

CORPORATION OF THE  
TOWNSHIP OF BILLINGS

AGENDA

January 11<sup>th</sup>, 2022 7:00 p.m.

**Electronic**

1. OPEN
2. APPROVAL OF AGENDA
3. DISCLOSURE OF PECUNIARY INTEREST
4. ADOPTION OF MINUTES
5. DELEGATIONS
6. COMMITTEE REPORTS
7. OLD BUSINESS
8. NEW BUSINESS
  - a. Oakville Energy  
Corporation Lease  
Negotiation Discussion
9. CORRESPONDENCE
10. INFORMATION
11. ACCOUNTS FOR PAYMENT
12. CLOSED SESSION
13. CONFIRMING BY-LAW
14. ADJOURNMENT

## **Special Council Meeting – Oakville Energy Corporation (OEC) Lease Discussion**

**Date: January 11, 2022**

**Presented By: Mayor Ian Anderson**

### **The Question**

The current power generating station lease is set to expire on December 31, 2029.

Oakville Energy Corporation (OEC) is faced with decisions surrounding the requirement for rather significant repair and refurbishment funding.

They are requesting that Council consider an extension of the lease for a ten-year period (to 2040).

The rationale is to extend the time through which OEC might recover its investment.

### **Kagawong Generation Station Background**

Billings Township owns the property, structures and equipment of the Kagawong Generating Station.

In the late 1980's Kagawong Power Incorporated (KPI) acquired a power purchase agreement under Ontario's NUG (non-utility generators) program and negotiated the right to operate the station under a lease with the Township of Billings.

At that time the rent/royalty terms were negotiated at 15% of gross revenue paid to the township. In 2010, while KPI still owned the business the rent/royalty was renegotiated to 23.5% of gross revenue for a term extending to 2030.

Oakville Energy Corporation (OEC) bought the business (including the lease) from KPI in 2013. The lessee (now OEC) is responsible for all aspects of operations, maintenance and repair of all of the structures (powerhouse, intake, dam, penstock and generating equipment (Francis turbine, gearbox, generator, HPU, switchgear, controls, transformer, grid interconnection and station services).

The lessee is also responsible for the relationship with I.E.S.O. (Independent Electricity System Operator) now under an H.C.I. contract (hydroelectric Contract Initiative) and for the operation of the power plant in accordance with the MNRF Water Management Plan.

This Plan dictates Kagawong lake water levels as well as the minimum year-round flow rates to be maintained at the dam for aesthetic purposes and downstream for ecological reasons (aquatic life including fish spawning habitat).

The township receives 23.5% of gross revenue.

Kagawong generating station has the capacity of about 725 KW and produces on average just over 3000 MWH annually. (A megawatt hour equals 1,000 kilowatts of electricity generated per hour.)



It is a relatively old station (turbine dating from the 1920's or 1930's) and has been operated in its current configuration with little in the way of refurbishment for over 35 years.

In the opinion of Bill Touzel, a consultant to OEC, the Kagawong generating station will need somewhere between \$500,000 and \$1,000,000 to ensure that it will be fit for continued service past 2030.

Bill Touzel is a Chartered Accountant who spent many years as President of a mid-sized environmental engineering business (9 offices, 175 professional staff).

That Business developed a significant specialty in matters related to the environmental assessment, permitting, engineering and construction of hydroelectric facilities.

Mr. Touzel was also personally involved, for about 15 years, in the ownership and operation of a small hydroelectric generating station in west Quebec.

He has gained a very broad perspective (both technical and financial) in the industry. He is also an active member of the Ontario Waterpower Association's Board of Directors.

Most of the major equipment components are showing obvious signs of being old. Maintenance and repair costs, and downtime, have risen significantly over the last few years. (Recently, it was learned that maintenance & repair costs in 2019 were approximately \$120,000, and approximately \$200,000 in 2020.)

OEC receives approximately 8.5 cents per kilowatt hour for energy produced.

Maximum practical capacity of about 725 KW (maximum amount of power output at any one time – instantaneous power).

Maximum amount of energy in any hour is 725 KW (kilowatt hours) or \$63.75 hour.

The plant seldom runs at this maximum level of output, often closer to 50% capacity, and so total annual generation averages roughly 3.1 million kWh per year, or roughly \$260,000 per year before operation, maintenance costs. Billings Township receives 23.5% of the gross revenue, or an average of approximately \$60,000 per year, with no exposure to operation and maintenance costs.

In dry summers the plant must be shut down when the rule curve minimum is reached.

#### **Other**

Paul Young is the VP Generation Development for Orillia Power Generation Corporation, a municipally owned company with a handful of operating waterpower stations in central Ontario. Paul is also a member of the Board of the Ontario Waterpower Association, and has been involved in the waterpower industry for most of his career.



On November 11, 2021 Mayor Anderson made an initial contact by phone with Paul Young and outlined the particulars regarding our generating station and contract with OEC.

This was followed up with questions on November 16, 2021 via email. The following are the questions and answers from that email.

Question: Our infrastructure related to this plant and most components are approximately 100 years old, would it be reasonable to expect major replacement/refurbishment costs of \$750,00 to 1 million over the next 10 years?

**Answer: This is very reasonable, and I wouldn't be surprised if the total costs exceeded \$1,000,000, particularly if there has been no major maintenance done for a while**

Question: Would you have any estimates as to an average annual maintenance cost including dams, reporting, licensing, staff to run etc.

**Answer: There are a couple of old formulas that were in use that estimate operating costs. They are based on the year 2001 and are for American plants. The formulas are:**

**Fixed annual costs = 24,000 x (size in MW) ^0.75**

**Variable annual costs = 24,000 x (size in MW) ^0.80**

**If you plug in the size of your plant at 0.725MW, make allowance for inflation and exchange rates, the total of fixed plus variable annual costs would come to about \$CAN 70,000 today. To this you would need to add the Gross Revenue charge that you likely pay to the province, plus insurance, so this would put you in the range of \$100,000, by this methodology. We have found that this method underestimates costs for smaller plants, so costs would be higher.**

Question: Our plant is a 725-kw station, in your opinion would many of Ontario's larger water generated power companies have interest in our plant when our municipality is receiving 23.5% of gross revenue currently?

