

# **ASSURANCE OF VOLUNTARY COMPLIANCE**

**Pursuant to s. 112.7 of the  
*Ontario Energy Board Act, 1998***

**ENWIN Utilities Ltd.**

**Licence No. ED-2002-0527**

**OEB File No. EB-2020-0244**

**November 4, 2020**

## I. INTRODUCTION AND SUMMARY

Ontario Energy Board (OEB) staff conducted an inspection of ENWIN Utilities Ltd.'s (ENWIN) customer disconnection notice, and bill issuance and payment procedures. Following the inspection, OEB staff identified, and ENWIN verified, specific instances of the distributor's non-compliance with various of its customer disconnection and payment allocation-related obligations under the Distribution System Code (DSC).

In resolution of the contravention, ENWIN provided this Assurance of Voluntary Compliance to the OEB under section 112.7 of the *Ontario Energy Board Act, 1998* (OEB Act).

## II. STATEMENT OF FACTS

ENWIN is an electricity distributor that operates in the City of Windsor, as described in its distribution licence, ED-2002-0527.

In the process of reviewing complaints received by the OEB from two of ENWIN's customers, OEB staff identified breaches of enforceable provisions by ENWIN relating to the form of disconnection notice that the utility used during the period May to June, 2019. The breaches also related to the manner by which ENWIN allocated customer payments.

Upon being notified of the complaints by OEB staff, ENWIN took prompt action to reconnect customers who had been disconnected following receipt of the non-compliant disconnection notice. ENWIN issued refunds to each of these customers who had paid reconnection charges. ENWIN also updated its form of disconnection notice to address the non-compliant items noted by OEB staff.

In November 2019, OEB staff advised that it was commencing an inspection to assess ENWIN's compliance with section 4.2 of the DSC and related provisions, and sections 2.6.6 and 2.6.6.2B of the DSC, in order to determine if enforcement action would be necessary. The notice of inspection also required ENWIN to provide OEB staff with additional information. ENWIN has

been responsive to OEB staff throughout the inspection process. Through the course of the information exchange, ENWIN confirmed to OEB staff as follows:

- i. ENWIN issued approximately 6,740 disconnection notices during the period May to June, 2019, each of which were not fully compliant with the DSC for one, or more, of the following reasons:
  - The disconnection notice failed to provide the minimum 10-day notice period as prescribed by section 4.2.3 of the DSC. These customers were inadvertently provided a notice period of nine days.
  - Since the minimum notice period was nine days instead of ten days, as required, the disconnection notice failed to advise of the earliest and latest possible dates of disconnection, in contravention of sections 4.2.2 (b) and 4.2.2.3 of the DSC. The disconnection window, while being 11 days following the last day of the applicable minimum notice period, was nevertheless also non-compliant in that it had the potential to mislead the customer into believing that the customer is at risk of disconnection one day earlier than the earliest day ENWIN would be permitted to disconnect under the DSC.
  - The disconnection notice failed to provide customers with an accurate dollar figure representing the minimum amount payable in order to avoid electricity disconnection, as required by section 4.2.2 (c) of the DSC, as although the disconnection notice separately indicated the amounts owing for electricity and water and sewer services, the disconnection notice advised the customer to pay a total amount due that included the water and sewer arrears.
- ii. ENWIN disconnected the electricity service of 263 customers following their receipt of a non-compliant disconnection notice, as identified above.
- iii. ENWIN collected approximately \$10,075 in reconnection charges from 155 customers whose electricity service was disconnected following receipt of a non-compliant disconnection notice, as identified above.

- iv. Upon being notified of the customer complaints in July 2019, ENWIN took prompt and voluntary steps to reconnect all customers who had received non-compliant disconnection notices and who remained disconnected, and to refund reconnection charges paid to the 155 customers noted in point iii above.

