

Assurance of Voluntary Compliance

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

E.L.K. Energy Inc.

EB-2023-0284

November 3, 2023

I. STATEMENT OF FACTS

On April 14, 2022, the Ontario Energy Board (OEB) sent a letter to all licensed electricity distributors in the province advising them that the OEB had recently accepted an Assurance of Voluntary Compliance (AVC) from a distributor that had overcharged customers as a result of incorrectly prorating the fixed monthly charges approved by the OEB under section 78 of the *Ontario Energy Board Act, 1998* (OEB Act). The letter explained:

The AVC arose after a distributor identified that it was overcharging customers due to applying a daily charge that had been incorrectly calculated. While the distributor used the approved fixed monthly charges from its OEB-approved Rate Order, its billing system translated these monthly charges into a daily charge for application to customers' bills. In the translation from monthly to daily charge, the daily charge was calculated on the basis of there being 30 days in every month (or 360 days in a year) but billed customers 365 days a year, leading to an overcharge of each customer.

The letter asked all distributors to review their billing systems and to advise the OEB if they discovered the same proration issue.

On July 7, 2023, E.L.K. Energy Inc. ("E.L.K."), a distributor serving approximately 12,600 customers for 6 communities in Southwestern Ontario, wrote to the OEB advising that it had seen the AVCs provided by Kingston Hydro Corporation, Synergy North Corporation, Sioux Lookout Hydro Inc., Fort Frances Power Corporation, and Atikokan Hydro Inc. which related to the incorrect proration of fixed monthly charges. The E.L.K. Management Services Provider and the new E.L.K. Board of Directors undertook a review and immediately reported that after reviewing those AVCs, it discovered that its billing system was configured in a similar way. Only a portion of bills were affected, because proration was used in only two circumstances: (a) the first and last bill of a partial month (move-in and move-out); or (b) if the customer is billed off cycle (not based on their bill day) when accounts are behind on billing. In those circumstances, the billing system prorated the monthly service charge rate to a daily charge using a set value of 30 days to calculate the daily rate, regardless of the month. Customers in E.L.K.'s Residential, GS<50, and GS>50 rate classes were affected, but only in the two circumstances described above.

E.L.K. determined that the issue had persisted since November 2020. Effective November 1, 2023, E.L.K. appropriately implemented changes to its billing system to ensure customers would not be overcharged due to the incorrect proration of fixed monthly charges.

E.L.K. has agreed to provide this AVC which is modeled on the ones referenced above. E.L.K. recognizes that several other distributors that have provided an AVC to the OEB in respect of the incorrect proration of fixed charges have agreed to issue a credit to affected customers equivalent to thirty-six months worth of overcharges. As the impacted bills represented only a portion of all bills issued, the total amount that E.L.K. over-collected since November 2020 was relatively small: \$2,741.82 (or an average of \$76.16 per month). Considering that a customer credit would be small (around 30 cents per residential customer), and that many customers who received impacted bills are no longer customers of E.L.K. and therefore difficult to track down,

E.L.K. has proposed instead to make a contribution to the Low-income Energy Assistance Program (LEAP), to help customers in need.

II. ASSURANCE

E.L.K. acknowledges that, as a result of its billing system configuration, it was over-billing some customers more than the OEB-approved fixed charges. To remedy the contravention of the rate orders, E.L.K. assures the OEB that it will take the following measures:

1. E.L.K. will make a payment of \$2,741.82 to the LEAP agency serving customers in the E.L.K. service territory, which is equivalent to thirty-six months of overcharges (November 1, 2020 to October 31, 2023). The LEAP payment will be paid as a lump sum within 90 days of the acceptance of this AVC by the OEB.
2. At the time of the contribution to LEAP, E.L.K. will notify customers of the contribution and this AVC, in a form and manner to be approved by the OEB.

III. ADMINISTRATIVE PENALTY

E.L.K. agrees to pay an administrative penalty to the OEB in the amount of \$10,000. Payment will be made electronically with notice sent to the Registrar, within four weeks of the acceptance of this AVC by the OEB.

IV. CONSUMER RIGHTS

Nothing in this AVC affects any rights a consumer may have under any applicable law.

V. FAILURE TO COMPLY

E.L.K. acknowledges that this AVC has the same force and effect as an order of the OEB pursuant to section 112.7(2) of the OEB Act.

VI. EXECUTION OF ASSURANCE

I have the authority to bind E.L.K. to the terms set out in this AVC.

Name: JIM HOGAN

Title: MANAGEMENT SERVICES PROVIDER LEAD

Signature: 

Dated this 3 day of November, 2023