

CORPORATION OF THE TOWN OF PELHAM

BYLAW NUMBER #2212 (2000)

Being a by-law to transfer the employees, assets, liabilities, rights and obligations of the Pelham HydroElectric Commission and of The Corporation of the Town of Pelham in respect of the transmission, distribution and retailing of electricity to a corporation and its subsidiary corporations to be incorporated under the Business Corporations Act (Ontario) pursuant to Section 142 of the Electricity Act, 1998 (Ontario).

RECITALS:

WHEREAS pursuant to Subsection 145(1) of the *Electricity Act, 1998*, the Council may make Bylaws transferring employees, assets, liabilities, rights and obligations of The Corporation of the Town of Pelham ("Town") or of a commission or other body through which the Town transmits, distributes or retails electricity, to a corporation incorporated under the *Business Corporations Act (Ontario)* (the "OBCA") pursuant to Section 142 of the *Electricity Act, 1998*;

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

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

AND WHEREAS the Town, together with The Corporation of the Town of Lincoln and The Corporation of the Township of West Lincoln (the "Municipalities"), have agreed to the amalgamation of the Hydro Electric Commissions of Lincoln, Pelham and West Lincoln;

AND WHEREAS the Council and each Municipality has authorized the incorporation of a corporation ("Peninsula West Power Inc" or the "Corporation") and subsidiary companies ("Peninsula West Utilities Limited and "Peninsula West Services Ltd." or the "Subsidiaries") (collectively the "Corporation and its Subsidiaries"), to be incorporated under the OBCA pursuant to Subsection 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 other business activities permitted by the *Ontario Energy Board Act, 1998*;

AND WHEREAS pursuant to Subsection 145(1) of the *Electricity Act, 1998* (Ontario), the Council deems it appropriate to transfer the employees, assets, liabilities, rights and obligations of the Commission and/or the Town to the Corporations on and subject to the terms and conditions set forth herein;

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

ARTICLE I INTERPRETATION

1.01 Definitions. Whenever used in this Bylaw, unless the context otherwise requires, the capitalized words and terms set out in Schedule "A" hereto have the respective meanings ascribed to them in Schedule "A".

1.02 Extended Meanings. In this Bylaw, words importing the singular number only indicate the plural and vice versa and words importing gender shall include all genders.

1.03 Binding Effect. As provided in Section 145 of the *Electricity Act*, this Bylaw is binding on the Town, the Commission, the Corporation and its Subsidiaries and all other Persons, despite any general or special act or any rule of law, including any act or rule of law which requires notice or registration of transfers and does not require the consent of the Town, the Commission, the Corporations and its Subsidiaries, or any other Person. Section 161 of the *Electricity Act* provides that Part XI of the *Electricity Act*, which includes Section 145, applies despite the *Public Utilities Act (Ontario)* and despite any other general or special act. The Corporations may register such documents, instruments and agreements, including, without limitation, certified copies of this Bylaw, as may be necessary or desirable in order to evidence or confirm such transfers.

1.04 Successors and Assigns. This Bylaw shall enure to the benefit of all shall be binding on and enforceable by the Town, the Commission, the Corporations and its Subsidiaries and their respective successors and assigns.

1.05 Applicable Law. This Bylaw and all documents, instruments, agreements and transfers contemplated hereby shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.06 Severability. If any section of this Bylaw or part thereof is invalid or *ultra vires* the Town, such section or part shall not affect the remaining sections or parts of this Bylaw.

1.07 Schedules. The following Schedules attached to this Bylaw are an integral part of this Bylaw to the same extent as if they had been set forth herein:

Schedule "A"	Definitions
Schedule "B I"	Distribution Employees
Schedule "B2"	Competitive Employees
Schedule "B3"	Holding Company Employees
Schedule "C"	Distribution Assets
Schedule "D"	Distribution Liabilities
Schedule "E"	Excluded Assets
Schedule "F"	Excluded Liabilities
Schedule "G"	Holding Company Assets
Schedule "H"	Competitive Assets
Schedule "I"	Holding Company Liabilities
Schedule "J"	Competitive Liabilities

ARTICLE II TRANSFERS

2.01 Transfer of All Assets and Assumed Liabilities. As of the Effective Date, the Town hereby sells, assigns and transfers all the assets, liabilities, rights and obligations of the Commission and of the Town relating to the generation, distribution, transmission and retailing of electricity to the Corporations in accordance with this Bylaw.

