

## APPENDIX No. 2

Toronto and Niagara Power Company to say, and they will necessarily fight in the Privy Council, that section 373 of the new Act, being inconsistent with the special Act itself, does not apply, and therefore their powers are unimpaired the same as they were under section 247.

Mr. NESBITT: For the future?

Mr. KILMER: For the future.

Mr. MACDONELL: You have them up to date.

Mr. KILMER: And what is further, the old section 247 did apply to companies incorporated by special Act, and notwithstanding that, the Privy Council decided that it did govern the Toronto and Niagara Power Company, which was incorporated by special Act, does section 373 go one step further? It may be that the language is stronger, the interpretation clause has been somewhat changed, and it may accomplish the result as regards the Toronto and Niagara Power Company as this committee intend that it shall. But they did intend in 1906 to accomplish that very result in section 247 that they are trying to accomplish here, and they failed there. In my opinion it is gravely open to question if this won't fail in exactly the same way. Now, we ask to have that situation met beyond all question, and let us have a new section embodying the same principles, but do not have it a lineal descendant of the old section 280.

Mr. NESBITT: Is your new section retroactive?

Mr. KILMER: Yes, for this reason, in the proposal. It was intended in 1906 to put this very curb on these very companies including the Toronto and Niagara Power Company, and Parliament thought it had accomplished it, and the Court of Appeal thought that Parliament had accomplished it, and so decided. But the Privy Council decided that Parliament had not. We only ask this to be retroactive to the date when this Parliament passed what they thought was legislation restricting these powers, and the reason of that comes particularly from an example in the city of Toronto. There the existing system of the Toronto Electric Light Company is with an expiring franchise, and their rights on the streets remain. Now, they have threatened publicly, and may have done so by this time, to transfer all their poles, wires, underground conduits, and so on, to the Toronto and Niagara Power Company, which is under the same management and owned by the same people; and the Toronto and Niagara Power Company will exercise in perpetuity the very rights which the Toronto Electric Light Company are now giving up under their contract, and against their covenant to do so. That is a concrete example, and it is actually being threatened publicly by the manager of that company.

Mr. CARVELL: What rights have you as to the franchise of the Toronto and Niagara Power Company?

Mr. KILMER: None.

Mr. CARVELL: What about that of the Toronto Street Railway?

Mr. KILMER: It expires in 1921.

Hon. Mr. COCHRANE: As I understand it, you think that the Toronto Electric Light Company have made a transfer now?

Mr. KILMER: Yes.

Hon. Mr. COCHRANE: And it is your wish to shut them off?

Mr. KILMER: To shut them off.

Hon. Mr. COCHRANE: I think the city of Toronto has an agreement with the Toronto Electric Light Company to the effect that they have a chance to sell to the city?

Mr. KILMER: Yes, sir, that is the position. That has been publicly stated by the department. The three clauses of this Bill then do not change the old principal at