TO: Bert Meunier, Chief Administrative Officer

FROM: Bert Meunier, Chief Administrative Officer  
J.A. Keech, President and C.E.O., Kingston Electricity Distribution Limited

PREPARED BY: N. Taylor, Vice President, Utilities Kingston  
R. Murphy, Manager, Finance, Utilities Kingston

DATE OF MEETING: 2004-11-16

SUBJECT: Utility Corporate Structure

RECOMMENDATION TO COUNCIL:

It is recommended that:

1) Council authorize and direct Kingston Electricity Distribution Limited to take all necessary steps to activate 1425447 Ontario Limited, including but not limited to, an amendment to the Articles of Incorporation to provide for the issuance of an additional class of special shares to the City of Kingston which will be transferred to 1425447 Ontario Limited in exchange for 120 common shares of 1425447 Ontario Limited.

2) Council approve the Declaration of the Shareholder of 1425447 Ontario Limited attached to this report

3) Council appoint Mr. Harvey Rosen, Mayor, Mr. Bert Meunier, Chief Administrative Officer and Mr. James Keech, President and CEO of Utilities Kingston as the first Directors of 1425447 Ontario Limited

4) Council authorize the first Directors to take all necessary steps to activate 1425447 Ontario Limited including the issuance of all required classes of share capital

5) Council authorize Kingston Electricity Distribution Limited and 1425447 Ontario Limited to take all necessary steps to transfer 1425445 Ontario Limited (operating as Utilities Kingston) to 1425447 Ontario Limited

6) That all transactions come in to effect at the close of business December 31, 2004

ORIGIN/PURPOSE:

In the letter to management following the 2003 audit, KPMG, our audit firm has recommended that we review the corporate relationships particularly due to the fact that there is an exemption on the transfer tax until March 2005.
The need to review the relationships between the existing utility corporations is a result of a requirement of the Ontario Energy Board (OEB) that Kingston Electricity Distribution Limited must file audited financial statements annually.

In 2002 there was a change to Generally Accepted Accounting Principles (GAAP), in that from 2003 forward all financial statements of a parent company must be consolidated with those of its subsidiary companies. Since Kingston Electricity Distribution Limited is a parent company this means that it must report consolidated financial statements to the OEB.

As a result the OEB receives information regarding competitive aspects of Utilities Kingston business to which it would not otherwise have access. At the Special meeting of the Shareholder held on June 22, 2004 the following recommendation was approved:

*It is recommended that staff undertake a review of the options to restructure Kingston Electricity Distribution Limited and report back to the Board and the Shareholder.*

This report summarizes the result of the review that has been undertaken.

**OPTIONS/DISCUSSION:**

**Background**

As a result of the *Energy Competition Act, 1998* the City of Kingston resolved to incorporate three (3) companies. Two were incorporated under section 142 of the *Electricity Act*, Kingston Electricity Distribution Limited, then known as “Wires Co” and 1425447 Ontario Limited, then identified as a future “competitive” company. Kingston Electricity Distribution Limited in turn incorporated an affiliate then known as the “Services Co” that subsequently became Utilities Kingston.

Currently, the City of Kingston owns 120 common shares of Kingston Electricity Distribution Limited with an original value of $12,380,619. In turn Kingston Electricity Distribution Limited owns 120 common shares of Utilities Kingston, with an original book value of $2. The company known as 1425447 Ontario Limited has remained inactive.

**Current Structure**
Analysis of the Options

As a result of the current transfer tax holiday on the sale of electrical assets we initiated the review by looking at the sale of assets. However, all these options require the approval of the OEB, would require a new distribution license and would affect banking and other agreements that are in place. All options related to the sale of assets have been rejected.

There are however two options that can be considered with respect to the sale of shares in the companies. These two options are outlined below.

Option 1

A review of the relevant sections of the Electricity Act and the Ontario Energy Board Act (see Appendix A) has lead to the conclusion that the City of Kingston has the authority necessary to incorporate both a distribution company and a generation company and to hold them directly. There is a section of the Municipal Act that permits municipalities to form corporations as prescribed by Regulation 168/03. This regulation does not apply to 1425447 Ontario Limited.

Under this scenario, the inactive company, 1425447 Ontario Limited can be activated as a generation company that in particular focuses on the development of renewable energy projects (such of the biogas project proposed for Ravensview). As a distributor, Kingston Electricity Distribution Limited cannot perform this generation function directly and the municipality is also prohibited from generating electricity by Section 144 of the Electricity Act.

To complete the transaction Kingston Electricity Distribution Limited will sell its shares of Utilities Kingston to 1425447 Ontario Limited. The structure would then be as below:

![Diagram]

City of Kingston

<table>
<thead>
<tr>
<th>Kingston Electricity Distribution Limited</th>
<th>1425447 Ontario Limited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owns the electrical assets and the OEB distribution</td>
<td>Utilities Kingston</td>
</tr>
</tbody>
</table>
In this scenario the objective of having non-consolidated financial statements for Kingston Electricity Distribution Limited is achieved for 2005. Kingston Electricity Distribution Limited remains the licensed distribution company and all agreements between Kingston Electricity Distribution Limited and third parties are unaffected. No OEB approval is required as there is no change of ownership for Kingston Electricity Distribution Limited. There is no partial accounting year provided that the transfer takes place at the close of business on December 31, 2004. We have obtained external advice with respect to the *Excise Tax Act*, *Income Tax Act* and the *Electricity Act* with respect to Payments in Lieu of Income Tax and the steps contemplated will minimize any risk to the City of Kingston and its subsidiaries. The City would be able to directly entertain the development of small renewable generation business opportunities, fiscal year and forward. The distribution company would be regulated by the OEB and the generation company would be licensed by the OEB but would not be regulated by the OEB.