2.02 Transfer of Distribution Assets and Distribution Liabilities. As of the Effective Date, all of the Distribution Assets and Distribution Liabilities are hereby transferred to and assumed by Peninsula West Utilities Limited.

2.03 Transfer of Competitive Assets and Competitive Liabilities. As of the Effective Date, all of the Competitive Assets and Competitive Liabilities are hereby transferred to and assumed by Peninsula West Services Ltd.

2.04 Transfer of Holding Company Assets and Holding Company Liabilities. As of the Effective Date, all of the Holding Company Assets and the Holding Company Liabilities are hereby transferred to and assumed by Peninsula West Power Inc.

2.05 Transfer of Employees, Employee Agreements and Employee Plans.

On the Effective Date:

- (1) the Employees listed in Schedule "B1" are transferred to Peninsula West Utilities Limited (the "Distribution Employees"). Peninsula West Utilities Limited shall elect to participate in OMERS in respect of the Employees listed in Schedule "B1" and shall perform and assume all of the obligations and duties of an associated employer under the OMERS Act with respect to the Employees listed in Schedule "B-1";
- (2) the Employees listed in Schedule "B2" are transferred to Peninsula West Services Ltd. (the "Competitive Employees"). Peninsula West Services Ltd. shall elect to participate in OMERS in respect of the Employees listed in Schedule "B 2" and shall perform and assume all of the obligations and duties of an associated employer under the OMERS Act with respect to the Employees listed in Schedule "B-2";

- (3) the Employees listed in Schedule "B3" are transferred to Peninsula West Power Inc. (the "Holding Company Employees"); Peninsula West Power Inc. shall elect to participate in OMERS in respect of the Employees listed in Schedule "B-3" and shall perform and assume all of the obligations and duties of an associated employer under the OMERS Act with respect to the Employees listed in Schedule "B-3";
- (4) the Employee Plans (other than pension plans), Employee Agreements and Assumed Liabilities related to a particular Employee shall be transferred to and assumed by the Corporations respectively and in accordance with the transfer of Employees pursuant to Subsections 2.05(1), (2) and (3).

2.06 Effective Time of Transfer. The transfer of the Assets and Assumed Liabilities pursuant to this Bylaw shall be deemed to take effect as of the opening of business on the Effective Date, notwithstanding the date of receipt of any approvals referred to in Section 4.01, the actual date of the issuance of any consideration therefor or the date of enactment of this Bylaw.

2.07 Excluded Assets and Excluded Liabilities. The transfer of the Assets and the Assumed Liabilities pursuant to this Bylaw shall not include the Excluded Assets and Excluded Liabilities, which shall remain the assets and liabilities of the Town, which shall be solely responsible for the discharge of any such liabilities.

2.08 Reserves. The reserve funds, if any, held by the Commission, which are transferred to Peninsula West Utilities Limited, shall be used only to pay for capital costs in respect of electrical power services for which such reserve funds were collected.

2.09 NonAssignable Assets. Notwithstanding any other provision hereof, if, notwithstanding subsections 145(3) and (5) of the Electricity Act, any of the Assets shall not be assignable, or shall only be assignable with the consent or approval of any other third party, the Town and/or the Commission shall:

- (1) use all reasonable efforts in cooperation with but at the cost of the Transferee to secure the consent required in connection with the assignment thereof; and
- (2) pending the effective transfer thereof, hold all rights or entitlements that the Town or Commission has hereto, in trust, for the exclusive benefit of the Transferee, provided that the Transferee shall pay, perform and discharge all obligations arising or accruing with respect thereto during such period and shall indemnify the Town and the Commission for such obligations.

In the event that a transfer of certain Assets cannot be effected within one (1) year of the Effective Date, the amount payable for the Assets shall be adjusted accordingly.

