binding form of the democratic practice and cannot be revoked nor amended, in any other manner, other than by way of a calling second referendum.

This council, in not abiding themselves in the acceptance of this practice is putting themselves in violation of the laws they were elected to uphold.

The aforementioned people (former commissioners of the OWLP) are the only duly elected representatives of the people and were elected in conformity to Bylaw 557 and, to this date, were never legally replaced. The referendum of the people dictated this position and the amended

Electricity Act only directly applied to utilities that were, at the time, under the control of a municipal council. Other forms of the legislation could be, otherwise, satisfied by the duly elected people with council's required assistance.

The alleged transfer to city council happened with the 2000 council choosing, on their own, to take over the transfer process alleging to the Ontario Energy Board that they had the right to do so and return the management and control of the utility back to council. Why the council of the day made this choice is unknown to us. It may be that they did not understand the ramifications of Bylaw 557 that took control away from council and placed it into the hands of the electorate by voting in four commissioners, separate from council, to manage the utility in the peoples' best interest. They may not have been aware that the only way of reversing a decision made by way of referendum or plebiscite is to have another referendum. **This was never done.**

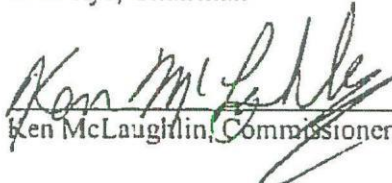
The former elected commission, with now full knowledge of the transfer process that took place 15 years ago, are unanimous that we have a fiduciary obligation to the people to advise them of what we believe was an illegal decision made by council that robbed them of the fair and equitable management control of their utility by a separately elected body that operated in arm's length of council. By one sweep of the pen the true shareholders that was clearly decided by way of referendum were the people of Orillia. But this right was taken away so as to have the council, as shown as it's only shareholder. The City of Orillia, with this action, were in direct contravention of the referendum resulting in Bylaw 557.

Out of consideration to the members of council and with the goal of being as accurate as possible as proven by the past bylaws, minutes, motions and background information that the city has in its possession, we respectfully ask that you read the attached document that will be published as to provide key information to the people of Orillia. You may also want staff to confirm that council had the legal right to change Bylaw 557 without having a second referendum asking for control to be transferred back to the city. We have a written legal opinion that states the city DID NOT have the legal right to do so and, if necessary, if council continues to proceed with the sale of the distribution arm, we will have no recourse other than to allow the courts make the determination as to the legality of the city's right to override the referendum of the people.

Respectfully submitted,

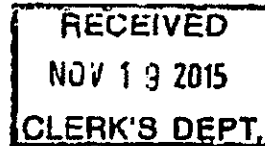

Gord Rye, Chairman


Frank Kehoe, Commissioner


Ken McLaughlin, Commissioner


Dan Valley, Commissioner

Attachment:
Disclosure document (9 pages)



Disclosure Document

Orillia electric customers have been cheated for the past 15 years

Chapter 1

O.W.L.P. now changed to Orillia Power Corporation

Orillia electrical customers up until 2000 enjoyed among the lowest hydro rates in the province but things were about to change. New legislation was introduced that changed the business model, the Electricity Act was amended and the Ontario Energy Board Act planned a bigger controlling role.

The Commissions across the province were now required to be changed to Corporations operating under the Provincial Business Corporation Act.

In the late 1990's key senior city staff, with the Mayor and the Council of the day, had an inside track on how the legislation could be manipulated so as to give the Council, not the elected commission, the lead role in the transfer process. The City and Council recognized that if the elected commission could give financial dividends to its customers then possibly the legislation could be secretly maneuvered in such a way so as to set up corporations to show that Council was the sole shareholder and not the people who were the true owners. In doing so they could redirect the dividends for their own pet municipal projects. This would be a second form of taxation that the people of Orillia would not be aware of.