**Option 2**

In this scenario, 1425447 Ontario Limited could issue shares to the City of Kingston in exchange for the common shares of Kingston Electricity Distribution Limited. Kingston Electricity Distribution Limited could then sell its common shares of Utilities Kingston to 1425447 Ontario Limited. In this case 1425447 Ontario Limited becomes the holding company with share ownership of both Kingston Electricity Distribution Limited and Utilities Kingston.

![Diagram](diagram.png)

In this scenario the objective of having non-consolidated financial statements for Kingston Electricity Distribution Limited is achieved for 2005. Kingston Electricity Distribution Limited remains the licensed distribution company and all agreements between Kingston Electricity Distribution Limited and third parties are unaffected.

OEB approval is required as there is a change of ownership for Kingston Electricity Distribution Limited. It is unlikely that this approval could be obtained by the close of business on December 31, 2004, creating a partial accounting year. A review of possible tax issues has been completed and there are no concerns.
Conclusion

Based on the above analysis, it is concluded that Option 1 is the preferred option because it addresses the concerns of KPMG and puts the municipality in a position to respond quickly to generation opportunities.

The necessary Shareholder Declaration has been attached to the report. The Shareholder Declaration is modeled after the existing Declaration for Kingston Electricity Distribution Limited and Utilities Kingston and has been amended to reflect the new business and the current practices of Utilities Kingston. Further, it is recommended that the declaration with respect to Utilities Kingston be amended to replace one position of Director, currently named as the Vice President of Utilities Kingston with a second member of the public.

EXISTING POLICY/BY-LAW:
Not Applicable

LINK TO STRATEGIC PLAN:
Not Applicable

FINANCIAL CONSIDERATIONS:
Not Applicable

CONTACTS:
- Alan McLeod, Senior Legal Counsel (546-4291 Ext. 1237)
- Denis Leger, Commissioner, Department of Corporate Services and Treasurer, Kingston Electricity Distribution Limited (546-4291, Ext. 1328)
- Gerard Hunt, Manager, Finance (546-4291, Ext. 2205)

DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:
- Office of the Chief Administrative Officer
- Utilities Kingston

NOTICE PROVISIONS:
Not Applicable
APPENDICES:
Appendix A - relevant legislation
Appendix B - Shareholder Declaration of 1425447 Ontario Limited

J.A. Keech
President & C.E.O.
Kingston Electricity Distribution Limited

Bert Meunier
Chief Administrative Officer
Electricity Act

Incorporation of municipal electricity businesses

142. (1) One or more municipal corporations may cause a corporation to be incorporated under the Business Corporations Act for the purpose of generating, transmitting, distributing or retailing electricity. 1998, c. 15, Sched. A, s. 142 (1).

Ontario Energy Board Act:

Restriction on business activity

71. Subject to subsection 70 (9), a transmitter or distributor, other than a public utility commission or a municipal corporation, shall not, except through an affiliate or affiliates, carry on any business activity other than transmitting or distributing electricity. 1998, c. 15, Sched. B, s. 71.

Municipal Act

Powers to establish corporations

Regulations re: corporations

203. (1) The Lieutenant Governor in Council may make regulations governing the following activities by a municipality:

1. The incorporation of prescribed corporations.
2. The nomination or authorization of a person to act as an incorporator, director, officer or member of a prescribed corporation.
3. The exercise of any power as a member of a prescribed corporation.
4. The acquisition of an interest in, or guarantee or exercise of any power as a holder of, a prescribed security of a prescribed corporation. 2001, c. 25, s. 203 (1).

Scope

(2) Without limiting subsection (1) a regulation under this section may,

(a) prescribe and define corporations to which this section applies;
(b) prescribe and govern the powers of municipalities in relation to the prescribed corporations, including prescribing the purposes for which the powers may be exercised, imposing conditions and limitations on the powers and prescribing rules in relation to the use of the powers;
(c) govern the prescribed corporations;
(d) prescribe the purposes for which prescribed corporations may carry on business;
(e) impose conditions and rules applicable to prescribed corporations and to the directors and officers of prescribed corporations;
(f) prescribe securities for the purpose of paragraph 4 of subsection (1) and prescribe rules that apply to those securities;
(g) provide that prescribed corporations are or are not local boards or, if the definition of “municipality” in any Act includes local boards, are or are not local boards that fall within that definition, or are or are not operating public utilities for the purpose of any Act or any specified provision of any Act, with such modifications as may be prescribed;
(h) exempt a municipality from the application of sections 106 and 268 with respect to prescribed corporations;
(i) provide for any transitional matters related to the exercise by a municipality or prescribed corporations of powers under this section. 2001, c. 25, s. 203 (2); 2002, c. 17, Sched. A, s. 39.

