

Tel: 519-419-1515
Fax: 877-702-8993

R. J. Potomski

Email: rjp@potomski.com

P.O. Box 21117,
Windsor, Ontario
N9B 3T4

November 2, 2011

Secretary,
for the Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Toronto, Ontario, Canada
M4P 1E4
Email: boardsec@ontarioenergyboard.ca

Re: OEB # 2011-0291

Dear Board Members,

I have received and read the letter of Andrew J. Sasso, dated October 25, 2011, that was sent to the Ontario Energy Board.

On reading Mr. Sasso's letter, I feel I need to clarify my position as it seems to be misunderstood. It is my position that the Ontario Energy Board does not have jurisdiction under the Ontario Energy Board Act to hear matters that relates to Enwin collecting money for third parties. I stated my position in the third paragraph of my letter to the OEB, dated October 4, 2011.

The OEB does have jurisdiction to hear a matter that relates to Enwin Utilities collecting money for third parties under the Collections Agency Act.

AUTHORITY AND JURISDICTION OF THE ONTARIO ENERGY BOARD

1. The overseeing pieces of legislation for the Ontario Energy Board are the Statutory Powers Procedure Act¹ and the Ontario Energy Board Act².
2. Section 19 of the Ontario Energy Board Act allows it to hear a matter under the Collection Agency Act within the context of this application by Enwin. This

¹ See section 1, Statutory Powers Procedure Act, R.S.O. 1990, c. S.22

² See section 19, Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sched. B

authority has been confirmed by the Supreme Court of Canada in *Tranchemontagne v. Ontario*.³

REQUEST TO THE ONTARIO ENERGY

1. I ask that the application of Enwin Utilities be heard by the Ontario Energy Board under the collective authority of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sched. B, Collection Agencies Act, R.S.O. 1990, c. C.14 and the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22.
2. I ask that the Ontario Energy Board make a finding pursuant to the Collection Agencies Act, R.S.O. 1990, c. C.14, and its regulations that Enwin Utilities is not in compliance with the said Act. The non-compliance would include but not limited to the following:
 - a. Collecting money on behalf of a third party without registration as required under the Collection Agencies Act and its regulations;
 - b. Not separating money collected on behalf of a third party from the funds of Enwin Utilities and placing the said fund in the required trust accounts;
 - c. Forcing consumers to pay money owed to third parties by threatening to and disconnecting electrical service to the consumers (debtors).
3. Pursuant to the Collection Agencies Act⁴, I ask that the Ontario Energy Board take action direct Enwin Utilities to cease and desist collecting money on behalf of any third party which includes but not limited to the Windsor Utilities Commission and the Corporation of the City of Windsor.
4. I ask that the Ontario Energy Board to fine Enwin Utilities \$250,000.00 for non-compliance with the Collection Agencies Act, R.S.O. 1990, c. C.14⁵.
5. I ask that the Ontario Energy Board to fine every director or officer of Enwin Utilities \$50,000.00⁶ and a short jail sentenced if they knowingly concurred with the contravention of the Collection Agencies Act, R.S.O. 1990, c. C.14.
6. As restitution, I ask that the Ontario Energy Board order Enwin Utilities to pay back to all of its ratepayers all funds that they have collected from them on behalf of third parties within the last 24 months prior to the date of this letter⁷.

³ See paragraph 94, *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513

⁴ See Section 27 or any other pertinent section of the Collection Agencies Act, R.S.O. 1990, c. C.14

⁵ See Section 28(2) of the Collection Agencies Act, R.S.O. 1990, c. C.14

⁶ See Section 28(1) of the of the Collection Agencies Act, R.S.O. 1990, c. C.14

⁷ See Section 28(3) of the of the Collection Agencies Act, R.S.O. 1990, c. C.14

7. I ask that the Ontario Energy Board to fine Windsor Utilities Commission \$250,000.00 for engaging and using the services of a company for collections that is not in compliance with the Collection Agencies Act, R.S.O. 1990, c. C.14⁸.
8. I ask that the Ontario Energy Board to fine the Corporation of the City of Windsor \$250,000.00 for engaging and using the services of a company for collections that is not in compliance with the Collection Agencies Act, R.S.O. 1990, c. C.14⁹.
9. I ask that the Ontario Energy Board direct Enwin Utilities to comply with the Collection Agencies Act, before it collects money on behalf of any third party.
10. I ask that the Ontario Energy Board to deny the application of EnWin Utilities.
11. Any other request that I may submit.

GROUND FOR REQUESTS AND DENIAL

1. In its Application, Enwin Utilities admissions include but are not limited to the following:
 - a. It collects money for third parties that include Windsor Utilities Commission and the City of Windsor.¹⁰
 - b. The money collected on behalf of the third parties is not collected separately from the funds of Enwin Utilities and each of the third parties as required.¹¹
 - c. Enwin is collecting its own funds from clients (debtors) of the third parties.¹²
 - d. Any other admissions that I may submit.
2. If Enwin Utilities was in compliance with the Collection Agencies Act and could legally collect funds on behalf of third parties with the computer system they now use, the modification required to comply with section 2.6.6 of the Distribution System Code would be minor. Their computer system would require a one line

⁸ See Section 24(1) of the Collection Agencies Act, R.S.O. 1990, c. C.14

⁹ See Section 24(1) of the Collection Agencies Act, R.S.O. 1990, c. C.14

¹⁰ See page 2 at paragraph 2 and other pertinent paragraphs of the Application of Enwin Utilities, dated August 8, 2011.

