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CHAPTER 71

An Act to provide for
Municipal Hydro-Electric Service in
The Regional Municipality of Durham

Assented to June 22nd, 1979

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

   (a) "accumulated net retail equity" means the portion of equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro's rural retail system plus the portion of the balance recorded for customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;

   (b) "area municipality" means the municipality or corporation of the City of Oshawa, the Town of Ajax, the Town of Newcastle, the Town of Pickering, the Town of Whitby, the Township of Brock, the Township of Scugog and the Township of Uxbridge;

   (c) "Minister" means the Minister of Intergovernmental Affairs;

   (d) "municipal commission" means a hydro-electric commission or public utilities commission entrusted with the control and management of works for the retail distribution and supply of power in the Regional Area within the meaning of The Regional Municipality of Durham Act, 1973 immediately before the coming into force of this Act and established or deemed to be established under Part III of The Public Utilities Act;

   (e) "power" means electrical power and includes electrical energy;
(f) "regulations" means the regulations made under this Act;

(g) "retail", when used in relation to the distribution and supply of power, refers to the distribution and supply of power at voltages less than 50 kilovolts, but does not refer to works located within a transformer station that transform power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

2.—(1) On the day this Act comes into force, a hydro-electric commission for each area municipality is hereby established.

(2) Each commission established by subsection 1 shall be deemed to be a commission established under Part III of The Public Utilities Act and a municipal commission within the meaning of The Power Corporation Act.

(3) Each commission established by subsection 1 shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

8. Whitby Hydro-Electric Commission.

(4) Each commission established by subsection 1 shall consist of the mayor of the area municipality in respect of which the commission is established and additional members who are qualified electors under The Municipal Elections Act, 1977 in the area municipality.

(5) Except as otherwise provided in this Act, the council of each area municipality shall determine by by-law whether the number of additional members of the commission established by subsection 1 in respect of the area municipality shall be two or four.

(6) For the term expiring with the 30th day of November, 1980, the Ajax Hydro-Electric Commission established by sub-
section 1 shall consist of the mayor of the Town of Ajax and the following additional members who shall be appointed by the council of the Town of Ajax:

1. Two members of the Hydro-Electric Commission of the Town of Ajax as it existed immediately before the coming into force of this Act.

2. One member of the Public Utilities Commission of the Village of Pickering as it existed immediately before the coming into force of this Act.

3. One person who resides outside the part of the Town of Ajax supplied with power by a municipal commission immediately before the coming into force of this Act.

(7) For the term expiring with the 30th day of November, 1980, the Brock Hydro-Electric Commission established by subsection 1 shall consist of the mayor of the Township of Brock and the following additional members who shall be appointed by the council of the Township of Brock:

1. One member of the Hydro-Electric Commission of the Village of Beaverton as it existed immediately before the coming into force of this Act.

2. One member of the Hydro-Electric Commission of the Village of Cannington as it existed immediately before the coming into force of this Act.

3. One member of the Hydro-Electric Commission of Sunderland as it existed immediately before the coming into force of this Act.

4. One person who resides outside the part of the Township of Brock supplied with power by a municipal commission immediately before the coming into force of this Act.

(8) For the term expiring with the 30th day of November, 1980, the Newcastle Hydro-Electric Commission established by subsection 1 shall consist of the mayor of the Town of Newcastle and the following four additional members who shall be appointed by the council of the Town of Newcastle:

1. One member of the Public Utilities Commission of the Town of Bowmanville as it existed immediately before the coming into force of this Act.
2. One member of the Public Utilities Commission of the Village of Newcastle as it existed immediately before the coming into force of this Act.

3. One member of the Hydro-Electric Commission of Orono as it existed immediately before the coming into force of this Act.

4. One person who resides outside the part of the Town of Newcastle supplied with power by a municipal commission immediately before the coming into force of this Act.

