

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 SUBMISSIONS OF
THE APPELLANT, R. J. POTOMSKI,**

THE APPELLANT, R. J. POTOMSKI, submits the following pursuant to Procedural
Order No. 3 of the Ontario Energy Board, dated March 15, 2012:

1. The appellant asks that the Chair of the Ontario Energy Board (OEB) to recuse herself from being involved, directly or indirectly, in any matters related to this appeal.

- a. Reasons

- i. There may be a perceived conflict of interests as the CEO that oversees the administration of the OEB and its employees.
- ii. This is an appeal of the decision of Jennifer Lee, an employee of the OEB

2. Material Filed

- a. The appellant ask that any and all materials filed by him within OEB files numbers EB-2011-0291 and EB-2012-0006 be placed before the panel of the Ontario Energy Board hearing this Appeal.

3. Issues related to Reasons given by Enwin for Exemption:

- a. Enwin suggested that their "IT" employees consider the minor changes to allow for payments to be applied to the electricity portion of the bill would be very complicated for them.
- b. When Enwin decided to revamp their computer system they brought in outside software specialists.
- c. IT employees quite often do not have a very strong background in software. As such the simple "What if" macro may be too complicated for the IT employee that is not very familiar with designing software.
- d. Enwin could have and should have been directed to supply factual evidence from its software contractor that the minor adjustment would not be manageable.

- e. Enwin does segregate the electricity, water and sewer usage with its data bases, along with the individual dollar amount. (See attached a redacted invoice from Enwin) As such a minor macro could be written by their software contractor to give priority to the electricity portion when a payment is received.
- f. The Appellant is not an IT specialist but has been designing software for businesses for over 15 years. As such he does not believe Enwin requires an exemption as it could have complied in a timely fashion.
- g. The Appellant suggests that the OEB obtain documentation from Enwin's software contractor that provides factual proof that they were unable to make the required changes prior to December 31, 2011.
- h. The Appellant would like to cross examine Enwin's employees/contractors on their position that Enwin could not be in compliance by December 31, 2011.

4. Collections Agencies Act (see attached pertinent sections):

- a. As defined by the Section 1 of the Collection Agencies Act (CAA), Enwin Utilities is a collection agency.
- b. Pursuant to Section 2 of the CAA, Enwin is not exempt from the CAA.
- c. Pursuant to Section 17 of the CAA, Enwin must segregate any and all monies collected on behalf of a third party and hold the funds in a trust account.
- d. On reading the submissions of Enwin, it is contravening Section 17 of the CAA by not segregating funds it collects on behalf of a third party.
- e. Enwin has not submitted any information as to when, the money collected on behalf of a third party, is paid to that party. As such Enwin has not shown it is in compliance with Section 18 of the CAA.

- f. Enwin, unlike the Windsor Utilities Commission, is not a department of the Corporation of the City of Windsor and as such is a stand alone for Profit Corporation.
- g. The authority to collect money on behalf of a third party comes from the Collection Agencies Act, not the OEB Act.

5. **Water and Sewage Usage (see attached pertinent sections of the Municipal Act)**

- a. Water and Sewage usage do not fall under the umbrella of the Ontario Energy Board Act.
- b. The Municipal Act (MA) defines “public utility” as a system that is used to provide: water, sewage, fuel (including natural and artificial gas), energy (**excluding electricity**), heating, cooling and telephone and the service or thing that is provided.
- c. Under the Municipal Act, power is given to the municipality to shut off the supply of a public utility that excludes electricity, for non payment.
- d. Enwin has not submitted anything that supports it can act as a municipality.
- e. It is the position of the Appellant that the Municipal Act forbids the shut off of a public utility is an electricity bill is not paid.
- f. Unlike the Human Rights Code, the Ontario Energy Board Act does not have primacy of the statutes and regulations overseeing public utilities.
- g. The OEB, under the OEB Act, **is in a position to allow Enwin to collect** money and manage services for the Corporation of the City of Windsor and the Windsor Utilities Commission.