**Answer: Most generators value a project based on its cash flow going forward, which is related to the terms of the existing contract that the project has with the IESO. The potential purchase price would be significantly lowered by this revenue sharing arrangement. Also, the short remaining length of the Contract may cause many potential companies to be concerned, and possibly include zero terminal value at the end of the existing contract. It is nearly impossible to attract a secured lender to a project that does not have a contract.**

Question: In your opinion, would a small municipality like Billings Township (permanent population 540 people, (1560 voters)), be at financial risk trying to operate this plant on our own?

**Answer: Operating even a small waterpower plant requires a lot of skill in both operation and maintenance. My guess is that if a small organization tried to operate a plant like Kagawong, it would have to rely on a lot of outside help, particularly for maintenance activities and safety assessments. For older plants there is considerable structural and mechanical risk. There is also Public Safety risk. The plant should be reviewed to make sure that it meets current Public Safety Guidelines as published by the Canadian Dam Association and MNRF. A dam safety assessment should also be undertaken and updated every 5 years to look at the risk associated with dam failure. The cost for a Dam Safety Assessment can be quite significant.**



Question: What would some of the operational risks be with a power plant where the source of water is not unlimited for example (but not limited to this example)

**Answer: There is hydrology risk, but over the long term (10-20 years) this somewhat stabilizes. There can be drought periods lasting several years, so a hydrology reserve is prudent and normally required by project lenders.**

Question: Can you advise of any other examples that you are aware of in Ontario of a similar lease or profit-sharing arrangement with a municipality as to the percentages of the gross revenue going to the municipality? (Range of percentages would be helpful and or an overall average)

**Answer: We know of three based on Gross Revenue: One at 2.5%, one around 8% and one at 20%**

Question: Can you explain what Ontario's Independent Electricity Service Providers do and their potential impacts on long term contracts?

**Answer: The Independent Electricity System Operator (IESO) is a not-for-profit corporation established by the Electricity Act which (among other duties) manages all electricity contracts in Ontario including Kagawong GS's HCI Contract. It does have a reporting requirement to the Minister of Energy who often provides Ministerial Directives to the IESO. (see [What We Do \(ieso.ca\)](http://www.ieso.ca) ). Many contracts are expiring in 2029, and it is not clear what will replace them. The IESO does not want to engage in long term contracts any more, and is seeking to encourage competition among electricity producers. At the moment, the IESO is technology agnostic and does not consider carbon reduction in its mandate, only the lowest electricity price for the rate payers of Ontario. The Ontario Waterpower Association is lobbying very strongly to influence the IESO and the Ministry of Energy to take into consideration the unique nature of water power generation Stations, as not only producers of electricity, but water management and provision of other public/social value-related services. As a very recent update, the Minister of Energy has just released (Nov. 10) a directive to the IESO requesting them to look into ways to extend operation of small hydro facilities beyond contract expiry. This is a very positive development; however, all parameters are yet to be defined.**

Question: Lastly, are you aware of any higher financial arrangement in the province of Ontario than the 23.5 % of gross revenue, that Billings Township currently has with Oakville?

**Answer: We are not aware of any revenue sharing in excess of 23.5%. But we are not privy to other waterpower producer's private arrangements**

November 11, 2021 Mayor Anderson spoke to Paul Young and asked a few other questions, not covered in the November 16, 2021 email.

Question: if the municipality took over the generating plant what staff would you think we would need?

**Answer: At least 1 permanent employee plus 1 part time for 24/7 coverage. Most services would need to be contracted out.**

Question: With 725 KW station would many power companies in the province have much interest in taking this lease on where our municipality receives 23.5% of the gross revenue?

**Answer: Not likely, this is the highest that he knows of. You have a very good arrangement with virtually no risk to your municipality.**

During the November 11, 2021, phone call Mayor Anderson asked for another contact with perhaps a different perspective that he could reach out to. Mayor Anderson was given the name Chris Handley, who is the Chair of Fenelon Powerlink Committee (Fenelon Falls, population 1,800) On November 22, 2021, Mayor Anderson an opportunity to speak to Mr. Handley and similarly outlined the particulars of our generating station and our current contract. He supplied verbal answers and advice to some of the same questions that had been asked of Mr. Young.

Mr. Handley's observations include the following:

- The older the asset, the lower the efficiency.
- Catastrophic repairs might take years to pay off or a huge loan to cover.
- Repairs would be more costly on Manitoulin as skilled repair technicians trained in that specialty field would likely not be local.
- He was not aware of a better financial arrangement than the one we currently have.
- He suggested that we ask to see the financial records for better insight as to some of the costs associated with running the generating station/potential profits.
- Suggested that the municipality consider putting revenue received annually into a dedicated fund to be used for community related events.
- Oakville has all of the risks, your municipality does not.

On December 10, 2021, Mayor Anderson made phone contact with Sherri Hawthorne, Chief Financial Officer/Deputy Clerk, Village of South River. Population in the municipality 1,100 permanent residents.

South River owns a power generation station. Ms. Hawthorne gave Mayor Anderson a history of their involvement from past to present.

The South River power generating station was a private family operation which sold power to the South River village until 1960 when it was decommissioned. (Start date unknown.)

Around 2000 the municipality, through Green Energy Initiative, decided to take it over. The money borrowed from the bank, to purchase, has just been finished being paid back. Public Works oversees the operation of the dam. They have no employees but have three contractors on call 24/7 (an electrician, a millwright and an experienced generating station operator). They have to follow and operate within the MNRF Water Management Plan. You can not stockpile water so revenues vary from year to year. Costs also vary from year to year.

Insurance costs alone are very high. Even small components can be very difficult to source. Ms. Hawthorne gave an example of a part that could not be found in North America. The part was located in Ireland which resulted in one month shutdown, no revenue.

The plant averages 4.3 million KWH per year with a capacity of 800 kW but they also receive 14 cents per kilowatt hour (OEC receives 8.5 cents).