Chapter 2:

The Financial State of the Orillia Water, Light, and Power Commission (OWLP)

The elected commission, not being trained in the law and told by a senior staff member of the Ontario Energy Board as well as the Mayor truly believed that the legislation over-ruled all conflicting Municipal and Provincial legislation and that the Commission were powerless to fight it. Six months prior to any transfer the OWLP had in cash and receivables over 7 million dollars. We believe it was 7.2 million dollars so the elected commission members voted to again grant a dividend of 1 million dollars, not to exceed one million, fifty thousand dollars, to now appear as a credit on the customers' next electricity bill. The dividend amount was always based on the customers' electrical consumption so it varied with each customer. When the commission vote was taken the appointed member of Council, who was sitting in for the Mayor, voted against it. The other commission members, however, carried the vote yet found it strange that a Council member did not support it.

The Council or senior city staff with an inside track, with internal help, cancelled this dividend even though it was done by the legal commission while they were empowered to do so.

Changing a commission (utility) to three different corporations was done in using a somewhat secretive process. The Commissioners fully expected that at least two or more experienced Commissioners, who possessed vast knowledge and experience of the plans in place and the previous negotiation with the outside involved parties for additional generation and with the goal of making the utility self-sufficient in electrical energy by 2005 it would remain working with this new corporation. This never happened and the elected members of the commission said goodbye to the employees and left with somewhat dismay and reluctance. Their 40+ years of dedicated municipal experience did not appear to rate recognition from the City Council nor were we given a letter or a hand-shake or appropriate notice, of any kind, that we had been replaced.

We, as the elected Commission were misinformed, lied to and set aside from any change in status brought about by the amendment of the Electricity Act. The Commission members were asked to step aside as the new legislation, we were told, over-rode all Municipal and Provincial legislation and shifted the process from the Commission to the Council allowing them the ability to form new Corporations that in the future would ensure future dividends would be taken away from its customers and now paid to Council. The transition would now follow a process totally controlled by the Mayor and City Council.

We, the elected representatives of the utility, have never, up to this date, ever signed off or created a transfer document or bill of sale, or been officially or even unofficially notified that our election as Commissioners has been terminated. We were elected to serve the Municipal owners of this utility not the Council. We have no intention now of negating this role as we feel we have a fiduciary obligation to try to correct the wrong that was done to our electrical customers and their Municipal ownership that the elected Commission held in trust. To do what is right – to force the council to abide by the People's Referendum that legally required all control of the utility removed from council control we need the help of the Citizens in an effort to try to correct the aforementioned Provincial misdemeanors.

The elected Commission, on the word of a senior energy board official, were told, incorrectly, that we no longer had status and we, as the elected Commission, were not given a letter or resolution stating that we were now replaced, nor given any recognition for our years of dedicated municipal service. This service amounted to keeping the utility as a model utility, with well-trained dedicated staff, free of debt and at the same time, having electrical rates the second lowest in the province, which included preferred block customers of Hydro One. The objective of the Commission was to bring on additional generation so as to be totally self-sufficient in electrical generation by the year 2005.

The clock has now advanced fourteen plus years to 2014 when a former commission member was given a somewhat secret document called the "Recommendation on the Future of Orillia's Hydro Utility by the Bill 35 Transition Committee".

This secret document contained, what one commission member called, absolute treason and a direct betrayal of all of Orillia's electricity customers. The Council did not recognize the people's ownership nor the effect it would have on its' customers. The full transition document, that no commissioner had ever seen in its completion, went before council at its meeting 2000-87 April 17, 2000 where council gave their approval. This motion was buried among other by-laws and went overlooked by the press or members of the public present. This Council adoption happened six months in advance of any conversion from a democratic process to a secretive conversion stacked in favour of shifting electrical funds to now be re-directed to Council.

No elected member of the Commission was ever aware of this misrepresentation to the electorate until fourteen plus years later. It was believed, up until this point, that the transfer was made in legal conformant to both the Municipal and Provincial legislation. So one member of the former commission started to research the internal related bylaws, rate increases to the customers, and Orillia Power Corporation's reports to council that now shifted the alleged corporate ownership from the people to city council that allegedly now owned all of the shares. Hence, council could carry on, what commission members, called a charade.

