



October 25, 2011

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4
Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: Applicant Submission (EB-2011-0291)

This proceeding was initiated by EnWin Utilities Ltd. ("EnWin") by way of an application filed with the Ontario Energy Board (the "Board") on August 8, 2011.

On October 13, 2011, the Board provided EnWin with a copy of a letter from one of EnWin's ratepayers and advised that the Board would address the jurisdictional issue raised in that letter in its Decision.

On October 18, 2011, Board Staff filed its submission. The Board Staff submission did not address the jurisdiction of the Board issue raised in the ratepayer letter.

Background

EnWin is a licenced electricity distribution company that provides a suite of management and operational services to the water and waste water utilities in the City of Windsor, in accordance with Ontario Regulation 161/99. Just as billing is an operational function required by the electricity utility, it is an operational function required by the other utilities. Through a shared services model that operates in accordance with the Board's affiliate cost allocation transfer pricing rules, the utilities are able to reduce overall costs and avoid cross-subsidization. In keeping with the Board's ratemaking methodology, all utility ratepayers benefit from this Managed Services Agreement.

Jurisdiction

The first argument in the letter is that the Board lacks jurisdiction "in matters of billings, etc. for water and/or waste water" and therefore the Board may not temporarily exempt EnWin from its licence conditions that impact EnWin's billing of water and/or waste water. The second argument is that EnWin is subject to certain provisions of the *Collections Act* and that the effect of that Act prevents the granting of the order sought by EnWin.

In response to the first argument, the Board clearly has jurisdiction over distribution licences (*Ontario Energy Board Act, 1998*, ss. 57, 70), the Distribution System Code (*Ontario Energy Board Act, 1998*, ss. 70, 70.1, 70.2), and granting licence exemptions from the Distribution System Code (*Ontario Energy Board Act, 1998*, s. 70.1). But for the regulatory restrictions imposed in statute, regulation and code, distributors would have the full range of freedoms that attach to companies incorporated under the Ontario *Business Corporations Act*, including unregulated latitude to engage in billing activities. It is through the legislative and regulatory scheme over which the Board has statutory authority that the Legislature, Government and Board limit these business activities, including prioritization of partial payments as between billed electricity and other billed utility services.

In short, the Board has the authority to issue the Distribution System Code and prescribe partial payment prioritization parameters, and it also has the authority to grant exemptions from those parameters.

In response to the second argument, EnWin rejects the argument that the *Collection Agencies Act* is applicable to EnWin. The letter writer offered a definition from the Act, but no statutory analysis, case law precedent or other legal argument to establish this novel purported nexus.

Regardless, that legislation is not relevant to this proceeding. This proceeding deals with the Board's jurisdiction to grant exemptions under the *OEB Act* and the reasonableness of EnWin's request for such an exemption.

Of course, if the letter writer were correct and billing for other utility services is beyond the Board's jurisdiction, then the "billing for other services" provisions of the Distribution System Code would be void and EnWin would not require the exemption in the first place.

EnWin submits that the Board does have jurisdiction to regulate EnWin's billing practices by code and to grant code exemptions as part of the regulatory framework.

Distribution System Code

On July 2, 2010, the Board issued a Notice of Amendments to Codes in relation to EB-2007-0722. Among these were rules dealing with the allocation of partial payments between electricity and non-electricity charges set out in sections 2.6.6 to 2.6.6.3 of the Distribution System Code ("DSC"). Those rules were further amended in a Notice of Amendments to Codes in relation to the same proceeding on March 30, 2011. Those sections, as they currently read, are replicated below:

- 2.6.6 Where a bill issued to a residential customer includes charges for goods or services other than electricity charges, a distributor shall allocate any

payment made by the customer first to the electricity charges and then, if funds are remaining, to the charges for other goods or services.

- 2.6.6.1 Section 2.6.6 does not apply to existing joint billing agreements until the renewal date of such agreements or 2 years, whichever comes earlier, and thereafter the provisions of section 2.6.6 will be deemed applicable.
- 2.6.6.2A Where payment on account of a bill referred to in section 2.6.6 or 2.6.6.1 is sufficient to cover electricity charges, security deposits and billing adjustments, the distributor shall not impose late payment charges, issue a disconnection notice or disconnect electricity supply.
- 2.6.6.2B Subject to section 2.6.6.1, where payment on account of a bill referred to in section 2.6.6 or 2.6.6.1 is not sufficient to cover electricity charges, security deposits and billing adjustments, the distributor shall allocate the payments in the following order: electricity charges as defined in section 2.6.6.3, payments towards an arrears payment agreement, outstanding security deposit, under-billing adjustments and non-electricity charges.
- 2.6.6.3 For the purpose of this section, “electricity charges” are:
- (a) charges that appear under the sub-headings “Electricity”, “Delivery”, “Regulatory Charges” and “Debt Retirement Charge” as described in Ontario Regulation 275/04 (Information on Invoices to Low-volume Consumers of Electricity) made under the Act, and all applicable taxes on those charges;
 - (b) where applicable, charges prescribed by regulations under section 25.33 of the Electricity Act, 1998 and all applicable taxes on those charges; and
 - (c) Board-approved specific service charges, including late payment charges, and such other charges and applicable taxes associated with the consumption of electricity as may be required by law to be included on the bill issued to the customer or as may be designated by the Board for the purposes of this section, but not including security deposits or amounts owed by a customer pursuant to an arrears payment agreement or a billing adjustment.