Conflicts

(3) If there is a conflict between a regulation under this section and a provision of any Act or regulation under any Act, other than this section, the regulation under this section prevails. 2001, c. 25, s. 203 (3).

Exceptions

(4) A regulation under this section does not apply to a corporation incorporated under section 142 of the Electricity Act, 1998, section 13 of the Housing Development Act, sections 108 and 109 of this Act, a local housing corporation under Part III of the Social Housing Reform Act, 2000 or any other corporation a municipality is expressly authorized to incorporate, establish or control under any Act. 2001, c. 25, s. 203 (4).
APPENDIX B

SHAREHOLDER DECLARATION

OF

THE CORPORATION OF THE CITY OF KINGSTON
(THE SHAREHOLDER)

RESPECTING 1425447 ONTARIO LIMITED

WHEREAS the Shareholder has caused a corporation to be incorporated pursuant to section 142 of the Electricity Act, 1998, (the Corporation);

AND WHEREAS the Corporation has authorized capital of an unlimited number of one class of shares designated as Class A shares;

AND WHEREAS the Shareholder has subscribed for and is the legal and beneficial owner of all the shares issued by the Corporation (the Shares).

AND WHEREAS the Shareholder wishes to make a declaration for the purpose of establishing and defining rights and obligations with respect to the organization and operation of the affairs of the Corporation, the ownership, disposition and transfer of shares in the capital of the Corporation and such other matters as may hereinafter be referred to (the Declaration).

AND WHEREAS the Shareholder intends that this Declaration should constitute a unanimous Shareholder Agreement pursuant to section 108 of the Business Corporations Act.

AND WHEREAS the Corporation will be carrying on an electricity generation business pursuant to the Electricity Act, 1998 or such other business operations as are permitted from time to time on behalf of the Corporation of the City of Kingston;

NOW THEREFORE THE SHAREHOLDER DECLARES THAT:
ARTICLE 1

DEFINITIONS

1.1 In this Declaration, the following terms shall have the meanings as set out below unless the context requires otherwise:

"Accountants" means the Accountants of the Corporation, as may be appointed from time to time in accordance with the provisions of this Declaration.

"Act" means the Business Corporations Act, R.S.O. 1990, c. B.16 as from time to time amended or succeeded.

"Articles" means the articles (as defined in the Act) of the Corporation as amended or restated from time to time.

"Auditors" means the auditors of the Corporation, as may be appointed from time to time in accordance with the provisions of this Declaration.

"Authorized Capital," means the numbers and classes of shares that the Corporation is authorized to issue by virtue of the Articles.

"Bank" means the financial institution where the Corporation maintains its accounts, as determined from time to time, in accordance with the provisions of this Declaration.

"Board" means the board of directors of the Corporation, as may be elected from time to time, in accordance with the provisions of this Declaration.

"By-laws" means the by-laws of the Corporation, as amended from time to time in accordance with the provisions of this Declaration and the Act.

"Corporation" means 1425447 Ontario Limited.

"Director" means a person occupying the position of director of the Corporation, and "Directors" means every Director.

"Shareholder” ” means the Corporation of the City of Kingston, and any other person who acquires shares in accordance with the provisions of this Declaration.

"Shares" means:

- shares of the Corporation;
- rights, warrants, options, and other instruments issued by the Corporation which entitle the holder to acquire from the Corporation shares of the Corporation; and
- instruments which are convertible or exchangeable, either under all the circumstances or under some circumstances, into any of the foregoing.

"Transfer" includes any sale, exchange, transfer, assignment, gift, pledge, encumbrance, hypothecation, alienation, transmission or other transaction, whether voluntary, involuntary or by operation of law, by which the legal or beneficial ownership is transferred from one person to another.

"Utilities Kingston” means 1425445 Ontario Limited, the affiliate of the Corporation.
ARTICLE II
THE BUSINESS OF THE CORPORATION

2.1 The Shareholder hereby declares that the Corporation shall carry on the following businesses on behalf of the Shareholder:
(a) the generation of electricity pursuant to the *Electricity Act*, 1998 and regulations thereunder;
(b) the retail sale of electricity to the public;
(c) through its affiliates, the businesses authorized by the Corporation to be carried on by affiliates;
(d) or such other business operations as are permitted from time to time.

2.2 Unless the Shareholder decides otherwise, the Corporation shall not, either directly or indirectly, carry on any business other than the businesses described above, or a business which is incidental to or developed out of the conduct of any business which the Corporation may carry on in accordance with this section.

ARTICLE III
BOARD OF DIRECTORS

3.1 Number of Directors and Vacancies. Unless the Shareholder otherwise agrees, the Corporation shall have five directors appointed by the Shareholder. A vacancy among the directors shall be filled by the Shareholder. The directors of the Corporation shall be as follows:
- The Mayor of the Shareholder
- The Chief Administrative Officer of the Shareholder
- The President and Chief Executive Officer of Utilities Kingston
- Two residents of the City of Kingston to be appointed by the Shareholder.

