

# **ASSURANCE OF VOLUNTARY COMPLIANCE**

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

**Elexicon Energy Inc.**

**Licence No. ED-2019-0128**

**OEB File No. EB-2019-0256**

**November 27, 2019**

## I. INTRODUCTION AND SUMMARY

The Ontario Energy Board (OEB) commenced an inspection of Elexicon Energy Inc. (Elexicon Energy) on July 30, 2019, in relation to Elexicon Energy's customer disconnection practices. Following the inspection, OEB staff identified, and Elexicon Energy verified a number of specific instances of the utility's non-compliance with its customer disconnection obligations under the Distribution System Code (DSC). In resolution of the contravention, Elexicon Energy 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

Elexicon Energy is an electricity distributor that operates in the communities of Ajax, Pickering, Clarington, Belleville, Brock, Gravenhurst, Port Hope, Scugog, Uxbridge and Whitby under OEB licence ED-2019-0128.

In the process of reviewing a complaint filed by an Elexicon Energy customer in May 2019, OEB staff identified a number of potential breaches of enforceable provisions by Elexicon Energy relating to the utility's customer disconnection practices specific to its Veridian Rate Zone service territory.

By notice to Elexicon Energy dated July 30, 2019, the OEB advised that it was commencing an inspection to assess Elexicon Energy's compliance with its electricity distribution licence in order to determine if enforcement action would be necessary. The OEB's notice advised that the inspection was in relation to allegations of Elexicon Energy's non-compliance with regard to its customer disconnection obligations under the DSC. The OEB's notice set out requirements for Elexicon Energy to provide the OEB with certain information in relation to the allegations of non-compliance.

In response to the requirements set out in the OEB's notice, Elexicon Energy undertook a full review of its collection and disconnection practices, including each of the disconnection notices that it had sent during the period May 1 to July 30, 2019. Based on this review, Elexicon Energy advised OEB staff that approximately 3500 customers were inadvertently sent disconnection notices that did not comply with all the requirements of the DSC. Specifically:

- i. 3230 customers received notices that - as a result of a delay in their physical delivery to the customer – misrepresented the number of days remaining to the customer by which the customer could arrange for bill-payment prior to disconnection. These customers were ultimately not disconnected.
- ii. An additional 307 customers received non-compliant disconnection notices like those identified in “i.” above, and ultimately had their electricity service disconnected at least 10 days following receipt of the notice.
- iii. An additional 10 customers received non-compliant disconnection notices like those identified in “i.” above, and due to human error, ultimately had their electricity service disconnected within less than 10 days following their receipt of the notice.

Elexicon Energy admits that, with regard to the foregoing customers, Elexicon Energy failed to comply with its obligations under sections 4.2.2 (b) and (f), and 4.2.3 of the DSC. Together, these sections obligate a utility to provide at least a 10-day notice period to a customer prior to disconnection, and the notice period extends from the date of the customer's receipt of the notice to the “earliest possible disconnection date” stated in the notice.

The notices sent to approximately 3500 affected customers calculated the dates based on the day the notice was printed and expected to be delivered, not the date it was actually delivered as a result of a delivery delay, and as a result did not have a full 10 days between these two dates.

**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

(f) the time period during which any [permitted form of payment] will be accepted by the distributor.

In breach of section 4.2.2 (b), Elexicon Energy inadvertently provided approximately 3500 customers with a notice of disconnection which contained a false and misleading “earliest date on which disconnection may occur”. As well, contrary to section 4.2.2 (f), incorrect information was inadvertently provided to these customers regarding the amount of time they may have had in which to pay overdue amounts and avoid disconnection. As such, Elexicon Energy failed to ensure that its customers who were at risk of being disconnected for non-payment had the minimum 10-day window within which to make arrangements to settle the customers’ outstanding accounts without fear of being disconnected.

**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.

Elexicon Energy had a business practice in place to address the delay in delivery of a disconnection notice such that the payment window and earliest date of disconnection would be adjusted by Elexicon Energy to ensure the minimum 10-day notice period was complied with. However, this business practice was not sufficient to ensure that these customers were properly notified as required by the DSC. New customer notices should have been printed to reflect any changes in dates arising due to delayed deliveries.

In addition, Elexicon Energy breached its obligation under section 4.2.3 (b), by disconnecting 10 customers without first providing them the minimum 10-day window within which to make arrangements to settle their outstanding accounts.

### **III. ASSURANCE**

Elexicon Energy hereby assures the OEB that it is aware of its obligations under the DSC related to the disconnection process and that it takes these obligations seriously. Elexicon Energy further assures that all reasonable steps have been taken to ensure that Elexicon Energy staff involved in the collection and disconnection process have been properly informed of the regulatory

requirements and on-going training and management oversight remains in place to support compliance.

Elexicon Energy understands that when a disconnection is initiated, it must ensure it complies with all of the requirements set out in section 4.2 of the DSC and that one of the most important requirements of the DSC is that the notice of disconnection 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 addition, Elexicon Energy will deliver a letter to each of the approximately 3500 affected customers advising of the compliance matter and its resolution. Specifically,

- i. To address the 3230 customers who were given a non-compliant disconnection notice, Elexicon Energy will send a letter, approved by OEB staff, advising of (i) Elexicon Energy's general non-compliance with the DSC, (ii) Elexicon Energy having provided the OEB with this Assurance of Voluntary Compliance, and (iii) Elexicon Energy's obligation thereunder to make a payment of \$32,300 to the LEAP Program agency serving its customers in the Veridian Rate Zone service territory - United Way Simcoe Muskoka.
  
- ii. To address each of the 307 customers whose electricity service was disconnected upon having been given a non-compliant disconnection notice, Elexicon Energy will send a letter, approved by OEB staff, advising of (i) Elexicon Energy's non-compliance with the DSC as it specifically relates to the customer, (ii) Elexicon Energy having provided the OEB with this Assurance of Voluntary Compliance, (iii) Elexicon Energy's obligation thereunder to make a payment of \$32,300 to the LEAP Program agency

serving its customers in the Veridian Rate Zone service territory - United Way Simcoe Muskoka, and (iv) Elexicon Energy's obligation to provide the customer with a bill credit in the amount of \$110.

- iii. To address each of the 10 customers whose electricity service was disconnected within less than 10 days from receiving a notice of disconnection, Elexicon Energy will send a letter, approved by OEB staff, advising of (i) Elexicon Energy's non-compliance with the DSC as it specifically relates to the customer, (ii) Elexicon Energy having provided the OEB with this Assurance of Voluntary Compliance, (iii) Elexicon Energy's obligation thereunder to make a payment of \$32,300 to the LEAP Program agency serving its customers in the Veridian Rate Zone service territory- United Way Simcoe Muskoka and (iv) Elexicon Energy's obligation to credit the customer's account in an amount equal to the customer's arrears owing to Elexicon Energy as had been stated on the disconnection notice.

Elexicon Energy 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**

Elexicon Energy agrees to pay an administrative monetary penalty to the OEB in the amount of \$50,000. Payment will be made by cheque or electronically, together with notice sent to the Registrar and Board Secretary, within two weeks of Elexicon Energy being given notice of the acceptance of this Assurance by the OEB.

**V. CONSUMER RIGHTS**

With the sole exception of the payments being made by Elexicon Energy pursuant to Section III (items i., ii. and iii,) above, nothing in this 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 Elexicon Energy Inc. to the terms set out in this Assurance of Voluntary Compliance.

Name: Lesley Gallinger

Title: President & C.E.O.

Company: Elexicon Energy Inc.

Signature: 

Dated this 27<sup>th</sup> day of November, 2019