- h. The OEB, under the OEB Act, **is not in a position to give authority to Enwin** to collect money and manage services for the Corporation of the City of Windsor and the Windsor Utilities Commission.
- i. The authority to act as a Public Utility comes from the Municipal Act, not the OEB Act.

6. **Summary**

- a. Without going into detail on the why and how, sometime ago the electricity distribution was taken a way from the Windsor Utilities Commission.
- b. Enwin was formed as a for profit corporation that stood alone and separate, outside of the operations of the Corporation of the City of Windsor.
- c. The incomes of the members of the management team at Enwin that are over \$100,000.00 are private and confidential, unlike those of government employees.
- d. Enwin is attempting to reap the benefits of acting as a stand alone corporation and as a department of the City of Windsor.
- e. Enwin, in common language, is trying to blow and suck at the same time.
- f. Enwin is a stand alone for Profit Corporation and as such is required to follow the legislation that any other corporation is required to do.
- g. If Enwin was a department of the Corporation of the City of Windsor, the other statutes may not apply within the matters before the OEB.
- h. The Collections Agencies Act has been put into place to protect the interest of the public when a company is collecting money for a third party.

- i. By ignoring the CAA, the OEB may not be protecting the interests of the consumer, as authorizing collections by a third party is not considered within the OEB Act or within the expertise of the OEB.
- j. The issues that are related to public utilities such as water and sewer usage are outside the expertise of the OEB.
- k. I would like to suggest an analogy:

You can give your son or daughter permission to drive your car, but you can not give them the authority to drive legally. To allow either to drive your car, it would need to be conditional that they have authority under the Highway Traffic Act.

- l. In this case, under the OEB Act, the OEB can give Enwin permission to collect for a third party, but that permission must be conditional on Enwin receiving authority under the Collections Services Act.
 - m. Also in this case, under the OEB Act, the OEB's authority does not supersede the Municipal Act in that the OEB can give Enwin Authority to shut off a public utility for an unpaid electricity bill.
7. Any other submissions the Appellant may submit and the Ontario Energy Board allows.

Respectfully Submitted

March 19, 2012

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Appellant

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Respondent

AND TO: Andrew Sasso,
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N9A 5T7
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For the Respondent



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P.O. Box 1625, Station A
Windsor, ON N9A 5T7
Call Centre: 8:00am to 5:00pm (519)255-2727
Visit us at: www.enwin.com
Visit WUC at: www.wuc.on.ca

Account Number

Customer Name

Previous Balance
Payment - Thank You!
Balance Forward

\$0.00

Premise Address:

USAGE

ELECTRICITY
ENWIN Utilities Ltd.
519/255-2727
Business # 867120586

					Your Usage Detail:				
Mtr Type	Mtr Nbr.	Curr. Rd Dt	Prv. Rd Dt		Current Read	Previous Read	Actual Usage	Loss %	Billed Usage
Electricity									
Water									

scalled read

Your Electricity Charges For 20
Electricity:

Your Total Electricity Charges

Your Electricity Charges For 201
Electricity:

HST
Your Total Electricity Charges

Your Electricity Charges For 201
Delivery
Regulatory Charges
Debt Retirement Charge
HST
Your Total Electricity Charges

WATER
Windsor Utilities Commission
519/255-2727
Business # 122791098

Your Water Charges For 20
Meter Fixed Charge
Water Usage (9 CM @ 0.297 / CM)
Water Main Replacement Levy
Your Total Water Charges

WASTE WATER
City of Windsor
519/255-2727

Your Waste Water Charges For 20
Fixed Component
Consumption Component
Your Total Waste Water Charges

--- PAYABLE AT MOST FINANCIAL INSTITUTIONS - RETURN THIS PORTION WITH YOUR PAYMENT



787 Ouellette Avenue
P.O. Box 1625, Station A
Windsor, ON N9A 5T7
Call Centre: 8:00am to 5:00pm (519)255-2727
Visit us at: www.enwin.com
Visit WUC at: www.wuc.on.ca

Bill Date:

Account #:

Amount Due:

Due Date: 2

Amount Paid:

A late payment charge of 1.5% will be
assessed on any unpaid monthly balance.