South River leases the land where the power generating station is located and pay 10% of gross revenue.



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When asked the question around potential financial risk to our municipality considering the age of our equipment, she stated we would certainly be at risk. She went on to add that global warming alone is such an unknown making it very difficult to know what the future will bring for water supply. The old infrastructure makes finding parts very challenging. Her last advice was to keep our current arrangement.

This ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT (the "Agreement") dated as of the 16<sup>th</sup> day of ~~April~~<sup>MAY</sup>, 2013 between THE CORPORATION OF THE TOWNSHIP OF BILLINGS (the "Landlord"), KAGAWONG POWER INCORPORATED (the "Vendor"), and OAKVILLE HYDRO ENERGY SERVICES INC. (the "Purchaser").

WHEREAS, pursuant to an asset purchase agreement made as of the 14 day of November, 2012 (the "Purchase Agreement") between the Vendor, as vendor, and the Purchaser, as purchaser, the Vendor agreed to sell, and the Purchaser agreed to purchase, the Purchase Assets;

AND WHEREAS, in connection with the purchase and sale of the Purchase Assets, the Vendor agreed to transfer and assign in favour of the Purchaser, all of the Vendor's right and interest in and to the Lease Agreement dated December 1<sup>st</sup>, 1987 between the Landlord, as lessor, and the Vendor, as tenant, as amended pursuant to an Amendment To Lease Agreement dated August 2010 (collectively, the "Lease");

AND WHEREAS, capitalized terms used in this Agreement but not defined in this Agreement shall have the meanings given to them in the Purchase Agreement;

NOW THEREFORE, in consideration of the completion of the purchase of the Purchase Assets by the Purchaser and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree as follows:

**1. Assignment of Lease**

Save and except for the adjustments between the Purchaser and Vendor pursuant to the Purchase Agreement, effective from and after the date of this Agreement, the Vendor hereby assigns, transfers and sets over unto the Purchaser, for its sole use and benefit, all of the Vendor's respective undivided right, title and interest in and to the Lease.

**2. Assumption by Purchaser**

Save and except for items to be adjusted or readjusted between the Purchaser and Vendor in accordance with Section 2.4 of the Purchase Agreement, effective from and after the date of this Agreement, the Purchaser hereby assumes all of the obligations, duties and liabilities of the Vendor as tenant arising from and after and relating only to the period from and after the date of this Agreement under the Lease and covenants and agrees with the Vendor to make payment or otherwise perform such obligations, duties and liabilities of the Vendor as landlord in accordance with the provisions of the Lease.

### 3. Consent of Landlord

Pursuant to Section 4(k) of the Lease, the Landlord consents to the transfer and assignment of the Lease by the Vendor to the Purchaser.

### ~~4. Landlord Confirmation and Indemnity~~

Instrument No. T30798 (a copy of which is attached hereto as Schedule "A") contains the following covenant:

"The Grantee its successors and assigns hereby covenant with the Grantor its successors and assigns that the lands herein conveyed will not be sold until after the 20<sup>th</sup> day of December, 1988 and will be used for public recreational purposes, only."

The Landlord covenants to the Purchaser that such covenant is of no further force or effect, that the party for whose benefit such covenant was granted is no longer in existence, or that a release in respect of the use of the demised premises pursuant to the Lease was obtained by the Landlord and such release is in full force and effect. The Landlord shall indemnify and save the Purchaser harmless from and against, and shall reimburse the Purchaser for any and all claims, demands, actions, causes of action, damages, losses, costs, liabilities or expenses including reasonable professional fees and all costs incurred in investigating or pursuing any proceeding relating to any of the foregoing arising pursuant to or in connection with the Lease.

### 5. Indemnities

The Vendor shall indemnify and save the Purchaser harmless from and against, and shall reimburse the Purchaser for any and all claims, demands, actions, causes of action, damages, losses, costs, liabilities or expenses including reasonable professional fees and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing arising pursuant to or in connection with the Lease with respect to any matter that has occurred prior to and which relates only to the period prior to the date of this Agreement. The Purchaser shall indemnify and save the Vendor harmless from and against, and shall reimburse the Vendor for, any and all claims, demands, actions, causes of action, damages, losses, costs, liabilities or expenses including reasonable professional fees and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing arising pursuant to or in connection with the Lease with respect to any matter which occurs on or after and which relates only to the period from and after the date of this Agreement.

### 6. Successors and Assigns

This Agreement shall enure to the benefit of and shall be binding upon the parties and their respective successors and assigns.



**7. Further Assurances**

Each of the parties shall execute and deliver all such further documents and do such other things as the other parties may reasonably request to give full effect to this Agreement.

**8. Severability**

If any provision contained in this Agreement or its application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

**9. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or telecopied form and the parties to this Agreement adopt any signatures received by receiving telecopier machine as original signatures of the parties.

[The remainder of this page intentionally left blank.]



IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

KAGAWONG POWER INCORPORATED.

By: 

Name: Emile Masbou  
Title: President

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

☒ We have the authority to bind the corporation.

OAKVILLE HYDRO ENERGY SERVICES INC.

By: 

Name: Rob Lister  
Title: President and CEO

By: 

Name: \_\_\_\_\_  
Title: Scott Mudie, P. Eng.  
Vice President, OHESI

THE CORPORATION OF THE TOWNSHIP OF BILLINGS

By: 

Name: Austin Hunt  
Title: Mayor

By: 

Name: Kathy McDonald  
Title: Clerk Treasurer

We have the authority to bind The Corporation Of The Township Of Billings.

## ESTOPPEL CERTIFICATE

TO: Oakville Hydro Energy Services Inc. (the "Purchaser")

RE: Lease Agreement dated December 1<sup>st</sup>, 1987 between The Corporation Of the Township Of Billings (the "Landlord"), as lessor, and Kagawong Power Incorporated (the "Tenant"), as lessee, as amended by Amendment To Lease Agreement dated August 2012 between the Landlord and Tenant (collectively the "Lease") of the premises legally described as Part of the lands and premises legally described as Billings Concessions 15 and 16, Lots 27 and 28, and more particularly described as a site on the west bank of the Kagawong River on or near the juncture of Concessions 15 and 16 on the western edge of Lot 27 consisting of a structure and works designated as the "main dam" across the Kagawong River (the "Premises").