(9) For the term expiring with the 30th day of November, 1980, the Oshawa Public Utilities Commission established by subsection 1 shall consist of the mayor of the City of Oshawa and four additional members who shall be appointed by the council of the City of Oshawa, at least three of whom shall be as follows:

1. Two members of the Public Utilities Commission of the City of Oshawa as it existed immediately before the coming into force of this Act.

2. One person who resides outside the part of the City of Oshawa supplied with power by a municipal commission immediately before the coming into force of this Act.

(10) For a term commencing on the day this Act comes into force and expiring with the 30th day of November, 1982, the Pickering Hydro-Electric Commission established by subsection 1 shall consist of the mayor of the Town of Pickering and four additional members who shall be appointed by the council of the Town of Pickering.

(11) For the term expiring with the 30th day of November, 1980, the Scugog Hydro-Electric Commission established by subsection 1 shall consist of the mayor of the Township of Scugog and additional members who shall be appointed by the council of the Township of Scugog as follows:

1. At least one-half of the additional members shall be members of the Hydro-Electric Commission of the Village of Port Perry as it existed immediately before the coming into force of this Act.

2. At least one of the additional members shall be a person who resides outside the part of the Township of Scugog supplied with power by a municipal commission immediately before the coming into force of this Act.
(12) For the term expiring with the 30th day of November, 1980, the Uxbridge Hydro-Electric Commission established by subsection 1 shall consist of the mayor of the Township of Uxbridge and additional members who shall be appointed by the council of the Township of Uxbridge as follows:

1. At least one-half of the additional members shall be members of the Public Utilities Commission of the Township of Uxbridge as it existed immediately before the coming into force of this Act.

2. At least one of the additional members shall be a person who resides outside the part of the Township of Uxbridge supplied with power by a municipal commission immediately before the coming into force of this Act.

(13) For the term expiring with the 30th day of November, 1980, the Whitby Hydro-Electric Commission established by subsection 1 shall consist of the mayor of the Town of Whitby and the members, other than ex officio members, of the Public Utilities Commission of the Town of Whitby as it existed immediately before the coming into force of this Act.

(14) Where this section provides that one or more members of a municipal commission are to be additional members for a term specified by this section and the number of such members who are qualified electors under The Municipal Elections Act, 1977 is less than the required number of additional members, the council of the area municipality in respect of which the commission was established under subsection 1 shall appoint an additional member or additional members so that there will be the required number of additional members of the corporation.

(15) For terms commencing after the 30th day of November, 1980, or, for the Pickering Hydro-Electric Commission, the 30th day of November, 1982, the additional members of each commission established by subsection 1 shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1980 or, for the Pickering Hydro-Electric Commission, the 1st day of July, 1982, the council of the area municipality provides by by-law that the additional members shall be appointed by the council or that the additional members shall be elected by wards.

(16) Where, under subsection 15, the council of an area municipality provides that the additional members shall be elected by wards and the number of additional members is greater than the number of wards, one of the additional members shall be elected from each ward and the balance of the additional members
shall be elected by general vote of the electors in the area municipality.

(17) Notwithstanding subsection 15, where the number of additional members is less than the number of wards, the council of the area municipality shall not provide that the additional members be elected by wards.

(18) Members of the council of the area municipality served by a commission established by subsection 1 may be members of the commission, but the members of the council shall not form a majority of the commission.

(19) Subject to subsection 10, a member of a commission established by subsection 1 shall hold office for the same term as the members of council or until his successor is elected or appointed.

(20) The council of an area municipality served by a commission established by subsection 1 may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

(21) The salaries of the members of the commissions established by subsection 1 for the period expiring with the 30th day of November, 1980 shall be fixed on or before the 1st day of October, 1979 in an amount that does not exceed the highest salary paid to members of the municipal commissions operating in the Regional Area within the meaning of The Regional Municipality of Durham Act, 1973 on the 1st day of January, 1979.