3.2 Quorum. A quorum for any meeting shall be 3 of the directors, provided that at least 2 of the directors present are either the Mayor of the Shareholder, the Chief Administrative Officer of the Shareholder or the President and Chief Executive Officer of Utilities Kingston. All of the decisions of the Directors shall be by a majority of the Directors present and voting at a duly constituted meeting of Directors. The Chair of meetings of Directors shall not have a second or casting vote.
3.3 **Officers.** Unless the Shareholder otherwise agrees, the Corporation shall have the following offices:

- Chair
- President and Chief Executive Officer
- Secretary
- Treasurer

The officers of the Corporation shall be appointed by the Directors and approved by the Shareholder.

**ARTICLE IV**

**DIRECTORS’ POWERS AND MATTERS REQUIRING SHAREHOLDER APPROVAL**

4.1 **Management.** Subject to the provisions of this Declaration, the Directors shall manage or supervise the business and affairs of the Corporation.

4.2.1 **Shareholder Approval.** Unless the Shareholder otherwise agrees or directs:

(a) the registered office of the Corporation shall be located at Kingston, Ontario;
(b) the financial year of the Corporation shall terminate on the 31st day of December each year;

4.2.2 **Shareholder Approval.** Without the approval of the Shareholder, the Corporation shall not:

a) amend the Corporation's Articles or by-laws;
b) make any material change in the Corporation's business operations;
c) make any fundamental change to the Corporation, including dissolution, liquidation, amalgamation or winding-up;
d) incur any capital or operating expenditure which is not authorized in the capital or operating budget of the Corporation which budget shall have been approved by the Shareholder;
e) Acquire, by purchase, lease or otherwise, assets required for the purposes of the business of the Corporation, except in the ordinary course of business.
f) Give, sell, convey, transfer, assign, mortgage, lease, pledge, or otherwise dispose of or encumber any assets of the Corporation, except in the ordinary course of business.
g) Enter into any agreement with an affiliated or non-affiliated third party for the acquisition or delivery of services, except in the ordinary course of business,
h) Enter into any sharing arrangement for any undertaking or enterprise with a non-affiliated third party, including without limitation, any joint venture, partnership, leasing or agency arrangement.
5.1 **Proper Books of Account.** Proper books of account shall be kept for the Corporation and all entries shall be made of all matters and transactions that are usually written or entered therein. The Shareholder shall at all times have full and complete access to such books of account.

5.2 **Banking.** The Corporation shall maintain one or more accounts at the bank as the Shareholder may, from time to time determine. All bank accounts shall be kept in the name of the Corporation. All monies received from time to time for the account of the Corporation shall be paid immediately into such accounts or bank accounts of the Shareholder, provided the Shareholder credits to corporation for all such amounts paid in to the City's banks.

5.3 **Financing.** All additional funds required for the purposes of the Corporation shall be obtained to the greatest extent possible through loans made by the Corporation from the Shareholder, the bank or another lender or lenders. The decision as to whether such funds are required, from whom such funds will be borrowed and the terms and conditions of such borrowing shall be determined by the Directors, subject to the provisions of this Declaration.
5.4 Shareholder Advances

(a) To the extent funds derived from bank financing are insufficient (as determined by the Directors) to finance the operational requirements of the business of the Corporation, the Shareholder agrees to make available to the Corporation such funds as may be required by the Corporation from time to time to satisfy the deficiency.

(b) Unless otherwise agreed by the Shareholder, the advance shall be upon such terms and conditions as shall be agreed to by the Shareholder and the Corporation, and in default of such agreement, shall be upon the following terms and conditions:

(i) each Shareholder Advance shall be evidenced by a promissory note in the principal amount advanced by the Shareholder (a "Promissory Note");

(ii) there shall be a separate series of Promissory Notes issued by the Corporation upon the occasion of each advance of funds to the Corporation by the Shareholder; and

(iii) Promissory Notes shall have the following attributes:

(a) interest shall be computed from the date when funds are advanced to the Corporation by the Shareholder, at a rate of interest at least equal to the prime lending rate charged from time to time by the Shareholder's banker, the rate to be determined by the Shareholder;

(b) interest and principal on each Promissory Note shall be payable at least semi-annually, as determined by the Shareholder's Commissioner of Finance and based on the Shareholder's cash flow requirements.
ARTICLE VI

MANAGEMENT MATTERS

6.1 **Chair.** The Mayor of the Shareholder shall be the Chair of the Corporation, and in such capacity shall preside at all meetings of the Shareholder and the Directors, report to the annual general meeting of the Shareholder concerning the operations of the Corporation, and have such other duties and authorities as may be designated from time to time by the directors, subject to the provisions of this Declaration.

6.2 **Other Officers.** The Corporation shall retain the President and Chief Executive Officer of Utilities Kingston in the capacity of President and Chief Executive Officer, and in such capacity, such person shall manage and be responsible for the day to day affairs of the Corporation and shall have such other duties and authority as may be designated from time to time by the Directors, subject to the provisions of this Declaration. Similarly, the Corporation shall retain the Vice-President of Utilities Kingston in the capacity of Secretary, and the Manager, Finance, Utilities Kingston in the capacity of Treasurer.

6.3 **Management Obligations.** During the terms of their appointment pursuant to this Declaration, the Officers shall:

(a) devote such time and attention to the business of the Corporation as may be required by the Directors and the Shareholder; and

(b) exercise their best efforts, to manage, promote, develop and extend the businesses of the Corporation.