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The undersigned, the Landlord under the Lease, hereby certifies, confirms and acknowledges as follows:

1. The Landlord is the lessor as described in the Lease.
2. The Lease has been validly executed and delivered by the Landlord, as lessor, and constitutes the only and entire agreement between the Landlord and the Tenant respecting the Premises.
3. The effective date of the Lease was April 30, 1988.
4. The expiry date of the Lease is December 31<sup>st</sup>, 2029.
5. The Lease may be extended by the Tenant for a further extended term of one (1) year provided the Tenant delivers one (1) year prior notice to the Landlord.
6. The Lease is unmodified, in good standing, in full force and effect and represents a binding and enforceable agreement with respect to the Premises between the Landlord and the Tenant.
7. There is no unpaid payment payable or unfulfilled obligation outstanding by the Tenant to the Landlord pursuant to the Lease.
8. There are no disputes or defaults relating to the Lease as of the date hereof on the part of the Landlord or the Tenant. There is no default in respect of the Lease by the Landlord and the Landlord is not claiming any rent due and payable under the Lease nor any additional costs or expenses to be paid by the Tenant pursuant

to the Tenant's obligations under the Lease. There is no existing default in the Lease on the part of the Tenant.

9. There is no litigation or governmental or municipal proceedings commenced or pending or threatened against the Landlord with respect to the Premises.
10. The Landlord has not assigned the Lease nor to the knowledge of the Landlord, has the Tenant sublet any portion of the Premises. The Landlord has received no notice of any assignment of the Lease or the rents thereunder by the Tenant.

Dated the 22<sup>nd</sup> day of April, 2013.

THE CORPORATION OF THE TOWNSHIP OF BILLINGS

By: *Austin Hunt*

Name: Austin Hunt  
Title: Mayor

By: *K. McDonald*

Name: Kathy McDonald  
Title: Clerk Treasurer

We have the authority to bind The Corporation Of The Township Of Billings.

THIS AMENDING AGREEMENT made on the day of August, 2010

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF BILLINGS  
(hereinafter referred to as the "Lessor")

- and -

KAGAWONG POWER INCORPORATED  
(hereinafter referred to as the "Lessee")

AMENDMENT TO LEASE AGREEMENT

WHEREAS by Lease dated the 1<sup>st</sup> day of December, 1987 (the original Lease) attached hereto as Schedule "B" the Lessor granted to the Lessee a lease over the premises described in Schedule "A" attached hereto.

AND WHEREAS the said Lease had an effective date of April 30<sup>th</sup>, 1988.

AND WHEREAS pursuant to paragraph 5(e) of the Lease, the Lessee was granted the right to renew the Lease for an additional period of ten (10) years.

AND WHEREAS by letter dated September 12<sup>th</sup>, 2007, the Lessee provided notice to the Lessor that it wished to exercise the option for renewal pursuant to paragraphs 2(b) and 5(e) of the Lease.

AND WHEREAS the parties have subsequently agreed that the Lease would be extended.

AND WHEREAS the parties have further agreed to increase the Lease payments provided for in the Lease pursuant to paragraph 3 thereof.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of \$10.00 now paid by each party to the other, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the parties hereto agree as follows:

1. Paragraph 3 of the Lease is deleted and the following is substituted therefor:

"3. YIELDING AND PAYING THEREFOR unto the Lessor during the said term hereby granted, a sum of lawful money of Canada calculated as being 23.5% of the gross revenue of the Lessee actually received, said sums to be payable by consecutive monthly instalment of 23.5% of the gross revenue of the Lessee received in that month. Each instalment shall be paid within 2 weeks after the end of each month during the said term. All payments to be made hereunder shall be made to the Lessor through Post Office Box 34, in the Village of Kagawong or at such other place as the Lessor may advise the Lessee by notice in writing from time to time. The Lessee shall provide access to the

records of the Lessor at such times during the normal business hours of the Lessee as to allow the Lessee to verify the gross income of the Lessee from time to time. The rent payable hereunder shall be deemed to include all municipal taxes, rates and local improvement charges."

2. The amended payments prescribed pursuant to paragraph 3 of the Lease (as amended) shall commence on the 1<sup>st</sup> day of June, 2010.

3. Notwithstanding the notice provided to the Lessor by the Lessee dated September 12<sup>th</sup>, 2007 to extend the Lease to April 30<sup>th</sup>, 2018, the parties hereto agree that the Lease shall be and is hereby extended to December 31<sup>st</sup>, 2029.

4. The Lessee and the Lessor hereby covenant that they shall perform and observe all of the covenants, provisos and stipulations in the original Lease (except 5(e) of the original Lease which shall be amended *mutatis mutandis* to change the renewal period from ten (10) years to one (1) year and the notice period from three (3) months to one (1) year) as fully as if such covenants, provisos and stipulations had been repeated in full with such modifications only as are necessary to make them applicable to this Amending Agreement.

5. It is understood and agreed that the Lessee may register the Lease against the title to the Leased Premises and the Lessor agrees to execute any document required for such registration.

6. All of the other terms of the Lease shall continue in effect as modified by the terms of this Renewal and Amending Agreement.

IN WITNESS WHEREOF the parties hereto have duly executed this agreement under seal as of the day and year first above written.

SIGNED, SEALED AND DELIVERED  
In the presence of

) The Corporation of the Township  
) of Billings

)

) Per: \_\_\_\_\_

)

) Per: \_\_\_\_\_

)

) Per: \_\_\_\_\_

)

) Per: \_\_\_\_\_

) (We have authority to bind the Corporation)

) Kagawong Power Incorporated

)

) Per: \_\_\_\_\_

)

) Per: \_\_\_\_\_

) (We have authority to bind the Corporation)

original signed  
Sept. 7, 2010

SCHEDULE "A"Description:

Part of the lands and premises legally described as Billings Concessions 15 and 16, Lots 27 and 28, and more particularly described as a site on the west bank of the Kagawong River on or near the juncture of Concessions 15 and 16 on the western edge of Lot 27 consisting of a structure and works designated as the "main dam" across the Kagawong River.