Collection Agencies Act
R.S.O. 1990, CHAPTER C.14

Definitions

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”)

“collector” means a person employed, appointed or authorized by a collection agency to collect debts for the agency or to deal with or trace debtors for the agency; (“agent de recouvrement”)

Application of Act

2. This Act does not apply,

- (a) to a barrister or solicitor in the regular practice of his or her profession or to his or her employees;
- (b) to an insurer or agent licensed under the *Insurance Act* or broker registered under the *Registered Insurance Brokers Act*, to the extent of the business authorized by such licence or registration, or to the employees of the insurer, agent or broker;
- (c) to an assignee, custodian, liquidator, receiver, trustee or other person licensed or acting under the *Bankruptcy Act* (Canada), the *Corporations Act*, the *Business Corporations Act*, the *Courts of Justice Act* or the *Winding-up Act* (Canada) or a person acting under the order of any court;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) is repealed and the following substituted:

(c) to an assignee, custodian, liquidator, receiver, trustee or other person licensed or acting under the *Bankruptcy Act* (Canada), the *Corporations Act*, the *Business Corporations Act*, the *Courts of Justice Act*, the *Not-for-Profit Corporations Act, 2010* or the *Winding-up Act* (Canada) or a person acting under the order of any court;

See: 2010, c. 15, ss. 218 (1), 249.

- (d) to a broker or salesperson registered under the *Real Estate and Business Brokers Act, 2002*, or an official or other employee of such a broker to the extent of the business authorized by the registration;
- (e) to a bank listed in Schedule I or II to the *Bank Act* (Canada), a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act*, or an employee thereof in the regular course of his or her employment;

Collection Agencies Act
R.S.O. 1990, CHAPTER C.14

- (f) to an isolated collection made by a person whose usual business is not collecting debts for other persons; or
- (g) to a credit union incorporated under the *Credit Unions and Caisses Populaires Act* or any employee thereof acting in the regular course of his or her employment. R.S.O. 1990, c. C.14, s. 2; 1999, c. 12, Sched. F, s. 10; 2002, c. 8, Sched. I, s. 5; 2002, c. 30, Sched. E, s. 2 (1).

TRUST FUNDS

17. (1) All funds received by a collection agency in the normal course of business from clients or debtors, other than those which clearly represent payment for fees earned, and all advance payments or deposits for services to be rendered or expenses to be incurred at some future date are deemed to be trust funds. R.R.O. 1990, Reg. 74, s. 17 (1).

(2) Every collection agency or branch thereof shall maintain in respect of all trust funds that come into its hands a separate trust account in any Province of Ontario Savings Office or any Ontario branch of a bank, a corporation registered under the *Loan and Trust Corporations Act* or a credit union as defined in the *Credit Unions and Caisses Populaires Act, 1994* authorized by law to accept deposits, and such account shall be designated as the "Collection Agencies Act Trust Account". R.R.O. 1990, Reg. 74, s. 17 (2); O. Reg. 299/05, s. 1.

(3) For the purposes of this section, no collection agency or branch thereof shall maintain more than one account designated as a trust account without first notifying the Registrar and obtaining the Registrar's consent in writing. R.R.O. 1990, Reg. 74, s. 17 (3).

(4) All trust funds received by a collection agency or branch thereof whether by cash, cheque, or otherwise, shall be deposited in the collection agency trust account within two banking days of their receipt. R.R.O. 1990, Reg. 74, s. 17 (4).

(5) No collection agency shall disburse or withdraw any money held in trust, except in accordance with the terms and conditions upon which the money was received or as otherwise provided. R.R.O. 1990, Reg. 74, s. 17 (5).