2.10 Transfer and Delivery of Assets. Each of the Town and the Commission shall execute and deliver to the Corporations, as applicable, in a form suitable for registration, recording and filing with such public authorities as may be reasonably required, all such bills of sale, assignments, instruments of transfer, assurances, consents and other documents as shall be necessary to effectively record the transfer to the Corporations, as applicable, of all the Town's and the Commission's right, title and interest in, to and under, or in respect of, the Assets and the Assumed Liabilities.

2.11 Employees. As and from the Effective Date, the applicable Corporation set out in Section 2.05 shall employ, in accordance with Sections 145 and 147 of the Electricity Act, the Employees on terms and conditions which are substantially the same as those upon which such Employees are employed by the Commission immediately prior to the Effective Date, and without limiting the generality of the foregoing, shall be bound by, assume, pay, satisfy, discharge, observe, perform and fulfill all of the Commission's obligations under the Employee Agreements and Employee Plans transferred to each Corporation as provided by Section 2.05 in the place and stead of the Commission to the same extent and with the same effect as if it were an original party thereto. The Employees transferred in accordance with Section 2.05 shall cease to be employees of the Commission from and including the Effective Date and shall thereupon be employees of one of the Corporations as set out in Section 2.05.

2.12 Subsequent Transfers. Any of the Assets, Employees and Assumed Liabilities transferred under this Bylaw may, from time to time, subsequent to the Effective Date, be transferred to the Corporation or any Subsidiary, as may be permitted by the Electricity Act, at such time, on such terms and for such consideration as the directors of the transferring corporation may determine, and any such subsequent transfer shall be made pursuant to the authority granted by this By law and shall take effect in the sequence and at such times as so determined by the directors of the transferring corporation.

2.13 Costs. All costs and expenses incurred or to be incurred by the Town or by the Commission and not already paid and all taxes incurred or payable in connection with the transfer of the Assets shall be borne by one or more of the Corporations which shall reimburse the Town and Commission on demand for any such costs, expenses or taxes.

ARTICLE III PURCHASE PRICE

3.01 Purchase Price. The Purchase Price payable by the Corporations for the Assets shall be the fair market value of the Assets. The fair market value of the Assets shall be deemed to be the book value of the Assets as of the Effective Date. The fair market value will be determined as follows:

- (a) It is the intention of the Municipalities that the Assets shall be transferred at their fair market value as at the Effective Date and the Purchase Price may be adjusted as a result of any audit or valuation conducted with respect to the Assets as at the Effective Date.
- (b) The adjustments to the Purchase Price contemplated by this Article 3 may be effected as determined by the Secretary-Treasurer of Peninsula West Power Inc. based on an audit or valuation by KPMG and as approved by the Board of Directors of Peninsula West Power Inc. For greater certainty, all necessary adjustments to the Purchase Price shall have the same effect as if they were made on the Effective Date.

3.02 Satisfaction and Allocation of Purchase Price. The purchase price for the transferred assets shall be satisfied as follows:

- (a) Distribution Assets and Distribution Liabilities - The purchase price for the Distribution Assets shall be satisfied by:
 - (i) the assumption by Peninsula West Utilities Limited of the Distribution Liabilities; and
 - (ii) as to the balance of the purchase price for the Distribution Assets (the "Distribution Equity Price"), by the allotment and issuance by Peninsula West Utilities Limited to the Town of fully paid and nonassessable common shares, which amount shall be added to the stated capital account for such class of shares.
- (b) Competitive Assets and Competitive Liabilities - The purchase price for the Competitive Assets shall be satisfied by:
 - (i) the assumption by Peninsula West Services Ltd. of the Competitive Liabilities; and
 - (ii) as to the balance of the purchase price for the Competitive Assets (the "Competitive Equity Price"), by the allotment and issuance by Peninsula West Services Ltd. to the Town of fully paid and nonassessable common shares, which amount shall be added to the stated capital account for such class of shares.
- (c) Holding Company Assets and Holding Company Liabilities - The purchase price for the Holding Company Assets shall be satisfied by:
 - (i) the assumption by Peninsula West Power Inc. of the Holding Company Liabilities; and

- (ii) as to the balance of the purchase price for the Holding Company Assets (the "Holding Company Equity Price"), by the allotment and issuance by Peninsula West Power Inc. to the Town of fully paid and nonassessable common shares, which amount shall be added to the stated capital account for such class of shares.