(22) A resignation from the council of an area municipality of a member of the council who is a member of a commission established by subsection 1 shall be deemed to be a resignation from both the council and the commission.

3.—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by The Public Utilities Act on a municipal corporation with respect to power shall, on and after the 1st day of January, 1980, be exercised on behalf of each area municipality by the commission established by section 2 in respect of the area municipality and not by the council of any municipality or any other person.

(2) Subject to sections 4 and 5, on and after the 1st day of January, 1980, each commission established by section 2 has the sole right to distribute and supply power within the area municipality in respect of which it is established.

(3) The right of a commission established by section 2 to distribute and supply power is subject to any subsisting contracts for
the supply of power made under section 70 of *The Power Corpora-
tion Act*.

(4) A commission established by section 2 may contract with
Ontario Hydro without electoral assent or other approval or
authorization for the transmission and supply to the commission
of power to be distributed and sold in the area municipality served
by the commission.

(5) A contract under subsection 4 shall be deemed to be an
agreement within the meaning of clause 5 of subsection 2 of section
293 of *The Municipal Act*.

(6) Except where inconsistent with the provisions of this Act,
the provisions of *The Power Corporation Act* applicable to a
municipal corporation that has entered into a contract with
Ontario Hydro for the distribution and supply of power to the
municipal corporation apply to the commissions established by
section 2.

(7) With the consent of a commission established by section 2,
Ontario Hydro may distribute and supply power directly to cus-
tomers in the area municipality in respect of which the commission
is established.

4.—(1) Ontario Hydro shall continue to distribute and supply
power in those areas of the Town of Newcastle, and the townships
of Brock, Scugog and Uxbridge that Ontario Hydro served
immediately before the coming into force of this Act.

(2) The duty of Ontario Hydro under subsection 1 to distribu-
te and supply power in an area municipality is terminated, on the
date specified in the by-law, by a by-law passed with the consent
of Ontario Hydro by the council of the area municipality under
clause a of subsection 1 of section 5.

(3) Sections 7 and 10 do not apply in respect of the assets and
employees of Ontario Hydro in an area municipality until the
passing of the by-law referred to in subsection 2.

5.—(1) The council of each of the Town of Newcastle and the
townships of Brock, Scugog and Uxbridge, with the consent of
Ontario Hydro and without the assent of the municipal electors,
by by-law,

(a) may direct the commission established by section 2 in
respect of the municipality to commence on a day
specified by the by-law the distribution and supply of
power in all areas of the municipality and on the
specified day sections 7 and 10 shall apply with neces-
sary modifications to the assets and employees of Ontario Hydro in the municipality; or

(b) may dissolve the commission established by section 2 in respect of the municipality on a day specified by the by-law and on the specified day,

(i) all assets under the control and management of and all liabilities of the commission, and all debentures issued in respect of the distribution and supply of power in the municipality are, without compensation, assets and liabilities of Ontario Hydro, and

(ii) Ontario Hydro shall commence to distribute and supply power in all areas of the municipality.

(2) Until such time as the power conferred by subsection 1 has been exercised,

(a) the council of each of the Town of Newcastle and the townships of Brock, Scugog and Uxbridge shall review the distribution and supply of power within their respective municipalities at least once in every three years and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by subsection 1; and

(b) where the council of the Town of Newcastle or the townships of Brock, Scugog and Uxbridge determines as provided in clause (a) that it is financially feasible for the commission established under section 2 in respect of the municipality to distribute and supply power in the entire municipality, the council, subject to the approval of Ontario Hydro, shall exercise the power conferred by subsection 1.

6.—(1) On the 1st day of January, 1980, all assets under the control and management of and all liabilities of the municipal commissions in each area municipality are, without compensation, assets under the control and management of and liabilities of the commission established by section 2 in respect of the area municipality.

(2) Any of the assets, powers and responsibilities of the municipal commissions in an area municipality that pertain to the distribution and supply of power in the area municipality may be transferred by agreement before the 1st day of January, 1980 to the commission established by section 2 in respect of the area municipality.