Chapter 3:

The Process to Rob the Electrical Customers of Their Dividends

The first order of Council business was to implement a maximum return on dividends on the back of electrical consumers in order that Council could gain greater revenue. The Council would now implement a fifteen per cent raise in Orillia's electrical rates which they did.

Chapter 4:

Now Comes the Move by Council to Create Debt Where There was None

As previously mentioned the OWLP had seven plus million dollars with absolutely no debt but nevertheless Council now required the new corporation to issue two promissory notes to the City as follows:

- Orillia Power Distribution Corporation would now owe the City nine million seven hundred and sixty-two thousand dollars (\$9,762,000.00). This debt is at an interest rate of 7.5% per annum to December 31, 2005 and after that at a fluctuating rate based on a fixed formula of 2% above the Royal Bank lending rate.
- Orillia Power Generation Corporation now shows a debt to the City of five million, thirty-four thousand dollars (\$5,034,000.00). This debt is at an interest rate of 7.5% per

annum to December 31, 2005 and after that at a fluctuating rate based on a fixed formula of 2% above the Royal Bank lending rate.

- **The debt now owing to Orillia Council is nine million, seven hundred and sixty-two thousand dollars plus five million and thirty-four thousand dollars for a total of \$14,796,000.00.**

This borrowing rate comes close to two times the normal borrowing rate of the City but the model we would expect is stick it to the people (customers) the Council have other uses for the money.

Chapter 5:

More Loan Sharking

The new corporations are now required to pay **only** the interest alone with nothing going against the principal until December 31, 2030. Could anyone imagine paying a mortgage for thirty years and at the end of the thirty-year period you would still owe the same amount as when you started or in this case fourteen million, seven hundred and ninety-six dollars (**\$14,796,000.00**).

The Council now requires their sole appointed Board of Directors to carry out the Council requirements so as to ensure ever increasing dividends flow freely back to the Council as well as the Corporations always continuing to operate in the Council's best interest, not the customers. The Council passes another by-law 2001-48 and appoints five directors to the board that will, we expect, will tow the line for Council and run the resemblance of the now partially demised utility.

For the distribution arm the Council institutes in the amended Bylaw #2000-144, revised October 16th, 2000 under financial policies that the distribution arm will establish policies to maximize the return to the shareholder (the Council) to the extent permitted by the Ontario Energy Board over a transition period of three to five years. For the generation arm the shareholder (Council) expects that the Corporation through its Board of Directors will establish policies to move to a profit maximization approach over a transition period of three to five years.

The directors shall be elected (and appointed) for a term of three years on a rotational basis except for the initial five directors who shall be elected as follows:

- One for a one-year term
- Two for a two-year term
- Three for a three-year term

We would expect since there has been minor charges in the appointed directors over the last 15 years that this could be best referred to as the Electricity Club. The remuneration for the board

members is now close to ten times that of the former elected commission who had dedicated loyalty to the people (customers) and who would never be party to the now organized destruction of Orillia's greatest asset.

We see in the bylaw (2000-144) what we assume that too much information on the operation of the newly formed Corporations may be harmful to the peoples' health so the bylaw to prevent this happening now includes a requirement that the people (the true owners) be kept in the dark.

Chapter 6:

Confidentiality (included in the bylaw)

The shareholders and the directors and officers of the Corporation and the subsidiaries (each a receiving party) will ensure that no confidential information of the shareholders or the corporation or subsidiaries is discussed or otherwise made available to any person, except to the extent that:

- a. Disclosure to a receiving party's employees or agents if necessary for the performance of any receiving party's duties and obligations under this or any other shareholders' declaration.
- b. Disclosure is required in the course of judicial proceedings or pursuant to law
- c. The confidential information becomes part of the public domain (other than through unauthorized disclosure by the receiving party)

So by bylaw, it is apparent that the appointed Board of Directors are, at every opportunity, required to apply for increases in the electricity rates to its customers so as to generate, in part, more and more cash to be given to Council in the form of dividends. The Directors, in 2014, applied to the Ontario Energy Board for an adjustment of the rates which was approved on March 19th, 2015 by the Ontario Energy Board.

