

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act,
1998, S.O. 1998, c. 15, Schedule B;
AND IN THE MATTER OF the Electricity Act, 1998,
S.O. 1998, c. 15, Schedule A;
AND IN THE MATTER OF the Statutory Powers
Procedure Act, R.S.O. 1990, c. S.22;
AND IN THE MATTER OF the Collection Agencies Act,
R.S.O. 1990, c. C.14;
AND IN THE MATTER OF the an application pursuant
to section 74 of the Ontario Energy Board Act, 1998,
S.O. 1998, c. 15, Schedule B; by Enwin Utilities Ltd. to
amend its Electricity Distribution Licence ED 2002-0527

BETWEEN :

R. J. POTOMSKI

Appellant
(Affected Person/Consumer)

and

JENNIFER LEA

Respondent
(Employee of the Board)

and

ENWIN UTILITIES LTD.

Respondent
(Applicant)

NOTICE OF APPEAL

made pursuant to Section 7 and any other
pertinent sections of the Ontario Energy Board Act,
1998, S.O. 1998, c. 15, Schedule B.

THE AFFECTED PERSON/CONSUMER, R. J. POTOMSKI, APPEALS to the Ontario
Energy Board from the decision and order made by Jennifer Lea, an employee of the
Board, dated December 12, 2011.

THE AFFECTED PERSON/CONSUMER, R. J. POTOMSKI, attaches to this Notice of Appeal a copy of the decision from which he appeals.

THE APPELLANT REQUEST:

1. The appellant's requests will follow.

THE APPELLANT'S GROUNDS FOR THE APPEAL:

1. The appellant's grounds will follow.

December 27, 2011

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EB-2011-0291

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF an application pursuant to
section 74 of the *Ontario Energy Board Act, 1998* by
EnWin Utilities Ltd. to amend its Electricity Distribution
Licence ED2002-0527

By delegation, before: Jennifer Lea

DECISION AND ORDER

BACKGROUND

On August 8, 2011, EnWin Utilities Ltd. (“EnWin”) filed an application with the Ontario Energy Board under section 74 of the *Ontario Energy Board Act, 1998* (the “OEB Act”) to amend its electricity distribution licence ED-2002-0527 to exempt EnWin from sections 2.6.6 to 2.6.6.3 of the Distribution System Code (“DSC”) until January 1, 2013. The Board assigned file number EB-2011-0291 to the application.

Notice of EnWin’s application was given, inviting submissions from interested parties on the application. On October 4, 2011, the Board received a submission from one of EnWin’s customers, Mr. R. J. Potomski, in which he raised a jurisdictional issue and requested an interim order. On October 13, 2011, the Board issued a letter advising Mr. Potomski that the Board would address the jurisdictional issue raised as part of its decision on the merits of EnWin’s application and that if he wished to make a submission on the merits of the application, the submission should be filed with the Board by the date specified in the notice, October 18, 2011. Board staff filed a

submission on the merits of the application, and on October 25, 2011, EnWin filed its reply submission responding to both the jurisdictional issue raised by Mr. Potomski and Board staff's submission on the merits of the application.

On November 2, 2011, Mr. Potomski filed a submission with respect to the jurisdictional issue raised in his original submission and on the merits of EnWin's application. On November 4, 2011, EnWin filed a letter with the Board submitting that as Mr. Potomski's November 2nd submission was filed late and subsequent to Enwin's reply submission, it was prejudicial to EnWin. Enwin asked that the Board remove the November 2nd submission from the public record and disregard the submission in making its decision.

THE APPLICATION

As indicated above, EnWin seeks to amend its electricity distribution licence ED-2002-0527 to reflect an exemption from sections 2.6.6 to 2.6.6.3 of the DSC until January 1, 2013. The subject sections of the DSC are reproduced at Appendix A to this decision. Among other things, these sections of the DSC direct electricity distributors issuing customer bills that include charges other than electricity,

- (a) to allocate partial payments received from a customer, first to electricity charges and then to non-electricity charges, and
- (b) refrain from imposing late payment charges, issuing a disconnection notice or disconnecting electricity supply, where the payment received from the customer is sufficient to cover electricity charges, security deposits and billing adjustments.

EnWin is the billing contractor for the Windsor Utilities Commission in respect of water and waste water billing. The electricity bill for the majority of EnWin's customers includes charges for water and waste water services in addition to charges relating to electricity services. EnWin performs its billing function through a customer information system ("CIS") which is programmed on the basis of allocated partial payments among the three utility services, and does not allocate partial payments first to electricity services.