6.4 **Execution of Instruments.** All cheques, bills, notes, drafts or other instruments or documents for the purposes of binding the Corporation in connection with the accounts and transactions with the bank, and all deeds, transfers, assignments, agreements, contracts or obligations for and on behalf of and in the name of the Corporation or relating to the property of the Corporation shall require the signatures of the Secretary or the Treasurer of the Corporation together with the President and Chief Executive Officer or one Director.
ARTICLE VII

GENERAL MATTERS RELATING TO THE HOLDING
OF SHARES AND PERMITTED TRANSFERS

7.1 The Shareholder shall subscribe for all initial shares issued by the Corporation that are voting securities.

7.2 General Prohibition on Issue of Further Shares. The Corporation shall not issue any shares and shall not grant an option or other right to purchase or subscribe for shares in the capital of the Corporation without the consent of the Shareholder.

ARTICLE VIII

MATTERS RELATING TO THE DISPOSITION AND ACQUISITION OF SHARES

8.1 Permitted Transfers. Notwithstanding any provision hereof, the Shareholder (the "Selling Shareholder") may from time to time transfer any or all of the Shares beneficially owned by it to another person (the "Purchasing Shareholder") at such price and on such terms and conditions as may be agreed by the Selling Shareholder and the Purchasing Shareholder.

ARTICLE IX

VALUATION OF SHARES

9.1 Determination of Fair Value. For the purposes of this Declaration, the valuation of the Shares in the capital of the Corporation should reflect, as far as possible, the fair value of the Shares. The Corporation's accountant or such other party as may be agreed to by the Shareholder shall, from time to time, at the request of the Directors or the Shareholder, determine the fair value of the Shares in the capital of the Corporation at the appropriate time using generally accepted valuation principles.
ARTICLE X

GENERAL PROVISIONS

10.1 **Endorsement on Share Certificates.** All share certificates issued by the Corporation shall include the following endorsement:

"The transfer of shares of the Corporation represented by this share certificate is restricted pursuant to the terms of a Shareholder Declaration."

10.2 **Notice Provisions**

Any notice to be given pursuant to this Declaration may be given to a Shareholder at the address appearing in the books of the Corporation by prepaid registered mail, telecopier or telegram or personal delivery and shall be deemed to have been received, in the case of prepaid registered mail, three days after mailing, and in the case of personal delivery, when delivered, and in the case of telecopier or telegram one day following transmission.

10.3 **Invalidity of Provisions**

The invalidity of any provision of this Declaration shall not affect the validity of any other provision.

10.4 **Conflict with By-laws and Articles** In the event of any conflict between the provisions of this Declaration and the provisions of the By-Laws or Articles, the provisions of this Declaration shall prevail.

10.5 **Conflict with Applicable Legislation.** In the event of any conflict between the provisions of this Declaration and the provisions of the Electricity Act, 1998, and the Ontario Energy Board Act, 1998, and regulations thereunder, or any other applicable provincial or federal legislation, the provisions of such legislation shall prevail.

10.6 **Entire Declaration** This Declaration constitutes the entire Declaration of the Shareholder respecting the Corporation, and no supplement, amendment, waiver or termination of this Declaration shall be binding unless executed in writing by the Shareholder.
10.7 **Number.** In this Declaration, any reference in the singular shall include the plural, and vice versa, as the circumstances may require.

10.8 **Time of the Essence.** In this Declaration, time shall be of the essence.

10.9 **Governing Law** This Declaration shall be governed by and construed in accordance with the laws of the Province of Ontario

IN WITNESS WHEREOF the Shareholder has executed this Declaration this day of , 2004.

The Corporation of the
City of Kingston

______________________________
Mayor Harvey Rosen, Chair

______________________________
City Clerk
SHAREHOLDER DECLARATION OF

1425447 ONTARIO LIMITED
(THE SHAREHOLDER)

REGARDING 1425445 ONTARIO LIMITED (UTILITIES KINGSTON)

WHEREAS the Shareholder has been incorporated for the purpose of generating electricity on behalf of the Corporation of the City of Kingston pursuant to section 142 of the Electricity Act, 1998;

AND WHEREAS the Corporation has authorized capital of an unlimited number of one class of shares designated as Class A shares;

AND WHEREAS the Shareholder has subscribed for and is the legal and beneficial owner of all the shares issued by the Corporation (the Shares).

AND WHEREAS the Shareholder wishes to make a declaration for the purpose of establishing and defining rights and obligations with respect to the organization and operation of the affairs of the Corporation, the ownership, disposition and transfer of shares in the capital of the Corporation and such other matters as may hereinafter be referred to (the Declaration).

AND WHEREAS the Shareholder intends that this Declaration should constitute a unanimous Shareholder Agreement pursuant to section 108 of the Business Corporations Act.

NOW THEREFORE THE SHAREHOLDER DECLARES THAT:
ARTICLE 1

DEFINITIONS

1.1 In this Declaration, the following terms shall have the meanings as set out below unless the context requires otherwise:

"Accountants" means the Accountants of the Corporation, as may be appointed from time to time in accordance with the provisions of this Declaration.

"Act" means the Business Corporations Act, R.S.O. 1990, c. B.16 as from time to time amended or succeeded.

"Articles" means the articles (as defined in the Act) of the Corporation as amended or restated from time to time.