DATED: December 1, 1987

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF BILLINGS

AND:

KAGAWONG POWER INCORPORATED

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INDENTURE

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McMASTER MEIGHEN  
Barristers and Solicitors  
300-30 Metcalfe Street  
Ottawa, Ontario  
K1P 5L4

Telephone NO. (613) 233-1146

(GORDON B. GREENWOOD)

THIS INDENTURE made the 1st of December,  
1987.

IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT,  
B E T W E E N:

THE CORPORATION OF THE TOWNSHIP OF  
BILLINGS

hereinafter called the "LESSOR".

OF THE FIRST PART

A N D:

KAGAWONG POWER INCORPORATED

hereinafter called the "LESSEE"

OF THE SECOND PART

DEMISED  
PREMISES

1. WITNESSETH that in consideration of the  
rents, covenants and agreements hereinafter reserved  
and contained on the part of the Lessee, to be paid,  
observed and performed, the Lessor has demised and  
leased, and by these presents doth demise and lease  
unto the Lessee all that messuage or tenement  
described in the Schedule "A" hereto annexed.

TERM

2.(a) TO HAVE AND TO HOLD the demised premises  
for and during the term of twenty (20) years, to be  
computed from a date commencing on the date an  
agreement is reached between the Lessee and Ontario  
Hydro, said date to be no later than April 30, 1988  
and from thenceforth next ensuing and fully to be  
completed and ended on a date twenty (20) years  
thereafter but no later than April 30, 2008.

2.(b) AFTER the aforementioned period, the term  
of this agreement may be extended for a further term  
or terms in accordance with subparagraph 5(e) herein.

2.(c) PROVIDED THAT the Lessee may terminate this agreement at any time on six (6) months notice to the Lessor in the event that Ontario Hydro notifies the Lessee that it does not intend to renew its agreement with the Lessee at which time the Lessee will peaceably surrender and yield up to the Lessor the said premises hereby demised, with the appurtenances, together with all the buildings and erections erected or made by the Lessee thereon, in good and substantial repair and condition.

2.(d) PROVIDED FURTHER THAT, should Ontario Hydro terminate its agreement with the Lessee, this agreement may, at the option of the Lessee, be terminated on one (1) month's written notice to the Lessor given within six months after such termination by Ontario Hydro.

RENT

3. YIELDING AND PAYING THEREFOR unto the Lessor during the said term hereby granted, a sum of lawful money of Canada calculated as being fifteen (15%) percent of the gross income of the Lessee actually received, said sums to be payable by consecutive monthly instalments of fifteen (15%) percent of the gross income of the Lessee received in that month. Each instalment shall be paid within two (2) weeks after the end of each month during the said term. All payments to be made hereunder shall be made to the Lessor through Post Office Box 34 in the Village of Kagawong or at such other place as the Lessor may advise the Lessee by notice in writing from time to time. The Lessee shall provide access to the records of the Lessor at such times during the normal business hours of the Lessee as to allow the

Lessee to verify the gross income of the Lessee from time to time. The rent payable hereunder shall be deemed to include all municipal taxes, rates and local improvement charges.

LESSEE'S  
COVENANTS

4. THE LESSEE COVENANTS WITH THE LESSOR as follows:

- (a) To pay rent.
- (b) To construct, (in accordance with architectural drawings mutually agreed upon) maintain and operate a power plant adjacent to the Kagawong River in Lot 28, Concession XV in the Township of Billings.
- (c) To construct and permit the Lessor exclusive use of a structure 400 sq. ft. in size for use as a fish hatchery, or such other reasonable use as the parties may agree upon, which structure shall be adjacent to the machine room of the power house.
- (d) To maintain the water level of Lake Kagawong within a range of 0.45m. (18 in.) below a datum of 213.11m. ( ft.) above mean sea level and to maintain a minimum water flow of 0.4 cubic metres per second at Bridal Veil Falls, whether or not there is a physical breakdown at the power plant. Further, should the water level fall below said range, the Lessor shall stop generating at the power plant and should the water level exceed the maximum range the Lessor shall spill water at such rate as to bring the water level back within the range.
- (e) To rebuild or replace the Municipal Water Supply Pipe at or near the concrete culverts under Main Street.
- (f) Not to interfere with or obstruct private water line intakes along the Kagawong River or the Canal.

Taxes and  
Utilities

(g) The Lessee will in each and every year during the said term pay and discharge, as they become due, all taxes, rates, charges, assessments, license fees, or similar charges as are charged by any Parliamentary, or other body other than the Municipality during the term hereby demised, and all charges for electrical current, gas, water and other rates in connection with any such business or occupancy, and will indemnify and keep indemnified the Lessor from and against payment of all loss, costs, charges and expenses occasioned by, or arising from any and every such tax, rate, charge, assessment and license fee.

Repair, etc.

(h) The Lessee, at its own expense, shall operate, maintain and keep the demised premises and every part thereof in good order and condition (both inside and outside), and promptly make all needed repairs and replacements (structural or otherwise) and without limiting the foregoing the Lessee shall keep the demised premises well painted, clean and in such condition as a careful owner would do, including without limitation, the buildings, structures, driveways, erections, equipment, roofs, foundations and appurtenances, water, sewer and gas connections, wiring, pipes and mains, and all other fixtures, machinery, facilities and equipment belonging to, or connected with the demised premises or any part thereof, or used in their operation. The Lessee shall, at its own expense, promptly comply with the requirements of every applicable statute, law and ordinance, and with every applicable lawful regulation or order, with respect to the condition, equipment, maintenance use or occupation of the demised premises and every part thereof, including the making of any alteration or addition in or to any

structure, upon, connected with or appurtenant to the demised premises or any part thereof, whether or not such alteration be structural or be required on account of any particular use to which the demised premises, or part thereof, may be put, and whether or not such requirement, regulation or order be of a kind now within the contemplation of the parties hereto; and shall comply with any applicable regulation or order of the Canadian Fire Underwriters' Association, or any body having similar functions, or of any Liability or Fire Insurance Company, by which the Lessor, or Lessee, may be insured. The Lessee assumes the sole responsibility for the condition, operation, maintenance and management of the demised premises, and the Lessor shall have no liability for damage to the property of the Lessee or of any sub-lessee, licensee or assignee of the Lessee which is or may at any time be on the demised premises or any account, or for any reason whatsoever.

