

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)

SUPPLEMENTARY 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 APPELLANT REQUEST:

1. An order to extend the time for serving and filing material within this motion, if required;
2. An order that the hearing of this appeal be held in public at Windsor, Ontario;
3. An order that the hearing of this appeal be an oral hearing;
4. An order that oral cross examinations on the evidence be allowed at the hearing of this appeal;
5. An order that the decision of Jennifer Lea, dated December 12, 2011, be set aside;
6. A declaration that Enwin Utilities Ltd. pursuant to the Collection Agencies Act, is a Collection Agency;
7. An order that Enwin Utilities Ltd. cease and desist carrying on as a Collection Agency.
8. An order that Enwin Utilities Ltd. comply with the Collection Agencies Act, before collecting money due to the Windsor Utilities Commission.
9. An order that Enwin Utilities Ltd. comply with the Collection Agencies Act, before collecting money due to the Corporation of the City of Windsor.
10. Any and all request made in the Appellant's letter to the Ontario Energy Board, dated November 2, 2011, attached hereto;
11. Any and all request made in the Appellant's letter to the Ontario Energy Board, dated October 2, 2011, attached hereto;
12. An order that Enwin Utilities Ltd. reimburses, to the past and present customers of the Windsor Utilities Commission (WUC) and the Corporation of the City of Windsor (City), any and all money it has collected on behalf of the WUC and the City, forthwith.
13. An order that the past and present Directors of Enwin Utilities Ltd. reimburses, to the past and present customers of the Windsor Utilities Commission (WUC) and the Corporation of the City of Windsor (City), any and all money it has collected on behalf of the WUC and the City, forthwith.
14. An order that would levy the maximum fines and penalties as allowed under the Collection Agencies Act on Enwin Utilities Ltd., its Directors, its employees and any other individuals and/or companies that directly and/or indirectly influenced the actions of Enwin Utilities Ltd.;

15. Any other request the Appellant may submit.

THE APPELLANT'S GROUNDS FOR THE APPEAL:

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 the Ontario Energy Board to hear a matter under the Collection Agency Act³ within the context of this application by Enwin. This authority has been confirmed by the Supreme Court of Canada in *Tranchemontagne v. Ontario*.⁴
3. The customers of Enwin Utilities, which are affected by this decision, reside in the City of Windsor and as such should be allowed to attend the hearing without undue hardship and costs, by holding a public hearing in Windsor, Ontario.⁵
4. Jennifer Lea, erred in law;
5. The Ontario Energy Board Act does not supersede the Collection Agencies Act in matters related to a company collecting money on behalf of another person and/or company.
6. The regulations made under the Ontario Energy Board Act do not supersede the Collection Agencies Act.
7. Enwin Utilities Ltd. is not exempt from being registered under the Collection Agencies Act⁶.
8. Enwin Utilities Ltd. with approval under section 5(2) of Regulation 161/66 made under the Ontario Energy Board Act can apply to be registered/licensed under the Collection Agencies Act.
9. The registration/licence that Enwin Utilities Ltd. would obtain under the Collection Agencies Act would be restricted by the conditions set out by section 5(2) of Regulation 161/66 and the Ontario Energy Board Act.
10. Any and all grounds made in the Appellant's letter to the Ontario Energy Board, dated November 2, 2011, attached hereto;
11. Any and all grounds made in the Appellant's letter to the Ontario Energy Board, dated October 2, 2011, attached hereto;

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

³ See **Collection Agencies Act**, R.S.O. 1990, c. C.14

⁴ See paragraph 94, [Tranchemontagne v. Ontario \(Director, Disability Support Program\)](#), [2006] 1 S.C.R. 513

⁵ See rule 34.02 of the **OEB Rules of Practice and Procedure**

⁶ See Section 2, **Collection Agencies Act**, R.S.O. 1990, c. C.14

12. The Rules of Practice and Procedure of the Ontario Energy Board;
13. The Statutory Powers Procedure Act, R.S.O. 1990, c. S.22;
14. The Electricity Act, 1998, S.O. 1998, c. 15, Schedule A;
15. The Collection Agencies Act, R.S.O. 1990, c. C.14;
16. Tranchemontagne v. Ontario (Director, Disability Support Program), [2006] 1 S.C.R. 513;
17. Any other grounds or information the Appellant shall submit.

January 4, 2012

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Appellant

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AND TO: Jennifer Lea,
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Respondent

AND TO: Andrew Sasso,
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For the Respondent

R. J. Potomski

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October 4, 2011

Secretary,
for the Ontario Energy Board
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Re: Preliminary jurisdictional objection
OEB # 2011-0291

Dear Board Members,

I have read the material that Enwin Utilities has filed with the Ontario Energy Board and as such would like to make a preliminary objection.

It is my position that the Ontario Energy Board does not have jurisdiction under the Ontario Energy Board Act to make any exemption, decision and/or order that would grant the relief requested by Enwin Utilities.

The Ontario Energy Board Act does not give the Ontario Energy Board any jurisdiction in matters of billings etc. for water and/or waste water.

I ask that the Ontario Energy Board decline jurisdiction on the request of Enwin Utilities.