EnWin proposes to make the changes to its CIS by January 1, 2013 that are necessary to meet the subject provisions of the DSC. This will be accomplished as part of a project that EnWin has undertaken to replace its current CIS. Enwin's evidence indicates that bringing the system into compliance with the DSC as part of the overall

CIS replacement project would be more cost effective than making a series of incremental revisions to the current CIS. EnWin will incur costs to enable its replacement CIS to differentially allocate partial payments regardless of any investments in the existing CIS. The evidence also suggests that making these changes as part of the CIS replacement project would reduce the risk of EnWin's non-compliance with other regulatory requirements that are managed through its CIS.

FINDINGS

Legislative Framework

Mr. Potomski, a customer of Enwin, submitted in his letters of October 4, 2011 and November 2, 2011 that Enwin does not have the statutory authority to collect money owed to the Windsor Utilities Commission or the City of Windsor, and that Enwin is not in compliance with the *Collection Agencies Act*, R.S.O. 1990 c. C.14. He further submitted that the Ontario Energy Board does not, under the OEB Act, have the jurisdiction to grant the relief sought by Enwin, nor to give Enwin the authority to collect money for a third party.

Section 71 of the OEB Act deals with the permitted business activities of transmitters and distributors, and restricts that business activity to transmitting and distributing electricity. However, Ontario Regulation 161/99 under the OEB Act, entitled "Definitions and Exemptions", provides a specific exemption for municipal water and sewage services. Section 5(2) of the Regulation reads:

5. (2) Section 71 of the Act does not apply to a distributor if the only business activity that the distributor carries on, other than distributing electricity, is managing or operating the provision of water or sewage services on behalf of a municipal corporation that owns, directly or indirectly, by itself or with one or more other municipal corporations, voting securities carrying more than 50 per cent of the voting rights attached to all voting securities of the distributor.

Enwin's relationship and arrangements with the City of Windsor and the Windsor Utilities Commission mean that its activities related to water and sewage services are permitted under this provision.

Mr. Potomski further submitted that the *Collection Agencies Act* applies to Enwin's billing activity on behalf of the Windsor Utilities Commission, and that Enwin is out of compliance with that statute. In his letter of November 2, 2011, Mr. Potomski asked the Board to impose several sanctions on Enwin, its officers and directors, the Windsor Utilities Commission and the City of Windsor for failure to comply with the *Collection Agencies Act*. Mr. Potomski submitted that it is only under the *Collection Agencies Act* that the Board can regulate the activities of Enwin in regard to billing for services other than electricity.

It is a general principle of statutory interpretation that legislation that deals specifically with a topic prevails over legislation that is more general. There are specific provisions in the OEB Act relating to the licensing of distributors and conditions that may be imposed in those licences that, in my view, prevail over the provisions of the *Collection Agencies Act*. Of particular relevance in this case are the provisions in section 70(2)(d)(ii.1) of the OEB Act:

Licence conditions

70. (1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 1998, c. 15, Sched. B...

Examples of conditions

(2) The conditions of a licence may include provisions,

...

- (d) governing the conduct of the licensee, including the conduct of,
 - (i) a transmitter or distributor as that conduct relates to its affiliates,
 - (ii) a distributor as that conduct relates to a retailer, (ii.1) a distributor or suite meter provider as such conduct relates to,
 - (A) the disconnection of the supply of electricity to a consumer, including the manner in which and the time within which the disconnection takes place or is to take place,
 - (B) the manner, timing and form in which the notice under subsection 31 (2) of the *Electricity Act, 1998* is to be provided to the consumer, and
 - (C) subject to the regulations, the manner and circumstances in which security is to be provided or not to be provided by a consumer to a distributor or suite meter provider, including,

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- (1) the interest rate to be applied to amounts held on deposit and payable by the distributor or suite meter provider to the consumer for the amounts,
- (2) the manner and time or times by which the amounts held on deposit may or must be paid or set-off against amounts otherwise due or payable by the consumer,
- (3) the circumstances in which security need not be provided or in which specific arrangements in respect of security may or must be provided by the distributor or suite meter provider to the consumer, and
- (4) such other matters as the Board may determine in respect of security deposits.