Chapter 7:

Dividends

The former OWLP Commission after they were free of debt and in times of good generation years shared their good fortune with the true owners, the people of Orillia (customers) and mailed them a dividend cheque or gave them a credit on their next hydro bill.

As freedom of information legislation does not exist in the new corporations and there is no absolutely no co-operation on the part of Orillia Power Corporation to give this information we the former commissions have to depend on city by-laws, council resolutions, and city minutes as well as the annual shareholder meeting of Orillia Power Corporation for the information herewith.

We can, however, take the last figures that is by no means the complete figure, from the last agenda of the Orillia Power Corporation presentation to City Council on April 13, 2015. As part of the presentation of Orillia Power Corporation they show that Orillia Council, over the fifteen-year period 2000 to 2015, received (37.1 million dollars) together with the city's share to the hospital and university for an additional amount of \$4.325 million for a total of \$41.425 million dollars. The report shows that there are 13,400 Orillia customers so let's do the math on the assumption that each person's electrical bill is exactly the same. We of course know that this is not the case as some will be higher and some lower. So \$41.425 million divided by 13,400 customers is equal to \$3,091.42 per customer but this is for fifteen years so we divide \$3,091.42 by 15 and we arrive at \$206.09 per customer per year. Customers are no longer getting a dividend cheque, but it is being taken by the city as a hidden form of additional taxation.

It is evident to all customers, the true owners (the people) could not fathom that their Council could implement a process to gain revenue on the backs of consumers without their knowledge so as to direct part of their monthly electricity bill. If consumers want to cry they should look at their electricity bill and see that you have also paid GST on the amount extracted from you, the consumer, for council purposes.

In the Council Special Budget Committee meeting on October 28, 2015, Schedule "B" from the Chief Administrator Office are showing that Orillia Power Corporation interest to reserve of \$924,760.00 for the year 2015 then \$721,000.00 for the years 2015 through 2029. In the same report they are showing the dividends from Orillia Power Corporation as \$1,100,000.00 for the years 2015 to 2018, then increasing to \$1,500,000.00 for 2019 to 2029. On a separate line they are showing an increase to Orillia Power Corporation dividend (expansion) which starts in 2020 as \$1,709,000.00 through 2029. We have no idea of what or where this expansion figure is coming from and we hope with favour that this does not relate in any way to Mayor Clarke's article relating to negotiations with Hydro One on any disastrous sale of the distribution arm of the utility.

Chapter 8:

The Ownership of the Utility

The ownership of the utility belongs to the people of Orillia, not the Council and it requires that their elected representatives not Council's appointed people to act as their agent in trust for the people. To make any change in this process requires City Council to go back to the people in an amended referendum to make changes or attempt to dissolve the people's Bylaw 557 that they are legally bound to uphold.

In 1911, when there was an uproar from both industry leaders and the people regarding the complete mismanagement of their electrical asset and the depletion of all it's contingency

monies and lack of appropriate maintenance which lead to a great number of outages. Key industrialists (including J.B. Tudhope, Eratus Long, Benjamin Johnston, Harold Hale (Packet and Times), and Mayor William Sword Frost (father of Provincial Premier Leslie Frost)) and supporters of the electrical utility ran for and were elected to the 1912 Town Council with their platform being to remove the utility from the control and mismanagement of Council. This Council then composed a Special bylaw that would be put to a vote of the people as a binding referendum that could only be changed or amended in the same manner as instituted, that is with another supporting vote of the people. This plebiscite or binding referendum (Bylaw 557) remained in place for 87 years under the name OWLP until the Council or staff said that this old bylaw should now be ignored and that Council could now regain control without involving a vote by the people.