Definition  
of demised  
premises

(i) Wherever in this lease the demised premises are referred to they shall be deemed to include any buildings, erections or improvements made in, over or upon the demised premises, including without limiting the foregoing, sewers, water and gas mains, wiring, pipes, paving, driveways, poles and lighting equipment.

View, Repair

(j) It shall be lawful for the Lessor and its agents at all reasonable times during the said term in the presence of a representative of the Lessee to enter the said demised premises to examine the condition thereof; and further that all want of reparation that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises, the said Lessee will within three (3) calendar months next after such notice well



and sufficiently repair and make good accordingly.

Assigning, etc.

(k) The Lessee shall not during the said term assign, sublet or transfer or procure the said demised premises or any part thereof to be assigned, sublet or transferred to any person or persons whomsoever without the consent in writing of the Lessor, first had and obtained, but such consent shall not be unreasonably withheld.

Leave and  
Repair

(l) The Lessee, will, at the expiration or sooner determination of the said term, peaceably surrender and yield up to the Lessor the said premises hereby demised, with the appurtenances, together with all the buildings and erections erected or made by the Lessee thereon, in good and substantial repair and condition.

Fixtures, etc.

(m) Provided that the Lessee will surrender and yield up all fixtures, in an "as is" condition at the expiration of the term.

Proviso for  
Re-Entry

(n) Provided, and it is hereby expressly agreed that if and whenever the rent hereby reserved, or any part thereof, shall be unpaid, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of the Lessee, then and in either of such cases the Lessor shall give the Lessee fifteen (15) days' notice specifying the default and the Lessee shall have a further period of fifteen (15) days after the expiry of such period of notice within which to remedy such default and if the Lessee does not remedy such default within the thirty (30) day period it shall be lawful for the Lessor at any time thereafter, into and upon the said demised premises or any part thereof, in the name of the whole to re-enter, and the same to have again, repossess and enjoy, as of the Lessor's former estate; anything herein contained to the contrary notwithstanding.

Insurance and  
Damage by  
Fire

(o) (i) During the whole of the said term, the Lessee will insure and keep insured the demised premises and every part thereof by insurance in the name of the Lessor, any mortgagee, the Lessee and Ontario Hydro, as their interests may appear to such minimum amounts (not, however, exceeding 100% of the new value, i.e., not taking into consideration any depreciation) and against loss or damage from fire, lightning, explosion, windstorm, hail, riot, sprinkler leakage (if applicable), smoke damage, aeroplane, hurricane and by such other insurable hazards as the Lessor may from time to time reasonably request. The Lessee covenants that nothing will be done or omitted to be done whereby any policy shall be cancelled or the premises rendered uninsurable. Premiums for such insurance shall be paid by the Lessee, and the Insurance policies shall be deposited with the Lessor. In the event that the Lessee shall fail to insure and keep insured, as herein provided, the Lessor shall be free to effect such insurance, and the cost of same shall be added to the rent hereby reserved and the amount thereof shall be payable with the next ensuing monthly instalment of rent. All such insurance shall be carried in a company, or companies, satisfactory to the Lessor.

(ii) In case of damage to, or total or partial destruction of the demised premises or any part thereof by fire, or otherwise, the Lessee shall give the Lessor prompt notice thereof.

(iii) The Lessee further covenants that it will maintain and keep in force during the term of this lease public liability insurance of \$1,000,000.00 in respect of the demised premises and property damage insurance in respect of damage to the property of persons other than the Lessee. Copies of

such policies shall be furnished to the Lessor.

(iv) In the event of partial or total destruction of the demised premises full rent, in accordance with paragraph 3, shall continue without abatement.

Indemnity

(p) The Lessee shall indemnify and save harmless the Lessor from any and all liabilities, damages, costs, claims, suits or actions growing out of

- (i) any breach, violation or non-performance of any covenants, condition or agreement in this lease set forth and contained on the part of the Lessee, to be fulfilled, kept, observed and performed;
- (ii) any damage to property occasioned by the use and occupation of the demised premises.
- (iii) any injury to person or persons, including death resulting at any time therefrom, occurring in, on, or about the demised lands and premises; and

5.

IT IS HEREBY DISTINCTLY UNDERSTOOD AND AGREED BY AND BETWEEN THE LESSOR AND LESSEE that:

Quiet  
Enjoyment

(a) The Lessor covenants with the Lessee for quiet enjoyment.

Waiver of  
Exemptions

(b) The Lessee further covenants and agrees with the Lessor that notwithstanding the provisions of any Act then in force to the contrary that none of the goods and chattels of the Lessee at any time upon the demised premises shall be exempt from levy by distress for rent in arrears, and the Lessee waives the benefit of all and every exemption that might have accrued to it under the provisions of any Act then in force to that effect, but for the above covenants.

Use

(c) The premises hereby demised shall be

used for the operation of an electrical generator and the sale of electrical power arising therefrom.

Interior  
Changes and  
Structural  
Changes

(d) The Lessee shall have the right to make changes in respect of the interior and structure of the demised premises, provided that the Lessee shall first obtain the prior written consent of the Lessor to any changes (which consent shall not be unreasonably withheld).