7.—(1) On or before the 1st day of January, 1980, each commission established by section 2 shall purchase, on behalf of the
area municipality served by the commission, and Ontario Hydro shall sell to the commission the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in the area municipality.

(2) The purchases mentioned in subsection 1 shall include equipment leased by Ontario Hydro to retail customers in the area municipalities for the use of power supplied to the retail customers.

(3) The purchase price shall be determined in accordance with the regulations and shall be equal to the original cost of the assets less the sum of,

(a) the accumulated net retail equity of the customers supplied with power through the assets; and

(b) the accumulated depreciation associated with the assets.

(4) If the purchase price under subsection 3 is not determined before the 1st day of January, 1981, either of the parties at any time thereafter may request that the purchase price be determined either by a single arbitrator agreed on by the parties or by a board of arbitration.

(5) Where a request is made under subsection 4 for a determination by a single arbitrator and the parties are unable to agree on an arbitrator within thirty days after the making of the request, either of the parties may request that the purchase price be determined by a board of arbitration.

(6) Where a request is made under subsection 4 or 5 that the purchase price be determined by a board of arbitration,

(a) within fourteen days after the request, each party to the arbitration shall appoint a person as a member of the board of arbitration and shall give notice to the other party of the name and address of the person;

(b) the two members of the board of arbitration, within ten days after the giving of the notice of appointment of the second of them, shall appoint a third person to be chairman of the board of arbitration and the chairman shall give notice of his appointment to the parties; and

(c) if a party fails to appoint a member to a board of arbitration in accordance with clause $a$ or if the members do not appoint a chairman in accordance with clause $b$, or in the event of the absence or inability to act or of a vacancy in the office of a member or the chairman of a board of arbitration, either party may apply on notice to the other party to the Divisional Court and the court may appoint the member or chairman.
(7) Except as otherwise provided in this section, The Arbitration Act applies to subsections 4, 5 and 6.

(8) In subsections 4, 5 and 6, “parties” means Ontario Hydro and, in each case, the commission established by section 2.

8.-(1) All real property transferred by section 6 to the control and management of a commission established by section 2 or otherwise acquired by or for the commission shall be held by the commission in trust for the area municipality served by the commission.

(2) Where a commission established by section 2 is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the commission and the area municipality served by the commission, the real property may be disposed of as follows:

1. In the event that the area municipality served by the commission wishes in good faith to use the real property for a municipal purpose, it shall compensate the commission for the real property at its actual cost, less accrued depreciation as shown on the books of the commission or the assessed value of the real property, whichever is the greater, and when the municipality in good faith no longer wishes to use the real property for a municipal purpose, the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.

2. In the event that the municipality served by the commission does not wish to use the real property in accordance with paragraph 1, the commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor under this subsection shall be received by the commission and shall be applied in accordance with The Public Utilities Act.

9. Except as otherwise provided in this Act, sections 100 to 121 of The Regional Municipality of Durham Act, 1973 apply, with necessary modifications, to any borrowing for the purposes of a commission established by section 2.

10.-(1) In this section, “transfer date”, when used in respect of an employee of a municipal commission or Ontario Hydro,
means the date on which a commission established by section 2 assumes liability for the payment of the wages or salary of the employee.

(2) On or before the 31st day of December, 1979, Ontario Hydro and each municipal commission that supplied power in an area municipality immediately before the coming into force of this Act shall designate those of their full-time employees who were employed in the distribution and supply of power in an area municipality on the 1st day of January, 1979, and who continued such employment until the 31st day of December, 1979 or until their transfer dates, as the case may be, and each commission established by section 2 shall offer employment to the employees designated in respect of the area municipality served by the commission.

(3) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary he was receiving on the day nine months before the transfer date.