ENWIN admits that, with regard to the foregoing customers, it failed to fully comply with its obligations under sections 4.2.2(b) and (c), and section 4.2.3 of the DSC. ENWIN understands that, taken together, these sections require a utility to provide the prescribed minimum notice period to a customer prior to their possible disconnection, and to clearly indicate the amount to be paid for electricity arrears in order to avoid electricity disconnection.

As well, ENWIN admits that, due to functionality limitations, its Customer Information System (CIS) did not allocate customer payments in accordance with sections 2.6.6 and 2.6.6.2B of the DSC. ENWIN did, however, utilize a manual process to ensure customers were not disconnected in error.

**Distribution System Code, Section 4.2.2**

Section 4.2.2 of the DSC provides, in part, that a distributor that intends to disconnect, pursuant to section 31 of the *Electricity Act, 1998*, the property of a residential customer for non-payment, shall send or deliver a disconnection notice to the customer that contains, at a minimum, the following information:

(b) the earliest and latest dates on which disconnection may occur, in accordance with sections 4.2.3 and 4.2.2.3; and,

(c) the amount that is then overdue for payment, including all applicable late payment and other charges associated with non-payment to that date.

ENWIN issued approximately 6,740 disconnection notices that contained contraventions of one or more of the above-referenced enforceable provisions. The disconnection notices issued by ENWIN failed to ensure its customers had the minimum 10-day window within which to arrange

to settle the outstanding accounts without fear of being disconnected. ENWIN inadvertently provided its customers a notice period of nine days. As such, the notices did not specify an accurate earliest and latest date of possible disconnection.

The notices did not specify the amount of arrears required to be paid for electricity, in order to avoid electricity disconnection. Rather, although the notices included an amount for “Electric Past Due” and an amount for “Water/Sewer Past Due”, the customer was advised to remit the “Total Amount Due”, a combination of electricity arrears with water/sewer arrears, to avoid “disconnection of service(s)”. As such, ENWIN failed to specify on the notices issued to its customers, who were at risk of having their electricity service disconnected for non-payment, the minimum amount due in order to avoid disconnection of only the electricity service, rather than both utility services. ENWIN assures that if a partial payment was made covering only the electricity arrears, the electricity service would not have been disconnected, and that this practice will remain in place pending ENWIN’s upgrade to its CIS.

**Distribution System Code, Section 4.2.3**

Section 4.2.3 of the DSC provides that a distributor shall not disconnect a customer for non-payment until the following minimum notice periods have elapsed:

- (a) 60 days from the date on which the disconnection notice is received by the customer, in the case of a residential customer that has provided the distributor with documentation from a physician confirming that disconnection poses a risk of significant adverse effects on the physical health of the customer or on the physical health of the customer's spouse, dependent family member or other person that regularly resides with the customer; or
- (b) 10 days from the date on which the disconnection notice is received, in all other cases.

ENWIN did not comply with section 4.2.3 of the DSC, in that the disconnection notices failed to provide the required 10 days’ notice prior to the earliest date upon which the customer is advised that disconnection may occur. ENWIN breached its obligation under section 4.2.3 by disconnecting 263 customers without the disconnection notice incorporating the minimum 10-day notice period.

**Distribution System Code, Sections 2.6.6 and 2.6.6.2B**

Section 2.6.6 of the DSC sets out the manner by which a distributor is to allocate payments made by residential customers:

Where a bill issued to a residential customer includes charges for goods or services other than electricity, 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.

Furthermore, section 2.6.6.2B of the DSC requires that:

Where payment on account of a bill referred to in section 2.6.6 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.

ENWIN did not comply with section 2.6.6 and 2.6.6.2B of the DSC, which require that customer payments be allocated to electricity charges first. To address this issue, ENWIN is taking steps to ensure electricity customers are not harmed by the manner in which its CIS allocates payments and that no electricity customers have been or will be improperly disconnected because of the payment allocation methodologies which are in place.