"Auditors" means the auditors of the Corporation, as may be appointed from time to time in accordance with the provisions of this Declaration.

"Authorized Capital," means the numbers and classes of shares that the Corporation is authorized to issue by virtue of the Articles.

"Bank" means the financial institution where the Corporation maintains its accounts, as determined from time to time in accordance with the provisions of this Declaration.

"Board" means the board of directors of the Corporation, as may be elected from time to time in accordance with the provisions of this Declaration.

"By-laws" means the by-laws of the Corporation, as amended from time to time in accordance with the provisions of this Declaration and the Act.

"City" means the Corporation of the City of Kingston.

"Corporation" means 1425445 Ontario Limited.

"Director" means a person occupying the position of director of the Corporation, and "Directors" means every Director.

"Shareholder" means 1425447 Ontario Limited, the corporation caused to be incorporated by the City pursuant to section 142 of the Electricity Act, 1998 and any other person who acquires shares in accordance with the provisions of this Declaration.

"Shares" means: shares of the Corporation; rights, warrants, options, and other instruments issued by the Corporation which entitle the holder to acquire from the Corporation shares of the Corporation; and
instruments which are convertible or exchangeable, either under all the circumstances or under some circumstances, into any of the foregoing.

"Transfer" includes any sale, exchange, transfer, assignment, gift, pledge, encumbrance, hypothecation, alienation, transmission or other transaction, whether voluntary, involuntary or by operation of law, by which the legal or beneficial ownership is transferred from one person to another.
ARTICLE II

THE BUSINESS OF THE CORPORATION

2.2 The Shareholder hereby declares that the Corporation shall carry on the following businesses:

a) the provision of management services to 1425447 Ontario Limited respecting the generation and sale of electricity and

b) the provision of management services to Kingston Electricity Distribution Limited respecting the distribution and sale of electricity; and

c) the provision of management services to the City respecting gas and water public utilities and sewer service, and

d) the provision of telecommunications service.

2.2 Unless the City and the Shareholder decide otherwise, the Corporation shall not, either directly or indirectly, carry on any business other than the businesses described above, or a business which is incidental to or developed out of the conduct of any business which the Corporation may carry on in accordance with this section.
ARTICLE III

BOARD OF DIRECTORS

3.1 Number of Directors and Vacancies. Unless the City and the Shareholder otherwise agree, the Corporation shall have five directors appointed by the Shareholder with the approval of the City as follows:

The Chief Administrative Officer of the City
The President and Chief Executive Officer of the Corporation
Two residents of the City of Kingston to be nominated by the City and approved by the Shareholder
A person nominated by the International Brotherhood of Electrical Workers, Local 636, and, with the consent of the City, approved by the Shareholder

3.2 Vacancy Among the Directors. A vacancy among the directors shall be filled by the Shareholder, with the approval of the City, in accordance with the requirements of Article 3.1 of this declaration.

3.3 Quorum. A quorum for any meeting shall be 3 of the directors, provided that at least 2 of the directors present are either the Chief Administrative Officer of the City, and the President and Chief Executive Officer of the Corporation. All of the decisions of the Directors shall be by a majority of the directors present and voting at a duly constituted meeting of Directors. The Chair of meetings of Directors shall not have a second or casting vote.

3.4 Officers. Unless the City and the Shareholder otherwise agree, the Corporation shall have the following offices:

President and Chief Executive Officer
Vice-President
Secretary
Treasurer

The officers of the Corporation shall be appointed by the Directors with the approval of the City.

A vacancy among the officers shall be filled by the Directors, with the approval of the City.
ARTICLE IV

DIRECTORS' POWERS AND MATTERS REQUIRING CITY AND SHAREHOLDER APPROVAL

4.1 Management. Subject to the provisions of this Declaration, the Directors shall manage or supervise the business and affairs of the Corporation.

4.2 City and Shareholder Approval. Unless the City and the Shareholder otherwise agree or direct:

a) the registered office of the Corporation shall be located at Kingston, Ontario;

b) the financial year of the Corporation shall terminate on the 31st day of December each year;

c) Upon the dissolution, liquidation or winding up of the Corporation, the net assets of the Corporation shall be distributed only to the City and/or the Shareholder, as the City may direct.

4.2.1 City and Shareholder Approval Without the approval of the City and the Shareholder, the Corporation shall not:

a) amend the Corporation's Articles or by-laws;

b) make any material change in the Corporation's business operations;

c) make any fundamental change to the Corporation, including dissolution, liquidation, amalgamation or winding-up;

d) Incur any capital or operating expenditure which is not authorized in an approved management agreement.

e) Acquire, by purchase, lease or otherwise, assets required for the purposes of the Corporation's telecommunications service businesses, except in the ordinary course of
f) Give, sell, convey, transfer, assign, mortgage, lease, pledge, or otherwise dispose of or encumber any of the Corporation's assets used for the purposes of the telecommunications service businesses, except in the ordinary course of business.

g) Enter into any agreement with an affiliated or non-affiliated third party for the acquisition or delivery of services, except in the ordinary course of business.

h) Enter into any sharing arrangement for any undertaking or enterprise with a non-affiliated third party, including without limitation, any joint venture, partnership, leasing or agency arrangement.

i) Assume, undertake or make any commitment for debt, provided that the corporation may, in the ordinary course of business, borrow funds for operating purposes up to an amount equal to fifty per cent (50%) of its budgeted annual revenues.

j) Commence or undertake a new business activity or discontinue an existing business activity.

k) Declare dividends, whether payable in money, property, by the issue of fully paid shares of the Corporation, or options or rights to acquire fully paid shares of the Corporation.