These provisions in the DSC were the first to require specific prioritization of partial payments where the local distribution company (“LDC”) performs billing for another organization. Prior to the coming into force of these provisions, there was no prescription in statute, regulation or code to govern how partial payments are to be prioritized by the LDC.

EnWin’s Current and Proposed Ongoing Billing Practice

On approximately 70% of the “EnWin bills”, there are 3 bill segments: electricity, water and waste water. In the case of the remaining 30%, only one or two of the utility services are billed. On the consolidated bills, there are subtotals for each of these utility services. The amount owing is the total of the subtotals as well as any adjustments to the customer account (e.g. billing corrections). That is, the amount owed is the sum of all billed utility services.

The customer receives the one bill for a single invoiced amount. The invoiced amount has a single due date and, if there is no payment or insufficient payment, the single invoiced amount is initially handled through an internal credit and collections process. The consolidated billing, credit and collections processes are highly automated within EnWin's CIS. This streamlined approach to billing and related activities provides savings to EnWin, the Windsor Utilities Commission (water utility), the City of Windsor (waste water utility) and ratepayers of all those utilities.¹

When a partial payment is received, the payment is automatically allocated among the bill segments according to factors such as the age of the outstanding amount (i.e. payments are applied to older unpaid charges prior to newer unpaid charges). This programming is deeply embedded and entangled within the CIS. As the Board Staff submission appreciated, EnWin's preferred approach is to set up the new provisions of the DSC within its new CIS as opposed to engaging in a risky and expensive effort to customize the current CIS.

Board Staff Caveat

While EnWin appreciates Board Staff not opposing the temporary exemption sought, EnWin is concerned about the caveat proposed by Board Staff in respect of EnWin's disconnection process. The practical implications of the Board Staff proposal are set out below by way of an example.

Example

A customer uses \$150.00 of electricity, \$40.00 of water and \$60.00 of waste water services. The customer is billed for \$250.00. Aside from the \$250.00 invoice, this customer does not have any arrears, adjustments, etc. The CIS will expect to receive \$250.00 and based on the amounts owed for each bill segment, it is ready to allocate:

- 60% (\$150.00/\$250.00) to electricity,
- 16% (\$40.00/\$250.00) to water, and
- 24% (\$60.00/\$250.00) to waste water.

The customer makes a partial payment of \$80. The CIS applies the allocation formula:

- \$48.00 (60%) to electricity
- \$12.80 (16%) to water, and
- \$19.20 (24%) to waste water.

Under the Board Staff caveat, EnWin's Notice of Disconnection and related warnings during that stage of the process would stipulate that the customer make payment of \$102.00 (\$150.00-\$48.00) or risk disconnection for non-payment of electricity.

¹ For example, one envelope, one stamp, one payment per month to be processed.

The customer makes a payment of \$102.00. Because the outstanding debt is all of the same age, the CIS allocation formula does not change. The CIS allocates the \$102.00 payment as follows:

- \$61.20 (60%) to electricity
- \$16.32 (16%) to water, and
- \$24.48 (24%) to waste water.

Despite the Board Staff intention to get all electricity charges paid off first during the disconnection process, that does not happen based on the automated functionality of the CIS. There is still \$40.80 of electricity charges outstanding (\$150.00-\$48.00-\$61.20). As a result, the disconnection process is not terminated.

This problem with the Board Staff approach arises because it presumes that partial payments can be prioritized during disconnection process differently than it is prioritized during the initial invoicing process. In the case of EnWin's current CIS, that is incorrect.

In fact, the Board Staff Caveat would create even greater problems because it would require two different partial payment priority calculations operating at different times in the life of an outstanding amount: 1) the "grandfathered" initial payment prioritization and 2) the "Caveat" post-disconnection notice payment prioritization.

EnWin's intention in asking for this exemption is to avoid risk and cost; the Board Staff Caveat would create risk and cost of a degree even greater than if EnWin were required to comply with the DSC without an exemption.

The Board Staff Caveat would also create enormous confusion for ratepayers. Presently, utility customers who receive an EnWin bill are accustomed to one bill, one bottom line amount owing, one payment required to satisfy their obligations to pay for utility services, and one credit and collections process if sufficient payment is not received within the prescribed periods. This streamlined understood approach would become extremely convoluted if the Board Staff Caveat was put into place in the current CIS.

The Board Staff Caveat would bifurcate the process once the bill due date had passed. A customer would now receive two disconnection notices (electricity and water separately) with two distinct payment amounts. Two disconnection notices stemming from a single unpaid bill? Customers may think the notices were duplicates and discard one of them. Customers may think there is an error. But even if a customer gets past all that, they will be under the mistaken assumption that payment of one of those sums will prevent disconnection of the associated utility service. As set out in the calculation above, that would not be true.

