

ASSURANCE OF VOLUNTARY COMPLIANCE

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

Enova Power Corp.

Licence No. ED-2022-0006

OEB File No. EB-2022-0287

January 26, 2023

I. INTRODUCTION AND SUMMARY

Ontario Energy Board (OEB) staff conducted an inspection of Waterloo North Hydro Inc.'s (WNH) variance accounts 1588 and 1589 related to electricity commodity costs for the period 2015 to 2020 under the authority of Part VII of the *Ontario Energy Board Act, 1998* (OEB Act). On September 1, 2022, Kitchener Wilmot Hydro Inc. and Waterloo North Hydro Inc. amalgamated and continued operations as Enova Power Corp. (Enova). The contraventions that are the subject of this Assurance of Voluntary Compliance (AVC) arose before the amalgamation.

Enova has been approved to refund the amounts over collected from customers as part of its 2023 rate proceeding (EB-2022-0067). In order to address the noncompliance and resolve any outstanding matters related to the inspection, Enova has agreed to pay the IESO the amount of under remittance including interest on under remittance in the amount of \$152,908 for a for a total of \$3,486,655 (\$3,333,747 + \$152,908) to be paid to the IESO. Enova has provided this Assurance of Voluntary Compliance to the OEB under section 112.7 of the OEB Act.

II. STATEMENT OF FACTS

In February 2019, the OEB issued Accounting Procedures Handbook Update – Accounting Guidance Related to Commodity Pass-Through Accounts 1588 & 1589 (“Accounting Guidance”). From its review of the Accounting Guidance, WNH recognized that it had incorrectly interpreted and executed the applicable provisions of the Electricity Act and regulations. WNH brought forth revisions to its 1588 and 1589 account balances to recognize certain historical errors in its billing and settlement of the Global Adjustment (GA) as part of its 2021 Cost of Service rate application (EB-2020-0059).

The OEB initiated an inspection in February 2022 as a result of concerns raised during WNH's 2021 Cost of Service proceeding and 2022 IRM proceeding (EB-2021-0062).

In August 2022, the OEB issued its inspection report. The inspection assessed WNH's compliance with applicable enforceable provisions under the *Electricity Act, 1998* (Electricity Act) the OEB Act and related regulations. The inspection also assessed whether WNH conformed with the OEB's Accounting Procedures Handbook and related guidelines.

Through the inspection, OEB staff discovered that, during the period from 2015 to 2020, WNH failed to comply with the following enforceable provisions:

- i. Section 25.33 of the Electricity Act;
- ii. Section 16(3) of O. Reg. 429/04: Adjustments under Section 25.33 of the Electricity Act; and
- iii. Section 5(1) of O. Reg. 430/04: Payments re Section 25.33 of the Electricity Act.

The inspection found that WNH failed to settle Regulated Price Plan (RPP) variances in accordance with section 25.33 of the Electricity Act and related regulations and, as a result, contravened its licence. The contravention resulted in customers being overcharged \$1,604,378 from 2015 to 2018 and WNH under-remitting \$3,333,747 to the Independent Electricity System Operator (IESO) related to settlement of RPP variances and embedded generation amounts from 2015 to 2020.

Variance accounts 1588 and 1589 are pass-through commodity accounts that are used to record the monthly net differences between the energy and global adjustment amounts billed to customers, and the actual costs paid by the distributor to the IESO. The balances accumulated in Accounts 1588 and 1589 are subsequently recovered from or refunded to customers through the rate application process.

The inspection found that:

- WNH incorrectly used the first estimate global adjustment (GA) rate instead of the actual GA rate to settle RPP variances with the IESO and to record GA costs for RPP and non-RPP customers in Accounts 1588 and 1589. As a result, from 2015 to 2020, WNH did not settle accurate RPP variances with the IESO and WNH reported inaccurate Accounts 1588 and 1589 balances.
- WNH incorrectly used the energy billed in the settlement month instead of the energy consumed during the settlement month to settle RPP variances with the IESO. As a result of the timing differences, from 2015 to 2020, WNH did not settle RPP variances

with the IESO correctly and WNH reported inaccurate Accounts 1588 and 1589 balances.

- WNH did not include correct energy volumes for its embedded generation customers in settling embedded generation amounts with the IESO. As a result, from 2015 to 2020, WNH did not settle correct embedded generation amounts with the IESO and WNH reported inaccurate Accounts 1588 balances.

The inspection also found that, as a result of the above errors, WNH had over-charged its customers by a total of \$1,604,378 from 2015 to 2018 and under-remitted a total of \$3,333,747 to the IESO. Enova subsequently acknowledged that due to the large under-remittance, it owed an additional \$152,908 in interest for a total of \$3,486,655 (\$3,333,747 principal + \$152,908 interest) to the IESO.

The inspection also found that WNH misstated the balances in Accounts 1588 and 1589 between 2015 and 2020. On December 8, 2022, the OEB issued Decision EB-2022-0067 approving Enova's proposal to correct the balances in Accounts 1588 and 1589 between 2015 and 2020, including balances from 2015 to 2018, which were disposed on a final basis. Dispositions approved by the OEB are found in Table 6.1 and Table 6.2 of OEB Decision EB-2022-0067, with Table 6.1 (including modification to include interest) reproduced below for accounts 1588 and 1589:

	Account 1588	Account 1589
Adjustments relating to 2015 to 2018 balances	(\$150,641)	(\$1,417,250)
Adjustments relating to 2019 balances	\$21,751	\$393,945
Adjustments relating to 2020 balances	\$55,642	\$74,243
Total Adjustments as of December 31, 2020	(73,249)	(949,062)
Interest on adjustments	14,425	(96,330)
Total Principal and Interest Adjustments	(58,824)	(1,045,392)

Upon being notified by OEB staff of the contravention, Enova undertook further review of its processes and records, admitted to the contravention of the Electricity Act and regulations, and clarified its understanding of the Electricity Act, regulations, OEB Accounting Procedures

Handbook and Accounting Guidance relating to settlement of Regulated Price Plan variances, embedded generation amounts and the reporting of the balances of accounts 1588 and 1589.

III. ASSURANCE

Enova acknowledges that distributors have a responsibility to ensure the balances of deferral and variance accounts are calculated correctly and that Regulated Price Plan variances and embedded generation amounts are to be settled in accordance with their statutory and regulatory obligations including:

- The applicable provisions of the Electricity Act and regulations
- The OEB's Accounting Procedures Handbook
- OEB guidance including the Accounting Guidance Related to Commodity Pass-Through Accounts 1588 & 1589 issued in February 2019.

Enova hereby assures the OEB that

1. Enova will make a one-time payment to the IESO consisting of the principal amount of the under remittance of \$3,333,747 as well as interest of \$152,908 to reimburse the IESO for the under remittance over the 2015-2020 period; and
2. Enova will not apply to recover the costs related to this Assurance of Voluntary Compliance in any current or future rate application.

IV. FAILURE TO COMPLY

Enova acknowledges that 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.


V. ADMINISTRATIVE PENALTY

Enova agrees to pay an administrative penalty to the OEB in the amount of \$3,000. Payment will be made to the Registrar, within four weeks of the acceptance of this Assurance of Voluntary

Compliance by the OEB.

VI. EXECUTION OF ASSURANCE

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



Name: Rene W. Gatien, P.Eng., MBA, ICD.D

Title: Co-CEO

Company: Enova Power Corp.

Dated this 26th day of January, 2023