4.2.2 City Approval. Without the approval of the City, the Corporation shall not:

(a) Incur any capital or operating expenditure which is not authorized for telecommunications services,

(b) Acquire, by purchase, lease or otherwise, assets required for the purposes of the City's gas and water public utilities, and sewer services, except in the ordinary course of business.

(c) Give, sell, convey, transfer, assign, mortgage, lease, pledge, or otherwise dispose of or encumber any of the City's assets used for the purposes of its gas and water public utilities, and sewer services, except in the ordinary course of business.
ARTICLE V

OPERATION AND FINANCING

5.1 **Proper Books of Account**  Proper books of account shall be kept for the Corporation and all entries shall be made of all matters and transactions that are usually written or entered therein. The Shareholder shall at all times have full and complete access to such books of account.

5.2 **Banking**. The Corporation shall maintain one or more accounts at the bank as the Shareholder may, from time to time, determine. All bank accounts shall be kept in the name of the Corporation. All monies received from time to time for the account of the Corporation shall be paid immediately into such accounts, or for those amounts received which are not related to the Fibre business, may be paid into bank accounts of the City of Kingston, provided the City credits the Corporation for all such amounts paid into the City's banks.

5.3 **Financing**. All additional funds required for the purposes of the Corporation shall be obtained to the greatest extent possible through loans made by the Corporation from the City, the bank or another lender or lenders. The decision as to whether such funds are required, from whom such funds will be borrowed and the terms and conditions of such borrowing shall be determined by the Directors, subject to the provisions of this Declaration.

5.4 **Advances**

(a) To the extent funds derived from bank financing are insufficient (as determined by the directors) to finance the operational requirements of the business of the Corporation, the City agrees to make available to the Corporation such funds as may be required by the Corporation from time to time to satisfy the deficiency.
(b) Unless otherwise agreed by the City, the advance shall be upon such terms and conditions as shall be agreed to by the City and the Corporation, and in default of such agreement, shall be upon the following terms and conditions:

i. each Advance shall be evidenced by a promissory note in the principal amount advanced by the City (a "Promissory Note");

ii. there shall be a separate series of Promissory Notes issued by the Corporation upon the occasion of each advance of funds to the Corporation by the City; and

iii. Promissory Notes shall have the following attributes:

iv. interest shall be computed from the date when funds are advanced to the Corporation by the City, at a rate of interest at least equal to prime lending rate charged from time to time by the City's banker, the rate to be determined by the City;

v. interest and principal on each Promissory Note shall be payable at least semi-annually, as determined by the City's Commissioner of Finance and based on the City's cash flow requirements.
ARTICLE VI
MANAGEMENT MATTERS

6.1 Officers. The officers of the Corporation shall be appointed by the Directors with the approval of the City. The Officers shall manage and be responsible for the day to day affairs of the Corporation and shall have such other duties and authority as may be designated from time to time by the Directors, subject to the provisions of this Declaration.

6.2 Management Obligations. During the terms of their appointments pursuant to this Declaration, the Officers shall:

(c) devote such time and attention to the business of the Corporation as may be required by the Directors, the City and the Shareholder; and

(d) exercise their best efforts, to manage, promote, develop and extend the businesses of the Corporation.

6.3 Execution of Instruments. All cheques, bills, notes, drafts or other instruments or documents for the purposes of binding the Corporation in connection with the accounts and transactions with the bank, and all deeds, transfers, assignments, agreements, contracts or obligations for and on behalf of and in the name of the Corporation or relating to the property of the Corporation shall require the signatures of the Secretary or the Treasurer of the Corporation, together with the President and Chief Executive Officer or one Director.
ARTICLE VII
GENERAL MATTERS RELATING TO THE HOLDING
OF SHARES AND PERMITTED TRANSFERS

7.1 The Shareholder shall subscribe for all initial shares issued by the Corporation that are voting securities.

7.2 General Prohibition on Issue of Further Shares The Corporation shall not issue any shares and shall not grant an option or other right to purchase or subscribe for shares in the capital of the Corporation without the consent of the City and the Shareholder.

ARTICLE VIII
MATTERS RELATING TO THE DISPOSITION AND ACQUISITION OF SHARES

8.1 Permitted Transfers Notwithstanding any provision hereof, the Shareholder (the "Selling Shareholder") may, with the consent of the City, from time to time transfer any or all of the Shares beneficially owned by it to another person (the "Purchasing Shareholder") at such price and on such terms and conditions as may be agreed by the Selling Shareholder and the Purchasing Shareholder.