These sections give the Board the ability to impose very specific conditions on distributors dealing with customer service and disconnection. Similarly, section 5(2) of Ontario Regulation 161/99 deals specifically with the provision of water and sewage services by electricity distributors for their shareholder municipalities. I find that the specific provisions of the OEB Act and Ontario Regulation 161/99 prevail over the more general provisions of the *Collection Agencies Act*, and it is under the OEB Act, the *Electricity Act, 1998*, S.O. 1998 c. 15, Sched A (the "Electricity Act"), and the regulations under those Acts that the Board can prescribe codes, and grant exemptions to those codes, relating to billing and collection by distributors for services other than electricity.

The Merits of the Application

Board staff supported the application. Mr. Potomski did not, arguing that Enwin did not present any factual evidence to support its claim that early modifications to its CIS to enable it to comply with the DSC provisions would be risky and imprudent. In addition, Mr. Potomski argued that Enwin had had ample time to notify the Board of any problems it had in complying with a decision made by the Board nearly a year ago.

I find that the evidence presented by Enwin is sufficient to support the relief sought. The utility explained in some detail the difficulties it presently faces in complying with the relevant provisions of the DSC, and its plan for bringing its CIS into compliance with those provisions. A factor in this decision was the delay permitted by the Board under section 2.6.6.1 of the DSC, which exempts distributors operating under certain renewable billing agreements from applying the new allocation rules until the earlier of

the renewal date or two years. The period for which the exemption is sought by Enwin is not excessive. It was Enwin's evidence that it had anticipated being covered by section 2.6.6.1, but found that the renewal date of its services agreement was a year earlier than anticipated. The exemption sought by Enwin does not appear to be inconsistent with the Board's policy, provided that it indeed comes into compliance on or before January 1, 2013.

In making findings on jurisdiction and the merits of the application, I have considered both letters from Mr. Potomski, dated October 4, 2011 and November 2, 2011. Enwin, by letter dated November 4, 2011 urged the Board not to consider the November 2, 2011 letter, as it was filed late and received after Enwin's reply submission, creating a situation prejudicial to Enwin. However, given my findings in regard to the issues put forward by Mr. Potomski, no harm to Enwin has resulted from the Board's consideration of the late filing.

Compliance with Section 31(1) of the Electricity Act

Board staff supported the temporary exemption sought by Enwin. However, Board staff submitted that should the Board grant the exemption, "such exemption should not be construed as an authorization to disconnect customers' electricity supply for non-payment of overdue amounts relating to services other than electricity services". Staff submitted that section 31(1) of the *Electricity Act* permits a distributor to shut off distribution of electricity to a customer only for failure to pay for the distribution or retail of electricity, not for overdue payments for other services. In staff's view, any notice of electricity supply disconnection Enwin sends to a customer must include only amounts owing related to electricity services, and if that amount is paid, disconnection cannot occur even if amounts for other services remain outstanding.

Enwin replied to the Board staff submission, emphasizing the practical difficulties under its present CIS with isolating amounts owing to electricity from amounts owing for other services. Enwin indicated that under the present CIS, partial payments cannot be prioritized differently during a disconnection process than at other times. Enwin also submitted that bifurcating the payment process for overdue bills would result in two disconnection notices stemming from a single bill, making the situation complicated and confusing for customers. Enwin submitted that it is in compliance with section 31(1) of the *Electricity Act* and will be compliant with section 2.6.6 of the DSC after it installs its

new CIS. Enwin also emphasized that its present multiple utility services billing system is comprehensible and cost efficient.

The question of whether Enwin's billing system is compliant with section 31(1) of the *Electricity Act* is not before me in this application. This is not a compliance proceeding on that issue. I make no specific finding or order as to whether the allocation procedure in Enwin's present CIS, and the disconnection protocol that results from it, is compliant with section 31(1) of the *Electricity Act*. Enwin proceeds with that protocol at its own risk.

This decision was made by an employee of the Board under the authority of section 6(1) of the *OEB Act*. Under section 7 of that Act, this decision and order may be appealed to the Board within 15 days.

IT IS ORDERED THAT:

1. EnWin's Electricity Distribution Licence (ED-2002-0527), specifically Schedule 3 of the licence, is amended to reflect an exemption from the requirements of sections 2.6.6 to 2.6.6.3 of the Distribution System Code. This exemption will expire on January 1, 2013.

DATED at **Toronto**, December 12,

2011 **ONTARIO ENERGY BOARD**

Original Signed By

Jennifer Lea
Counsel, Special Projects

**Appendix A to
Decision and Order
EB-2011-0291**

- 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, underbilling adjustments and non-electricity charges.
- 2.6.6.3 For the purposes 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 Lowvolume 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* 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.