The Purchase Price shall be allocated among the Distribution Assets, the Holding Company Assets and the Competitive Assets as determined by the Secretary-Treasurer of Peninsula West Power Inc. in consultation with the board of directors of Peninsula West Power Inc.

3.03 Transfer of Shares. All of the common shares of Peninsula West Utilities Limited issued to the Town pursuant to the transfer of employees, assets, liabilities, rights and obligations arising from the requirements of the Electricity Act, 1998 (collectively the "Transferred Shares") shall be transferred to Peninsula West Power Inc. by the Town as of the Effective Date in consideration of the allotment and issuance by Peninsula West Power Inc. to the Town of fully paid and nonassessable common shares of Peninsula West Power Inc.

3.04 Assumption of Liabilities. Each of the Corporations shall be bound by, assume, pay, satisfy, discharge, observe, perform and fulfil, and indemnify and save harmless the Town and the Commission from and against the Assumed Liabilities assumed by it. The transfer of the Assumed Liabilities under Part XI of the Electricity Act and this Bylaw releases the Town and the Commission from any liability or obligation in connection with the Assumed Liabilities pursuant to Section 153 of the Electricity Act.

ARTICLE IV GENERAL MATTERS

4.01 Regulatory Approvals. The transfer of any of the Assets, Assumed Liabilities or of the Transferred Shares, which are issued and outstanding shares of Peninsula West Utilities Limited pursuant to this Bylaw as of the Effective Date, shall be subject to obtaining such regulatory approvals as may be required by law, if any, which approvals may be sought by the Town, the Commission, Peninsula West Power Inc. or the appropriate Subsidiary and following the receipt of any such approval the transfer shall be completed with effect as of the Effective Date pursuant to this Bylaw.

4.02 Land Transfer Tax and Retail Sales Tax. Pursuant to Section 159 of the Electricity Act, the transactions contemplated by this Bylaw are exempt from Ontario land transfer tax pursuant to the *Land Transfer Tax Act (Ontario)* and retail sales tax pursuant to the *Retail Sales Tax (Ontario)*.

4.03 Bulk Sales Compliance. The transactions contemplated by this Bylaw are exempt from the provisions of the *Bulk Sales Act (Ontario)* pursuant to Section 159 of the Electricity Act.

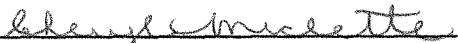
4.04 Goods and Services Tax. The transfers of Assets pursuant to this Bylaw will constitute the transfers of all or substantially all of the Assets necessary for the Transferee to carry on the business transferred to it. The Commission and each Transferee, being registered pursuant to the *Excise Tax Act (Canada)* with respect to the goods and services tax, shall sign the election provided for in Section 167 of the *Excise Tax Act (Canada)* and the Transferee shall file the election in accordance with that Section 167 of the *Excise Tax Act (Canada)* so that the transfers are exempt from goods and services tax.

4.06 Further Assurances. Each of the Town and the Commission shall promptly and duly execute and deliver such further documents and promptly take such further action not inconsistent with the terms hereof as may from time to time be reasonably required to more effectively carry out the intent and purpose of this Bylaw or to perfect and protect the interest of the Corporations in the Assets. The Mayor and the Clerk are hereby authorized and directed, for and on behalf of the Town, to do all acts and things and execute and deliver such other documents, instruments, agreements and transfers as may be reasonably necessary or desirable to give effect to the provisions of this Bylaw.

4.07 Amendment of Bylaw. In the event of any omission or error made in connection with the passage of this Bylaw, including, without limitation, the unintended transfer or failure to transfer any assets or liabilities of the Commission and/or the Town, the Town may amend this Bylaw.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS
2ND. DAY OF OCTOBER, 2000.


MAYOR


CLERK