ARTICLE IX
VALUATION OF SHARES

9.1 Determination of Fair Value For the purposes of this Declaration, the valuation of the Shares in the capital of the Corporation should reflect, as far as possible, the fair value of the Shares. The Corporation's accountant or such other party as may be agreed to by the Shareholder shall, from time to time, at the request of the directors or the City or the Shareholder, determine the fair value of the Shares in the capital of the Corporation at the appropriate time using generally accepted valuation principles.
ARTICLE X
GENERAL PROVISIONS

10.1 **Endorsement on Share Certificates.** All share certificates issued by the Corporation shall include the following endorsement:

"The transfer of shares of the Corporation represented by this share certificate is restricted pursuant to the terms of a Shareholder Declaration."

10.2 **Notice Provisions**

Any notice to be given pursuant to this Declaration may be given to a Shareholder at the address appearing in the books of the Corporation by prepaid registered mail, teletypewriter or telegram or personal delivery and shall be deemed to have been received, in the case of prepaid registered mail, three days after mailing, and in the case of personal delivery, when delivered, and in the case of teletypewriter or telegram one day following transmission.

10.3 **Invalidity of Provisions**

The invalidity of any provision of this Declaration shall not affect the validity of any other provision.

10.4 **Conflict with By-laws and Articles** In the event of any conflict between the provisions of this Declaration and the provisions of the By-Laws or Articles, the provisions of this Declaration shall prevail.

10.5 **Conflict with Applicable Legislation.** In the event of any conflict between the provisions of this Declaration and the provisions of the Electricity Act, 1998, and the Ontario Energy Board Act, 1998, and regulations thereunder, or any other applicable provincial or federal legislation, the provisions of such legislation shall prevail.
10.6 **Entire Declaration** This Declaration constitutes the entire Declaration of the Shareholder respecting the Corporation, and no supplement, amendment, waiver or termination of this Declaration shall be binding without the written consent of the City, and unless executed in writing by the Shareholder.

10.7 **Number.** In this Declaration, any reference in the singular shall include the plural, and vice versa, as the circumstances may require.

10.8 **Time of the Essence.** In this Declaration, time shall be of the essence.

10.9 **Governing Law** This Declaration shall be governed by and construed in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF the Shareholders executed this Declaration this day of , 2004.

1425447 Ontario Limited

____________________________________
Mayor Harvey Rosen, Chair

____________________________________
Nancy Taylor, Secretary
TO: Bert Meunier, Chief Administrative Officer
FROM: Mark Segsworth, Commissioner of Operations
DATE OF MEETING: November 9, 2004
SUBJECT: Hangar #3 Negotiations with the Kingston Athletic Club

RECOMMENDATION TO COUNCIL:
That negotiations with the Athletic Club of Kingston for the lease of Hangar No. 3 at Kingston (Norman Rogers) Airport be discontinued due to the substantial structural repair estimates, and further;

That Hangar No. 3 be vacated permanently by November 30, 2004.

ORIGIN/PURPOSE:
At the regular meeting of September 7, 2004, Council approved the following motion:

“That a bylaw be presented to Council to declare Hangar #3 at the Kingston (Norman Rogers) Airport to be surplus to need.”

And at the same meeting, the following Motion was also approved:

“That staff be directed to enter into negotiations with the Athletic Club group for the lease of Hangar No. 3.”

OPTIONS/DISCUSION:
Several meetings have been held with representatives of the Athletic Club of Kingston with a view to establishing a lease for Hangar No. 3 at the Airport.

The ACK (Athletic Club of Kingston) is proposing a four year lease at $30,000 per year for the entire term of the lease. All major repairs including structural, roof and exterior to be the responsibility of the City. Staff have attempted to quantify the structural deficiencies associated with Hangar No. 3. A major impediment to this task is the fact that the roof framing is concealed by ceiling batt insulation which arches between and covers the bottom chord of the timber trusses. In 2002, a limited random inspection of four locations was carried out where the ceiling material was removed.

The engineering firm that was retained in 2002 was requested to undertake the structural analysis. Based on their findings from 2002, the total estimated costs to complete the structural repairs would be approximately $200,000. This figure includes allowances for the removal and replacement of existing ceiling material, inspection and actual repairs.
As a result of this substantial estimate, it is felt that no additional funds should be expended to determine other associated costs unless Council is prepared to allocate the funds required for structural repairs. These associated costs would include, but not be limited to mechanical, electrical or roofing requirements. It must be reiterated that the cost associated with the ongoing leasing of Hangar No. 3 is allocated to the Airport and as such currently contribute negatively to the Airport’s financial performance.

The ultimate disposition of Hangar No. 3 will be outlined in a future report to Council that will review all City properties at the airport.

**EXISTING POLICY/BY-LAW:**
N/A

**LINK TO STRATEGIC PLAN:**
N/A

**FINANCIAL CONSIDERATIONS:**
The known structural repairs of $50,000 annually ($200,000 for four years) exceeds the proposed rent of $30,000 annually. Even without knowing what the additional associated costs are, or employing the concepts of full cost accounting, the initial cost to the City of providing Hangar No. 3 is $20,000/year.

**CONTACTS:**
Mark Segsworth, Commissioner of Operations, 546-4291 x 1345

**DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:**
Barclay Mayhew, Manager of Properties, 389 6404
Stephen Robins, P. Eng., McCormick Rankin Corporation 546-3555

**NOTICE PROVISIONS:**

**APPENDICES:**

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Mark Segsworth, P. Eng.
Commissioner of Operations

Bert Meunier
Chief Administrative Officer