¹¹ See page 2 at paragraph 3 and other pertinent paragraphs of the Application of Enwin Utilities, dated August 8, 2011 and Section 17 of regulation R.R.O. 1990, Reg. 74

¹² See Application of Enwin Utilities, dated August 8, 2011 and Section 22(a) of the Collection Agencies Act, R.S.O. 1990, c. C.14

macro¹³ to be added to it so it would accommodate the requirements of the Ontario Energy Board.

3. Enwin Utilities has not submitted an opinion from a qualified computer programmer or IT person qualified in programming to suggest the modification is no a simple matter.

SUMMARY

1. The submissions on the issue of an exemption of Enwin Utilities are vague without any factual evidence to support the statement that the modifications to their system would be “considered extremely risky and imprudent by EnWin’s Information Technology staff.”¹⁴
2. Enwin Utilities has not submitted any supporting evidence or law that it is exempt from the provisions of the Collection Agencies Act, R.S.O. 1990, c. C.14.
3. Enwin Utilities has made submissions that is acting as a Collection Agency as defined by the Collection Agencies Act, R.S.O. 1990, c. C.14.¹⁵ that reads as follows:

”collection agency” means a person other than a collector who obtains or arranges for payment of money owing to another person, or who holds out to the public as providing such a service or any person who sells or offers to sell forms or letters represented to be a collection system or scheme;”

4. The Ontario Energy Board, as confirmed by the Supreme Court of Canada,¹⁶ has the authority to address the issues under the Collection Agency Act.
5. The Ontario Energy Board by granting an exemption requested by Enwin Utilities would be condoning an illegal act. I believe the Ontario Energy Board should consider the position of the Ontario Municipal Board in not condoning illegal activities in its decision in Toronto (City) Zoning By-Law No. 902-88.¹⁷
6. Protecting the interests of the consumer is paramount¹⁸ to the Ontario Energy Board in carrying out its responsibilities and obligations. The interest of Enwin Utilities should be secondary and not interfere with protecting the interests of the consumer.

¹³ Macro definition: “a set of instructions that is represented in an abbreviated format”

¹⁴ See page 2 at paragraph 4 and other pertinent paragraphs of the Application of Enwin Utilities, dated August 8, 2011.

¹⁵ See Section 1(1) of the Collection Agencies Act, R.S.O. 1990, c. C.14.

¹⁶ See paragraph 94, Tranchemontagne v. Ontario (Director, Disability Support Program), [2006] 1 S.C.R. 513

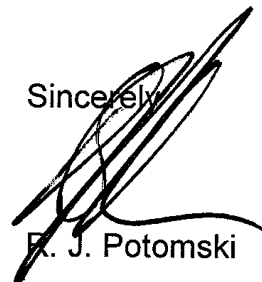
¹⁷ See page 13 of Toronto City Zoning By-Law No.902-88.

¹⁸ See Section 1 of the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sched. B

7. Enwin Utilities had ample time to notify the Ontario Energy Board with any problems they had in complying with a decision of the Board that was made approximately a year ago.
8. Enwin Utilities does not have any legal authority to collect money for a third party. As such the exemption requested by Enwin Utilities is a mute issue.
9. If and when Enwin Utilities becomes in compliance with the Collection Agencies Act, R.S.O. 1990, c. C.14 there would be another question that may remain. That question would be: “Can Enwin Utilities collect its own money from clients (debtors) of a third party if they are registered under the Collection Agencies Act, R.S.O. 1990, c. C.14?”¹⁹
10. If the Windsor Utilities Commission and the Corporation of the City of Windsor were not aware, they should have been aware that they engaged a company to collect their accounts that was not registered and not in compliance with the Collection Agencies Act, R.S.O. 1990, c. C.14.
11. The Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sched. B, as amended.
12. The Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, as amended.
13. The Collection Agencies Act, R.S.O. 1990, c. C.14, as amended.
14. Tranchemontagne v. Ontario (Director, Disability Support Program), [2006] 1 S.C.R. 513
15. Toronto City Zoning By-Law No.902-88.
16. Any other grounds that I may submit.

If the Ontario Energy Board decides to have a hearing in this matter, to allow for sworn evidence, I ask that the hearings be held in Windsor, Ontario.

Sincerely,



E. J. Potomski

cc Minister of Energy
B. Pitkin
A. J. Sasso – regulatory@enwin.ca

¹⁹ See Section 22 (a)(b)(c) of the Collection Agencies Act, R.S.O. 1990, c. C.14