**III. ASSURANCE**

ENWIN hereby assures the OEB that it is aware of its obligations under the DSC related to the customer disconnection process, and that it takes these obligations seriously. ENWIN understands that one of the most important requirements of the DSC is to ensure that a notice of disconnection issued to a residential customer include, at a minimum, all of the elements listed in section 4.2.2 so that customers are provided the necessary information to address any potential disconnection. In particular, ENWIN understands that, under section 31 of the *Electricity Act*,

1998, disconnection for non-payment is limited to the failure to pay for the distribution or retail of electricity to a property and that, while distributors are permitted by law to bill for certain other goods and services, a residential customer should not be exposed to the risk of disconnection by reason of partial payments being allocated in whole or in part to non-electricity charges.

ENWIN has taken all reasonable steps to ensure compliance with its customer disconnection-related obligations under the DSC. ENWIN staff worked with OEB compliance staff to obtain assistance and guidance prior to as well as during the compliance review to address specific issues within the disconnection notice. ENWIN has implemented changes to ensure that the disconnection notices that it issues to customers clearly indicate the amount of electricity arrears to be paid to avoid electricity service disconnection. While water and sewer arrears are itemized separately on the disconnection notice to advise that those arrears must be paid, ENWIN has made it more clear on the notice that the electricity arrears amount due is the only amount that must be paid in order for the customer to avoid disconnection of electricity.

ENWIN has voluntarily made an additional payment of \$32,648 for 2020 Low-income Energy Assistance Program (LEAP) funding, to assist the most vulnerable customers in its service territory.

ENWIN acted promptly to reconnect all customers who, pursuant to a non-compliant disconnection notice issued during the May to June 2019 period, were disconnected, and refunded, in full, all reconnection fees paid by those customers. ENWIN will deliver a letter, the contents of which will be approved by OEB staff, to each of these customers, advising them of (a) ENWIN's non-compliance with the DSC as it specifically relates to the customer, and the reason for the refund/credit of the reconnection charges and, that they will receive a bill credit of \$50 on the next bill following their receipt of the letter, (b) ENWIN having provided the OEB with this Assurance of Voluntary Compliance, and (c) ENWIN's additional payment of \$32,648 to the LEAP agency serving customers in the ENWIN service territory.

ENWIN is taking steps to ensure that the automated payment priority mandated by sections 2.6.6 and 2.6.6.2B of the DSC will be encompassed within a forthcoming upgrade to its CIS, which is scheduled for completion by December 2020. ENWIN will confirm in writing to the OEB when the CIS upgrade has been implemented.

ENWIN assures that it will not apply to recover the costs related to this Assurance of Voluntary Compliance in any current or future rate application.

**IV. ADMINISTRATIVE MONETARY PENALTY**

ENWIN agrees to pay an administrative monetary penalty to the OEB in the amount of \$35,000. Payment will be made by cheque or electronically, together with notice sent to the OEB Registrar, within two weeks of ENWIN being given notice of the acceptance of the Assurance by the OEB.

**V. CONSUMER RIGHTS**

Nothing in the Assurance of Voluntary Compliance affects any rights a consumer may have under any applicable laws.

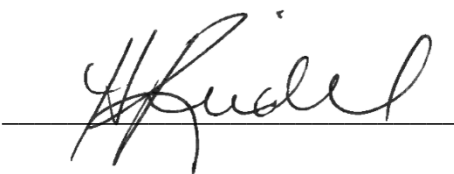
**VI. FAILURE TO COMPLY**

This Assurance of Voluntary Compliance has the same force and effect as an order of the OEB pursuant to section 112.7(2) of the OEB Act and any failure to comply with its terms shall be deemed to be a breach of an order of the OEB.

**VII. EXECUTION OF ASSURANCE**

I have the authority to bind ENWIN to the terms set out in this Assurance of Voluntary Compliance.

Name: Helga Reidel  
Title: President & CEO  
Company: ENWIN Utilities Ltd.

Signature: 

Dated this 4th day of November, 2020