This major change in billing policy would be costly to explain and very frustrating for many ratepayers who simply want to know how much is owed, when it is due and what happens if there is failure to pay. For customers who are grappling with personal financial hardship, this would have a confounding rather than ameliorating impact. From a practical perspective, the customer is faced with losing two vital services: electricity and water. These are not situations where EnWin wants to be talking about the well-established local arrangement being replaced with a new bifurcated process (which will be changing again with the new CIS), which is why this time there were two Notices and both need to be kept and paid to preserve both vital utility services. To paraphrase the *Charter of Rights and Freedoms*, that outcome would bring the administration of utility services into disrepute.

Going a step further, if the Board were to order EnWin to not only include the Board Staff Caveat but also undertake the CIS programming changes so that the CIS allocation methodology changed part way through the billing/payment process, in addition to the incremental costs and risks, the issues for the utility customers still would not be abated. Customers would still need multiple Notices of Disconnection requiring separate payments for electricity and water/waste water.

In short, the Board Staff Caveat, with or without CIS programming changes, will adversely affect the billing experience for the electricity ratepayer who either makes no payment or makes a partial payment. The customer currently has a “single utility experience” when it comes to billing, credit and collections, and fundamental confusion would ensue if this experience was bifurcated in this way, at this time, and for these reasons. EnWin suggests that Board Staff’s submission is an attempt to protect the customer, but for the reasons above, the Board Staff Caveat would have the impact of severely complicating and adversely affecting the customer.

Compliance with the Electricity Act

Board Staff’s submission notes that EnWin’s current and proposed process during the exemption period must comply with *Electricity Act* s. 31. EnWin agrees that it must and confirms that it does.

Section 31 permits a distributor to disconnect electricity if the amount due is overdue. It is in the DSC, especially s. 4.2, where the Board sets out the detailed rules for disconnection for non-payment.

Board Staff makes the claim on page 4 of its submission that:

“the amount required to be included by EnWin in a notice of electricity supply disconnection to a customer... for which payment must be made to avoid disconnection, must represent the overdue amount relating to electricity services **only** and must not include

amounts owing for water or waste water services.” (emphasis added)

Board Staff provided no citation or support for the claim and EnWin has not found it in statute, regulation or code.

EnWin complies with s. 31 and with s. 4.2. EnWin only disconnects electricity for non-payment if there are electricity amounts owing.

For the reasons set out in the example above, based on the payment allocation methodology embedded in its current CIS, it would be incorrect and disingenuous for EnWin to issue a Notice of Disconnection or related materials and only identify electricity amounts owing. As noted, this would encourage a payment that, once allocated, would be insufficient to cover electricity amounts owed. Since electricity amounts would still be owed, the electricity ratepayer would still be headed towards disconnection of electricity.

The Board has turned its mind to this issue. The Board established through s. 2.6.6 that, going forward, electricity service shall take primacy in the LDC billing processes. Consequently, there will be changes to Notices of Disconnection and other materials and other processes that are tied to payment processing. It is the very fact that so many processes turn on payment processing that EnWin is before the Board with this application.

Of course, once EnWin implements the new CIS it will comply with the partial payment prioritization rules of s. 2.6.6. Those allocation rules will result in the allocation of 100% of partial payments to owing electricity amounts and any remainder to water and waste water amounts owing from the same invoice. As a result, if there is \$102.00 owing for electricity, disconnection of electricity will be avoidable by paying \$102.00 because of the primacy of electricity. It is \$102.00 that would be listed on the Notice of Disconnection because the payment of that sum will eliminate the potential of disconnection of electricity.²

However, until s. 2.6.6 takes effect, EnWin is not precluded from allocating payments in the way it does it today.

Multiple Utility Services Billing Model

It is worth noting that the complexity that is being addressed here arises as an implication of a multiple utility services billing model that is different from the electricity-only LDCs. The multiple utility services billing model leads to efficiencies that lower the total cost of utility services for ratepayers; so, there are definitely trade-

² An interesting side effect will be that customers who would prefer to keep the water running will need to pay 100% of the electricity amounts owing before having any payments applied to water. The amended DSC clearly stipulates a payment prioritization rather than empowering the customer to choose the allocation.


offs for the ratepayer. Based on the approximately 700,000 multiple utility services bills that EnWin issues annually, EnWin's ratepayers seem far more concerned that EnWin find ways to keep rates down as compared to concerns about single utility bills and associated payment/non-payment processes.

To date, the Legislature, Government and Board have permitted LDCs to provide billing and other services to water and waste water utilities. To make those cost-saving arrangements work and still comply with the governing rules, the mechanics work differently than they do at electricity-only LDCs. EnWin's current and temporarily ongoing methodology is compliant, cost-saving and understood by its ratepayers. Respectfully, the Board should weigh these factors above the pan-provincial operational commonality that seems to be the basis for the Board Staff position.

For these reasons, as well as those cited in the Application, EnWin requests that the Board grant the proposed temporary exemption and not impose the Board Staff Caveat.

Respectfully,

ENWIN Utilities Ltd.



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