Right to  
Renew

(e) And in consideration of the Lessee entering into this lease the Lessor covenants with the Lessee that if the Lessee duly pays the rent and performs all and every the covenants, provisos and agreements herein contained and on the part of the Lessee to be paid and performed in accordance with the provisions herein contained, the Lessor will, upon the request in writing by the Lessee given at least three (3) months prior to the expiration of the term hereby granted, grant to the Lessee a renewal lease of the said premises for a further term of ten (10) years at the same rent that is set out in this lease. The said renewal lease shall contain the same covenants, provisos and agreements as are contained in this lease except the length of the term and this covenant for renewal. And if such renewal lease shall be granted and if during such renewed term, the Lessee duly pays the rent and performs all and every of the covenants, provisos and agreements herein contained and on the part of the Lessee to be paid and performed in accordance with the provisions herein contained, this lease shall be renewed for a further renewal term of one (1) year and from year to year provided that either party may, with at least one year's written notice to the other, terminate this renewal term and this lease upon the expiration of any renewal term thereafter. The said further renewal lease shall contain the same covenants,

provisos and agreements as are contained in this lease except the length of term.

Heat

(f) The Lessee shall heat all buildings situate upon the demised premises in order that the said buildings shall not be damaged by frost.

Signs

(g) No outside signs shall be placed upon the demised premises other than signs necessary for the public safety and signs giving the name and business of the occupant, provided that no such signs shall be placed upon the demised premises without the prior written consent of the Lessor and provided further that the Lessor shall have the right within three months from the termination of the said term to place upon the demised premises a notice, of reasonable dimensions and reasonably placed so as not to interfere with the business of the Lessee, stating that the demised premises are for sale or to let and further provided that the Lessee will not remove such notice or permit the same to be removed.

Condoning,  
Etc.

(h) Any condoning, excusing or overlooking by the Lessor of any default, breach or non-observance by the Lessee at any time or times in respect of any covenant, agreement, proviso or condition herein contained shall not operate as a waiver of the Lessor's rights hereunder in respect of any subsequent default, breach or non-observance nor as to defeat or affect in any way the rights of the Lessor herein in respect of any such subsequent default, breach or non-observance.

Overholding

(i) If at the expiration of this lease the Lessee shall with the consent of the Lessor hold over for any reason, the tenancy of the Lessee thereafter shall be from month to month only, and shall be subject to all terms and conditions of this lease, except as to duration and without any right of renewal, in the absence of written agreement to the

contrary.

Notices, etc.

(j) Any notice to be given pursuant to this lease shall be sufficiently given if served personally, or mailed by prepaid registered mail and in the case of the Lessor addressed to it at Post Office Box 34 in the Village of Kagawong, Ontario and in the case of the Lessee addressed to it at 922 Aylmer Road, Aylmer, Quebec, J9H 5T8. The date of the receipt of any such notice given by mailing as aforesaid shall be deemed conclusively to be the four (4) business days after such mailing. Either party may at any time give notice in writing to the other of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified shall be deemed to be the address of such party for the giving of notices thereafter.

(k) To the best of its ability, the Lessee shall ensure that the building and other improvements to be constructed on the demised premises shall be free of defects of workmanship and materials.

(l) The building to be constructed on the demised premises shall comply with the existing requirements of every applicable statute, law and ordinance, and with every existing applicable lawful regulation or order, with respect to the condition, equipment or maintenance of the demised premises.

(m) The covenant of the Lessee contained in sub-paragraph 4(d) to maintain water levels is not applicable in the event of exceptional weather conditions including, but not restricted to, drought or flood.

(n) The operation of the dam will be in the sole discretion of the Lessee.

(o) The Lessor shall lease the following



equipment to the Lessee at no cost:

(i) One Francis Turbine,  
manufactured by S. Morgan & Smith, bearing serial  
number 8188;

(ii) One 0.9m. (3 foot nominal  
diameter) gate valve; and

(iii) One conical pipe reducer,  
1.5m. (5.0ft.) to 0.9m. (3.0 ft.) for connection of  
penstock to turbine;

said equipment to be relocated to the new  
power plant at the expense of the Lessee and the  
Lessee shall repair any damage done to the building  
from which the equipment is removed.

(p) The Lessor shall grant or consent to  
such rights, privileges and grants of easement as  
Ontario Hydro may require from the Lessee.

Addition to  
Building

6. IF AT ANY TIME during the term of this  
lease or any renewal thereof the Lessee gives notice  
in writing to the Lessor that it requires for its own  
use an addition to be built on to the present  
building located on the said lands, then, provided  
such an addition would be permitted under the  
by-laws of the Corporation of the Township of  
Billings, the Lessee shall build the said addition to  
the said building on such terms as the Lessor and the  
Lessee might agree and any addition so built, shall  
form part of the said lands and premises and title  
thereto shall be vested in the Lessor.

Marginal  
Notes

7. THE LESSOR and Lessee agree that the  
marginal notes in this lease form no part of this  
lease and shall be deemed to have been inserted for  
convenience of reference only.

Definitions

8. UNLESS THE CONTRARY intention appears the  
words "Lessor" and "Lessee" wherein they appear in

this lease shall mean respectively "Lessor, its successors and/or assigns" and "Lessee, its successors and/or assigns".

IN WITNESS WHEREOF the parties hereto have caused their hands and seals to be affixed hereto.

The Corporation of the  
Township of Billings

*Arthur Z. Leary*  
( )  
*Arthur Pader*  
( Clerk-Treasurer )

Kagawong Power Incorporated

*E. M. J.*  
( SECRETARY-TREASURER )  
( )

SCHEDULE A

(a) The structure and works designated as the "Main Dam" across the Kagawong River and situate in Lot 28, Concession XV of the said Township of Billings where the Kagawong River intersects the Trunk Road leading from Little Current (Highway 540), together with all the appurtenances and fittings thereto such as stoplogs and checks.