On January 7, 1913 the above vote was certified and the referendum passed to create a separate elected commission (corporation), free of Council to administer and run both the generation and distribution in trust for the people. This was endorsed by 65.8% of all the electors and became people's by-law 557 forming the Orillia Water Light and Power Commission that could not be changed nor amended by any future council without the approval by the people through another referendum voted on and approved by the people. The Council on two occasions attempted to sell the utility to H.E.P.C. but were forced to call a second referendum in which they lost by a large majority.

Chapter 9:

Town of Orillia Act 1915

The legislature of the Province of Ontario passed the Town of Orillia Act and section 11(1) of the Act merely confirms the aforementioned.

"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 BYLAW APPOINTING SUCH COMMISSION REMAINS IN FORCE, 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."

The Province, within the amendments, did not have the intent within its legislation to create laws to override the people's ownership or dictate the process that would change the separation so as to give Council control over the legal referendum of the people.

Back in 2000 the Council had a legal obligation to abide by Bylaw 557 to support the transfer process to the true elected members of the utility, and conform to the Town of Orillia Act so as to assist the elected commission in the transfer and not thwart the process. The Orillia Water Light and Power Commission was a municipal corporation and under Section 142 of the Electricity Act, permitted other Municipal Corporations to make the transfer. Council had a role in the transfer process however, they did not have the right to name themselves the only shareholder. It was a simple process to change the name Orillia Water, Light and Power Commission to Orillia Power Corporation. **The elected commission members are adamant that until Bylaw 557 is appropriately repealed by a vote of the people (referendum) that the transfer, in our personal opinion, is not legal - particularly as it applies to council being the only shareholder of the respected corporations.**

Chapter 10:

Orillia Statistics 2012

- **Orillia's population is 30,586 (2011 Census)**
- **One third of Orillia's population, unfortunately, exists at or below the poverty line.**
- **40% of the population is on fixed income and unable to absorb increases related to their cost of living.**
- **The growth rate in Orillia, when you remove the students who live temporarily in our city during their 8-month school year and whose principal residence is elsewhere, is stagnate or, now negative falling from 0.5% in 2011 Census to now minus figures. The national growth rate is 5.9%.**
- **Orillia's median age is 49.2 years where the provincial median is 40.4 years.**

Chapter 11:

Sale of the Distribution Arm

Any sale of any portion of the former OWLP (Orillia Power or Orillia Distribution) would have a catastrophic negative effect on the peoples' utility and should never be considered - at any price.

All electrical customers and citizens of Orillia have an obligation to make their position known. To do nothing should not be an option. We should not allow the sale of our electrical asset to Hydro One or any other bidder and we should ask Council to have an open discussion and people's referendum on this issue.

Call your Ward Council representatives to ask them why they are in negotiations with the mismanaged Hydro One and if they are selling a portion of our profitable public utility just to pay for a recreation centre we cannot afford.

Mayor Steve Clarke: mayor@orillia.ca, (705) 325-2447

Councilor Ted Emond: ted@tedemond.com, (705) 826-2347

Councilor Sarah Valiquette-Thompson: votevaliquette@gmail.com, (705) 826-2351

Councilor Rob Klootra: cameronhouse@rogers.com, (705) 826-2350

Councilor Ralph Cipolla: cipolla@encode.com, (705) 826-2466

Councilor Mason Ainsworth: mason4orillia@gmail.com, (705) 826-2328

Councilor Jeff Clark: jn10clark@gmail.com, (705) 826-2343

Councilor Pat Hehn: pmhchn5@gmail.com, (705) 826-3497

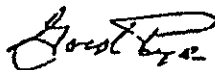
Councilor Tim Lauer: tlauer@sympatico.ca, (705) 325-5812

DO NOT LET YOUR COUNCIL GAMBLE BY SELLING A PORTION OF ORILLIA'S GREATEST ASSET TO HYDRO ONE AS ALL FUTURE CONTROL WILL THEN BE LOST. OUR RATES WILL CONTINUE IN AN UPWARDS SPIRAL AND OUR REVENUE STREAM WILL BE GONE FOREVER.