(6) Where a collection agency collects debts for other persons in consideration of the payment of a commission or other remuneration it shall remit all money collected to the persons entitled thereto in accordance with subsection 18 (1). R.R.O. 1990, Reg. 74, s. 17 (6).

(7) Nothing in this section shall be construed as affecting the right to any remedy available in law to a collection agency or any other person having a lawful claim to the money held in the trust account referred to in subsection (2). R.R.O. 1990, Reg. 74, s. 17 (7).

(8) When so requested in writing by the Registrar or a person entitled to an accounting, every collection agency shall account within thirty days for all trust funds

Collection Agencies Act
R.S.O. 1990, CHAPTER C.14

received from or on behalf of the person entitled to such accounting. R.R.O. 1990, Reg. 74, s. 17 (8).

18. (1) Every collection agency shall without any notice or demand account for all money collected and pay the money less the proper fees of such collection agency, to the person entitled thereto on or before the 20th day of the month following the month in which the money was collected, but when the money collected and due is less than \$15, payment to the person entitled thereto shall be made within ninety days. R.R.O. 1990, Reg. 74, s. 18 (1).

(2) Where for any reason a collection agency is unable to comply with subsection (1) and any money collected by it remains for a period of six months unclaimed by, or unpaid to, the person entitled to the money, it shall cause the money to be paid to the Minister of Finance who may pay the money to the person entitled thereto upon satisfactory proof being furnished by the person that the person is entitled to receive the money. R.R.O. 1990, Reg. 74, s. 18 (2).

Municipal Act, 2001
S.O. 2001, CHAPTER 25

PART I
GENERAL

Interpretation

1. (1) In this Act,

“public utility” means,

- (a) a system that is used to provide any of the following services or things for the public:
 - (i) water,
 - (ii) sewage,
 - (iii) fuel, including natural and artificial gas,
 - (iv) energy, **excluding electricity**,
 - (v) heating and cooling, and
 - (vi) telephone, and
- (b) the service or thing that is provided; (“service public”)

Shut off of public utility

81. (1) Without limiting sections 9, 10 and 11, a municipality may shut off **the supply of a public utility by the municipality to land if fees or charges payable by the owners or occupants of the land for the supply of the public utility to the land are overdue.** 2001, c. 25, s. 81 (1); 2006, c. 32, Sched. A, s. 33 (1).

Additional power

(2) In addition to the power under subsection (1), and without limiting sections 9, 10 and 11, a municipality may shut off the supply of water to land if fees or charges payable by the owners or occupants of the land in respect of a sewage system are overdue and the fees or charges are based on the fees payable for the supply of water to the land. 2001, c. 25, s. 81 (2); 2006, c. 32, Sched. A, s. 33 (2).

Notice

(3) Despite subsections (1) and (2), a municipality shall provide reasonable notice of the proposed shut-off to the owners and occupants of the land by

Municipal Act, 2001
S.O. 2001, CHAPTER 25

personal service or prepaid mail or by posting the notice on the land in a conspicuous place. 2001, c. 25, s. 81 (3).

Recovery of fees

(4) A municipality may recover all fees and charges payable despite shutting off the supply of the public utility. 2001, c. 25, s. 81 (4).

Debt

398. (1) Fees and charges imposed by a municipality or local board on a person constitute a debt of the person to the municipality or local board, respectively. 2001, c. 25, s. 398 (1); 2006, c. 32, Sched. A, s. 170 (1).

Amount owing added to tax roll

(2) The treasurer of a local municipality may, and upon the request of its upper-tier municipality, if any, or of a local board whose area of jurisdiction includes any part of the municipality shall, add fees and charges imposed by the municipality, upper-tier municipality or local board, respectively, to the tax roll for the following property in the local municipality and collect them in the same manner as municipal taxes:

1. In the case of fees and charges for the supply of a public utility, the property to which the public utility was supplied.
2. In all other cases, any property for which all of the owners are responsible for paying the fees and charges. 2001, c. 25, s. 398 (2); 2006, c. 32, Sched. A, s. 170 (2).