(b)(i) a right-of-way for an open cut canal across and through the sixty-six foot (66') Marine Reservation on the north bank of the Kagawong River; and

(ii) a right-of-way fifty feet (50') wide in and through part of said Lot 28, Concession XV of the said Township of Billings on which right-of-way an open cut canal has been cut (being a continuation of the canal referred to in subclause 1.(b)(i) above) the centre line of which right-of-way is as follows:

COMMENCING at the intersection of the centre line of the said right-of-way with the north side of the Kagawong River, the said intersection being fifteen hundred and ninety-six (1596) feet and six (6) inches more or less measured on a course of north twenty-five (25) degrees and twenty-one (21) minutes west from the south east angle of the said lot; THENCE north twelve (12) degrees and forty-seven (47) minutes west along the said centre line four hundred and eighty-five (485) feet and three (3) inches more or less to the south limit of the Trunk Road sixty-six (66) feet wide; THENCE continuing north twelve (12) degrees and forty-seven (47) minutes west on the production of the said centre line, two hundred and seventy-four (274) feet more or less from the north limit of the said Trunk Road to the beginning of a twenty-four (24) degree and twenty-eight (28) minute curve to the right, the radius of which curve is two hundred and thirty-six (236) feet; THENCE along the centre line of the said curve one hundred and seventy-three (173) feet to the end thereof; THENCE north twenty-nine (29) degrees and twenty-two (22) minutes east two hundred and thirty (230) feet more or less to the west limit of the Trunk Road.

The right-of-way described in this subclause 1.(b)(ii) above is the right-of-way "Thirdly" described in a certain Deed of Land from Manitoulin Pulp Company Limited to The Hydro Electric Power Commission of Ontario registered in the Registry Office for the District of Manitoulin on November 5, 1946 in the Book for the Township of Billings as No. 982.

(c) All the easements, rights, powers, privileges and immunities to which the Lessor is now entitled, to convey the waters of Lake Kagawong and the Kagawong River, or a portion thereof, under, across and over those portions of the highways hereunder particularly described.

(i) Across a portion of the Trunk Road leading to Gore Bay (Highway 540) being:

All that portion of the Trunk Road in said Lot Twenty-eight (28) in the Fifteenth Concession of the Township of Billings described as follows: COMMENCING where the centre line of the right-of-way of the channel cut for the Manitoulin Pulp Company across the said Lot Twenty-eight (28) in the Fifteenth Concession intersects the south limit of the said Trunk Road, the said intersection being distant twenty hundred and seventy-two (2072) feet and five (5) inches more or less measured on a course of north twenty-two (22) degrees and twenty-six (26) minutes west from the south east angle of the said lot; THENCE north twelve (12) degrees and forty-seven (47) minutes west along the production of the centre line of said right-of-way sixty-eight (68) feet and eight (8) inches to the north limit of the said Trunk Road and embracing on each side of the said centre line a width of twenty-five (25) feet.

(ii) Across a portion of the Trunk Road leading to the Village of Kagawong being:

All that portion of the Trunk Road leading to the Government Wharf and the Village at the shore of Mudge Bay at Kagawong described as follows: ALL AND SINGULAR, that certain portion of the said Trunk Road in Lot Number Twenty-eight (28) in the Fifteenth Concession of the Township of Billings, the said portion being described as follows: COMMENCING where the east end of the centre line of the right-of-way of the channel cut for the Manitoulin Pulp Company across the said Lot Number Twenty-Eight (28) in the Fifteenth Concession intersects the west limit of the Trunk Road, the said intersection being two thousand seven hundred and thirty-one (2731) feet more or less measured on a course of north fifteen (15) degrees and seventeen (17) minutes west from the south east angle of the said Lot Number Twenty-eight (28) in the Fifteenth Concession; THENCE north twenty-nine (29) degrees and twenty-two (22) minutes east, along the production of the said centre line of right-of-way seventy-eight (78) feet and six (6) inches to the east limit of the said Trunk Road.

The above rights and interests intended to be reconveyed in their entirety to the Corporation are those described in its By-Law No. 286 dated September 29, 1925 relating to Manitoulin Pulp Company Limited and being Exhibit "A" to Deposit 23 dated January 5, 1926. The rights and interests above set out are also those "Fourthly" described in the aforesaid Deed of Land registered November 5, 1946 as No. 982.

(d) The control works as they now exist and are situate in said Lot 28, Concession XV of the said Township and located on the south side of the Trunk Road leading to Gore Bay (Highway 540).

(e) The intake works also located in Lot 28, Concession XV of the said Township on the south side of the Trunk Road leading to the Village of Kagawong.

(f) The steel penstock five feet (5') in diameter situate in the aforesaid Lot 28, Concession XV and extending from the concrete culvert described in subclause 1.(c)(ii) and terminating on lands owned by the Lessor in the said lot at the point where the said steel penstock had been connected with a wood stave pipe also having a diameter of five feet (5').

(g) A strip of land one hundred feet (100') in width for a penstock, a powerhouse and all appurtenances necessary for operation of a powerplant is also hereby leased in said lot twenty-eight (28) in the Fifteenth Concession of the Township of Billings.

The said strip of land to commence where the centre line of the penstock described under (in? f ) intersects the east limit of the Trunk Road leading to the Village of Kagawong and traverse on an approximate course of north twenty-nine (29) degrees east, across and through to said lot twenty-eight (28) and Kagawong River to a point where the centre line of said strip of land intersects the East limit of Kagawong River.

(h) A right-of-way twenty feet (20') in width, for an overhead powerline, the said right-of-way to commence at the powerhouse to be constructed on land described under (in? g ) and traverse north and easterly across and through lot twenty-seven (27) and twenty-eight (28) of the Fifteenth Concession, Township of Billings, to a point where the said powerline shall be connected to Ontario Hydro's powerline.

The location of lands described under (in? g and h ) shall be more specifically determined hereafter by the Lessee's engineers.

(i) All the easements, rights, powers, privileges and immunities to which the Lessor is now entitled or may hereafter be entitled in respect of the development of water power on the Kagawong River and Kagawong Lake.

(j) The right at all times hereafter of ingress, egress and regress in, to and over the lands hereby described and any part of lot twenty-seven (27) and twenty-eight (28) in the Fifteen Concession, Township of Billings now owned by the Lessor, for the Lessee, his heirs, executors,

administrators and assigns, his and their employees and workmen with machinery as may be required for the purpose of access to land hereby described, in constructing, relaying and repairing all works associated with the operation of the powerplant.