BACKGROUND

1. The Ontario Energy Board Act gives the Ontario Energy Board jurisdiction to award licenses to and to regulate gas and electrical distributors
2. Enwin Utilities is an Electrical Distributor licensed by the Ontario Energy Board to distribute electricity within the City of Windsor.
3. Enwin Utilities bills its own customers for electricity usage on a periodic basis.

4. The Ontario Energy Board Act does not authorize the regulation of water, waste water or the collection of money for third parties.
5. Enwin entered into an agreement to collect on behalf of the Windsor Utilities Commission (WUC) to collect monies owed to WUC for water usage.
6. The money collected for water usage is or should be collected in trust for the WUC until it is payable to the WUC on a monthly basis. (see Schedule "C", paragraph 2 of the Managed Services Agreement, submitted by Enwin)
7. Enwin Utilities collects on behalf of the City of Windsor fees for waste water.
8. The relationship/contract between Enwin Utilities and the City of Windsor is not detailed in the material submitted to the OEB in the application.
9. In the submissions made by Enwin Utilities in the application it has made it very clear that it collects money owed to the Windsor Utilities (water) and the City of Windsor (waste water)

SUMMARY

1. Enwin Utilities "obtains or arranges for payment of money owing to another" and as such is acting as a "collection agency" as defined under the Collection Agencies Act, R.S.O 1990, CHAPTER C.14, which reads as follows:

1. (1) In this Act,

"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; ("agence de recouvrement")

2. Neither the Ontario Energy Board Act nor the Collection Agencies Act gives Enwin Utilities an exemption that would allow it to collect money owed to a third party.
3. Enwin Utilities, in its submissions, has not shown it has statutory/regulatory authority to collect money owed to a third party.
4. Enwin Utilities only has authority to collect its own electricity bills and as such the Ontario Energy Board does not have jurisdiction to give Enwin authority to collect money for a third party under the Ontario Energy Board Act.

5. By giving Enwin Utilities an exemption without it being licensed under the Collection Agencies Act, the Ontario Energy Board would be condoning an illegal act.

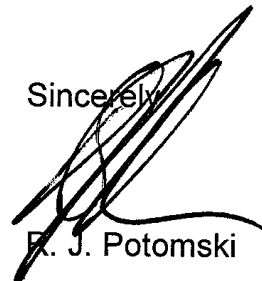
Since the matter that I have submitted is a jurisdictional issue, I ask that any furtherance to the application filed under #EB-2011-0291 be stopped, forthwith. Furtherance would include but not limited to the request for responses to the main application and removal of any deadlines on the main application. I ask that an interim order be issued, forthwith, that all matters within the main application be held in abeyance until the jurisdiction issue is decided upon.

I ask that I be allowed to rebut any response Enwin Utilities may give to this letter.

Any submissions on the merits of the main application will be submitted under a different cover.

I will await a response to this letter and a decision on my request for an interim order.

Sincerely,

A handwritten signature in black ink, appearing to be 'E. J. Potomski', written over the word 'Sincerely,'.

E. J. Potomski

cc Minister of Energy

R. J. Potomski

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November 2, 2011

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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 Act⁷ and the Ontario Energy Board Act⁸.
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

⁷ See section 1, **Statutory Powers Procedure Act**, R.S.O. 1990, c. S.22

⁸ 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*.⁹

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 Act¹⁰, 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.14**¹¹.
5. I ask that the Ontario Energy Board to fine every director or officer of Enwin Utilities \$50,000.00¹² 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 letter¹³.

⁹ See paragraph 94, [Tranchemontagne v. Ontario \(Director, Disability Support Program\), \[2006\] 1 S.C.R. 513](#)

¹⁰ See Section 27 or any other pertinent section of the **Collection Agencies Act, R.S.O. 1990, c. C.14**

¹¹ See Section 28(2) of the **Collection Agencies Act, R.S.O. 1990, c. C.14**

¹² See Section 28(1) of the of the **Collection Agencies Act, R.S.O. 1990, c. C.14**

¹³ 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.14**¹⁴.
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.14**¹⁵.
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.¹⁶
 - 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.¹⁷
 - c. Enwin is collecting its own funds from clients (debtors) of the third parties.¹⁸
 - 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

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

¹⁵ See Section 24(1) of the **Collection Agencies Act, R.S.O. 1990, c. C.14**

¹⁶ See page 2 at paragraph 2 and other pertinent paragraphs of the Application of Enwin Utilities, dated August 8, 2011.

¹⁷ 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](#)

¹⁸ 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**

macro¹⁹ 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.”²⁰
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**.²¹ 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,²² 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. 902-88.²³
6. Protecting the interests of the consumer is paramount²⁴ 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.

¹⁹ Macro definition: “a set of instructions that is represented in an abbreviated format”

²⁰ See page 2 at paragraph 4 and other pertinent paragraphs of the Application of Enwin Utilities, dated August 8, 2011.

²¹ See Section 1(1) of the **Collection Agencies Act, R.S.O. 1990, c. C.14**.

²² See paragraph 94, [Tranchemontagne v. Ontario \(Director, Disability Support Program\), \[2006\] 1 S.C.R. 513](#)

²³ See page 13 of Toronto City Zoning By-Law No.902-88.

²⁴ 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?**”²⁵
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

²⁵ See Section 22 (a)(b)(c) of the **Collection Agencies Act, R.S.O. 1990, c. C.14**