The content of this document, to the best of our knowledge, is correct. We, as both lifelong citizens of Orillia and as the only elected trustees of the public ownership of the utility, clearly are of the opinion that the electrical consumers (the People) are the only true owners of the utility and are deserving of the facts contained herein. This informational (paid by the former O.W.L.P. Commission members) should be part of the public domain and we strongly feel that a Freedom of Information process must be made available to all of its customers.

The Packet (Sunmedia) are released from any adverse liability related to the publication of this material.

Respectfully submitted, under the signature of your elected commission,


Gord Pye


Frank Kehoe


Ken McLaughlin


Dan Valley

EB-2016-0276
Hydro One Inc. Orillia Power Distribution Corporation
Hydro One Networks Inc. Application for approval to purchase Orillia Power
Distribution Corporation

Response of Orillia Water Light and Power Commission to the Submission of
Mark Rodger on Behalf of the City of Orillia, Dated December 22, 2016

Overview

Mr. Rodger's submission fails to address the fundamental issue of whether the the OLWPC, established by referendum, can be dissolved without a referendum thus denying the citizens of the City of Orillia of a fundamental democratic right. His submission addresses the bylaw transferring assets from the City of Orillia to a corporation established under the Business Corporations Act. However, it fails to address in any way whether the City has properly dissolved the OLWPC and validly obtained the assets to transfer. There may be a valid transfer bylaw but in the absence of a proper dissolution of the OWLPC and the City's legal and equitable ownership of the assets held by the Commission the transfer bylaw does not transfer the assets as they were not transferred to the City.

The Electricity Act Provisions

It is correct that the sections referred to by Mr. Rodgers in the Electricity Act validate a transfer bylaw made under the Act from the City to a Corporation established under the Business Corporation Act. However, they do not in any way address the manner in which the City receives the assets it is transferring. It the essence of the position of the OLWPC that it is bylaw 2000-146 which it is invalid with the result that no assets are transferred to the City. This does not challenge the validity of the bylaw transferring assets from the City to the corporation established under the Electricity Act as there are no assets to be transferred.

There are no provisions in the Electricity Act prohibiting an existing commission from continuing to operate. Section 143 prohibits the establishment of a new commission and the authorization of an existing commission to supply electricity. Section 144 prohibits a municipality itself from supplying electricity but neither section specifically prohibits an existing incorporated commission such as the OLWPC from continuing to do so.

Section 145 applies to transfer bylaws which, as stated above Bylaw 200-146 is not, and therefore, is not relevant.

Section 156 is also not relevant as it is not OWLPC's position that the transfer bylaw is in breach of any act, regulation or, bylaw.

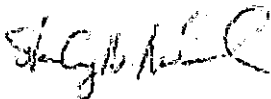
Section 158 does not enable a municipality to validate an illegal bylaw by making reference to it in a transfer bylaw. In any event it is not the transfer bylaw which is invalid. It is only ineffective as the City owns no assets to transfer.

EB-2016-0276
Hydro One Inc. Orillia Power Distribution Corporation
Hydro One Networks Inc. Application for approval to purchase Orillia Power
Distribution Corporation

Purpose of Electricity Act

It is the purpose of the Electricity Act to facilitate the privatization of the provision of electricity. In doing so it addresses the transfer of assets owned by a municipality to a corporation established under the Business Corporations Act. Its purpose is not to interfere with or abolish the democratic rights of the citizens of a municipality in doing so. To interpret the Act in the manner suggested by Mr. Rodger would be to vastly expand its provisions of the Act well beyond the expressed language of the Act and its purpose. In interpreting the authority of a municipality under the Act the Board should look to carefully protect the traditional democratic rights of the citizens of Orillia.

All of which is respectfully submitted,



Stanley M. Makuch

December 27, 2016