(4) Each commission established by section 2 shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Act comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on his transfer date, and The Ontario Municipal Employees Retirement System Act applies to such person as a member of the System.

(5) When a person who accepts employment under this section with a commission established by section 2 is entitled immediately before his transfer date to the benefit of a supplementary agreement between the Ontario Municipal Employees Retirement Board and a municipal commission that, immediately before the coming into force of this Act, supplied power in an area municipality mentioned in subsection 1 of section 2, the commission established by section 2 shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the commission had been a party to the agreement in the place of the municipal commission.

(6) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before his transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System.
Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

(7) Notwithstanding subsection 4, a person who accepts employment under this section with a commission established by section 2 and who,

(a) was employed by Ontario Hydro immediately before his transfer date; and

(b) continues in the employment of the commission until he or his beneficiary becomes entitled to a pension benefit,

is entitled to at least the pension benefit he would have been entitled to under The Ontario Hydro Pension and Insurance Plan if his years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1979, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection 4 shall be apportioned and paid as provided by the regulations.

(8) A person who accepts employment under this section is entitled as a term of his employment to continue as a member of the group life insurance plan in which he was a member with his former employer until the effective date of a common group life insurance plan covering all eligible employees of his new employer.

(9) On or before the 31st day of December, 1981, each commission established by section 2 shall provide a common group life insurance plan covering all of the eligible employees of the commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the person was entitled immediately before his transfer date.

(10) A person who accepts employment under this section shall continue to enjoy the rights and benefits of sick leave entitlements or sick leave insurance provided by his former employer immediately before the transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits.

(11) Each commission established by section 2 shall continue the provision of life insurance to pensioners formerly employed by
a municipal commission in the distribution and supply of power in
the area municipality served by the commission established by
section 2.

(12) Nothing in this section prevents an employer from ter-
minating the employment of an employee for cause.

(13) Where, in the opinion of the Minister, a person who is
designated or who accepts employment under this section ex-
piriences any difficulty or hardship with regard to life insurance
benefits, pension rights, pension benefits or sick leave rights or
benefits, the Minister by order may do anything necessary to
remedy or alleviate such difficulty or hardship.

11.—(1) On and after the 1st day of January, 1980, the control
and management of the bus transportation system operated by the
Public Utilities Commission of the City of Oshawa is entrusted to
the Oshawa Public Utilities Commission established by section 2.

(2) Sections 6 and 10 apply with necessary modifications in
respect of the bus transportation system operated by the Public
Utilities Commission of the City of Oshawa.

12. With respect to the Pickering Hydro-Electric Commission
established by section 2, each date mentioned in sections 3, 7 and
10 shall be deemed to be a date six months after the mentioned
date.

13. For the purposes of section 143 of The Regional Munici-
pality of Durham Act, 1973, the 1st day of January, 1980 is the
date determined by the Minister in respect of the Regional Area
within the meaning of The Regional Municipality of Durham Act,
1973, and on that date the municipal commissions are dissolved
and the by-laws establishing them passed under sections 38 and 40
of The Public Utilities Act shall be deemed to be repealed and the
assent of the municipal electors is not required.

14. The Lieutenant Governor in Council may make regula-
tions,

(a) for the purpose of subsection 3 of section 7 in respect of,

(i) the method of determining the original cost of the
assets or of any asset or of any part of any asset,

(ii) the allocation of the original cost of the assets or
of any asset or of any part of any asset,

(iii) the method of determining the amount of any
component of the accumulated net retail equity,
(iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,

(v) the method of calculating accumulated depreciation of any component of accumulated depreciation,

(vi) the allocation of accumulated depreciation or any component of accumulated depreciation,

(vii) the method of payment of the price of the assets;

(b) for the purposes of subsection 7 of section 10, in respect of the apportionment of the excess cost of any benefit referred to in the subsection and the payment of the excess cost or any part thereof.

15. This Act comes into force on the day it receives Royal Assent.