

# THE CORPORATION OF THE TOWN OF PELHAM

## BY-LAW NO. 2211 (2000)

To approve the incorporation of a corporation and subsidiaries under the *Business Corporations Act (Ontario)* pursuant to section 142 of the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* as well as an agreement of the shareholders of the foregoing parent company

WHEREAS pursuant to section 142 of the *Electricity Act, 1998*, the Council (the "Council") of The Corporation of the Town of Pelham (the "Town") may cause a corporation to be incorporated under the *Business Corporations Act (Ontario)* (the "OBCA") for the purpose of generating, transmitting, distributing or retailing electricity;

AND WHEREAS the Town transmits, distributes and retails electricity through The Pelham Hydro Electric Commission (the "Commission");

AND WHEREAS the Town also provides services such as street lighting, the renting of hot water heaters and the renting of sentinel lights (herein collectively referred to as the "Competitive Services");

AND WHEREAS pursuant to subsection 142(3) of the *Electricity Act, 1998*, two or more Municipal corporations may incorporate a Corporation for the purpose of carrying on of the business of generating, transmitting, distributing or retailing electricity;

AND WHEREAS Section 71 of the *Ontario Energy Board Act, 1998* provides that a corporation incorporated under Section 142 of the *Electricity Act, 1998* which acts as a transmission or distribution company shall not, except through an affiliate or affiliates, carry on any business other than transmitting or distributing electricity;

AND WHEREAS the Town, together with the Councils of the Corporation of the Town of Lincoln and the Corporation of the Township of West Lincoln (collectively the "Other Municipalities"), authorized the Amalgamation of the Hydro Electric Commissions of Lincoln, Pelham and West Lincoln, pursuant to Resolutions passed by the Town and the Other Municipalities in June 2000;

AND WHEREAS the Town is authorizing the incorporation of a corporation (the "Corporation") and subsidiary companies (the "Subsidiaries") (collectively the "Corporation and its Subsidiaries") to be incorporated under the OBCA pursuant to Section 142(1) of the *Electricity Act, 1998* and sections 71 and 73 of the *Ontario Energy Board Act, 1998* for the purpose of generating, transmitting, distributing or retailing electricity;

AND WHEREAS the Town and the Other Municipalities have agreed to enter into a Shareholders' Agreement (the "Shareholders Agreement") to provide for the conduct of certain affairs of the Corporation and its Subsidiaries, to provide for certain restrictions on the transfer and ownership of shares in the capital of the Corporation and to govern the mutual rights and obligations of the Town and the Other Municipalities with respect to the Corporation and its Subsidiaries and each other;

NOW THEREFORE the Council of the Corporation of the Town of Pelham hereby enacts as follows:

### **1. Incorporation of the Corporation and its Subsidiaries.**

- 1.1 The incorporation of the Corporation and its Subsidiaries is hereby authorized and approved, for the purposes of and pursuant to section 142(1) of the *Electricity Act, 1998* and sections 71 and 73 of the *Ontario Energy Board Act, 1998*, to occur on November 1, 2000, or such other date to be determined by the Mayor and the Mayors of the Other Municipalities. The incorporation of additional Subsidiaries as may be deemed necessary by the board of directors of the Corporation from time to time is also hereby authorized. The registered office of the Corporation and its Subsidiaries shall be the head office of the Lincoln Hydro Electric Commission, until otherwise determined by the Town and the Other Municipalities pursuant to the OBCA and the Shareholders' agreement.

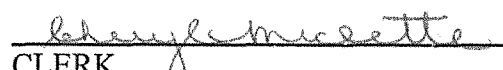
- 1.2 The persons listed in the Articles of Incorporation of the Corporation and its Subsidiaries as the first directors of the Corporation and its Subsidiaries are hereby authorized for and on behalf of the Town to execute and file, pursuant to the OBCA, all Articles of Incorporation (in substantially the form attached hereto as Schedule "A"), notices, articles of amendment, consents and other instruments as may be necessary to affect the incorporation of the Corporation and its Subsidiaries authorized pursuant to this by-law.
- 1.3 Any common shares or other securities issued by the Corporation or such other companies incorporated pursuant to this By-law shall be issued upon such incorporation, directly or indirectly, in the name of the Town
2. **Shareholders' Agreement.**
- 2.1 The Shareholders' Agreement among the Town, the Other Municipalities, the Corporation and its Subsidiaries, in substantially the form attached hereto as Schedule "B", forming part of this by law, is hereby authorized and approved.
- 2.2 The Mayor and the Clerk are hereby authorized and directed, for and on behalf of the Town to execute and deliver the Shareholders' Agreement and the applicable Organizational Documents (the "Organizational Documents") of the Corporation and its Subsidiaries, with such alterations, additions and amendments thereto as they may approve, the execution of the Shareholders' Agreement and the Organizational Documents by such individuals being conclusive evidence of such approval, and to do all such acts and things and to execute and deliver all such other documents, instruments and writings as may be necessary or desirable to give effect to the provisions of this by-law, the Shareholders' Agreement, the Articles of Incorporation of the Corporation and its Subsidiaries and the Organizational Documents.
3. **Transfer By-Law.**
- 3.1 The transfer of the assets, liabilities and employees of the Commission to the Corporation and its Subsidiaries shall be authorized by Council pursuant to a transfer by law in accordance with the *Electricity Act, 1998* to be submitted to Council for its consideration and enacted prior to November 1st, 2000 or such other date to be determined Council.

For the purposes of this By-law, "Subsidiary" means an affiliated body corporate and any one body corporate shall be deemed to be an affiliate with another body corporate if, but only if, one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person.

READ A FIRST TIME THE 2<sup>ND</sup>. DAY OF OCTOBER, 2000.

READ A SECOND AND THIRD TIME AND PASSED THE 2<sup>ND</sup>. DAY OF OCTOBER, 2000.

  
MAYOR

  
CLERK