

ASSURANCE OF VOLUNTARY COMPLIANCE

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

**E.L.K. Energy Inc.
Licence No. ED-2003-0015**

**OEB File No. EB-2020-0170
Wednesday November 11, 2020**

I. INTRODUCTION AND SUMMARY

Ontario Energy Board (OEB) staff conducted an inspection of E.L.K. Energy Inc.'s customer disconnection notice and related procedures. Following the inspection, OEB staff identified, and E.L.K. Energy Inc. verified, specific instances of the distributor's non-compliance with its customer disconnection obligations under the Distribution System Code (DSC) last revised March 14, 2019.

In resolution of the contravention, E.L.K. Energy Inc. 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

E.L.K. Energy Inc. is an electricity distributor that operates in the Towns of Essex, Lakeshore and Kingsville, as described in its distribution license (ED-2003-0015).

In the process of reviewing a complaint received by the OEB in July 2019 from one of E.L.K. Energy Inc.'s customers, OEB staff identified a potential breach of enforceable provisions by E.L.K. Energy Inc. relating to the disconnection notice that the distributor used during the period May to November, 2019.

In November 2019, OEB staff advised that it was commencing an inspection to assess E.L.K. Energy Inc.'s compliance with section 4.2 of the DSC and related provisions, in order to determine if enforcement action would be necessary. The notice of inspection also required E.L.K. Energy Inc. to provide OEB staff with additional information regarding the allegations of non-compliance. In response to the requirements set out in the OEB's letters, E.L.K. Energy Inc. undertook a review of its disconnection processes. Based on this review and through the course of the information exchange, E.L.K. Energy Inc. confirmed to OEB staff as follows:

- i. E.L.K. Energy Inc. issued approximately 2,000 disconnection notices during the period May to November, 2019, each of which were not fully compliant with the DSC for one, or more, of the following reasons:

- The disconnection notice failed to advise of earliest and latest possible date of disconnection, in contravention of sections 4.2.2 (b) and 4.2.2.3 of the DSC, as the disconnection notice advised of a twelve-day disconnection window (one day longer than permitted 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 the disconnection notice contained a total amount due that included water and sewer arrears.
 - The disconnection notice failed to comply with sections 4.2.2 (g), (k) and (k1) of the DSC, in that it did not disclose to customers all of the information required by those sections.
- ii. E.L.K. Energy Inc. disconnected the electricity service of 111 customers following their receipt of a non-compliant disconnection notice, as identified above.
- iii. E.L.K. Energy Inc. collected approximately \$7,000 in reconnection charges from customers whose electricity service was disconnected following receipt of a non-compliant disconnection notice, as identified above.

E.L.K. Energy Inc. admits that, with regard to the foregoing customers, E.L.K. Energy Inc. failed to comply with its obligations under one or more of sections 4.2.2 (b) and (c), (g), (k) and (k1) and section 4.2.3 of the DSC. E.L.K. Energy Inc. has since revised its form of disconnection notice to ensure compliance with these sections.

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;

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

(g) a statement that if the distributor attends the customer's property to disconnect, a customer will only be able to pay by credit card unless the distributor will accept other forms of payment as set out in the disconnection notice; and,

(k) and (k1) a detailed description of all the possible Board assistance programs that may be available to the customer, and related contact information.

Section 4.2.2.3

Section 4.2.2.3 of the DSC requires that a disconnection notice issued for non-payment shall expire on the date that is eleven days from the last day of the applicable minimum notice period referred to in section 4.2.3 (determined in accordance with the rules set out in section 2.6.7). A distributor may not thereafter disconnect the property of the customer for non-payment unless the distributor issues a new disconnection notice in accordance with section 4.2.2.

E.L.K. Energy Inc. issued approximately 2000 disconnection notices that contained contraventions of one or more of the above-referenced enforceable provisions. The notices did not specify the amount of arrears required to be paid for electricity in order to avoid electricity disconnection. Rather, the notices provided one total amount due, combining the electricity arrears with the water and sewer arrears under a heading entitled "Arrears Amount Due" and

informed the customer to “pay the full amount to avoid disconnection”. As such, E.L.K. Energy Inc. failed to ensure that its customers, who were at risk of having their electricity service disconnected for nonpayment, understood the amount due in order to avoid disconnection of electricity service. The disconnection notices issued by E.L.K. Energy Inc. also failed to advise customers of their earliest and latest possible date of disconnection, given that the notices advised of a disconnection window that spanned twelve-days. E.L.K. Energy Inc. did confirm no disconnections occurred outside of the eleven day prescribed window.

III. ASSURANCE

E.L.K. Energy Inc. 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. E.L.K. Energy Inc. understands that one of the most important requirements of the DSC is to ensure that a 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. E.L.K. Energy Inc. also 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 a licensed distributor’s partial payments being allocated in whole or in part to non-electricity charges.

E.L.K. Energy Inc. assures that all reasonable steps have been taken to ensure E.L.K. Energy Inc.’s compliance with its customer disconnection-related obligations under the DSC and its licence. E.L.K. Energy Inc. has implemented changes to ensure that the disconnection notices that it issues to customers will clearly indicate the amount of electricity arrears to be paid to avoid disconnection. While water and sewer arrears may be itemized separately on the disconnection notice to advise that those arrears must be paid, E.L.K. Energy Inc. will make it clear to its customers that the electricity arrears amount due is the only amount that must be paid in order for the customer to avoid disconnection of electricity.

E.L.K. Energy Inc. will voluntarily make an additional payment of \$5,000 for 2020 LEAP funding, to assist the most vulnerable customers in its service territory.

E.L.K. Energy Inc. provided full refunds of the reconnection charges paid by the 111 customers who were disconnected upon having received a non-compliant disconnection notice during the May to November, 2019 period. E.L.K. Energy Inc. will deliver a letter to each of these customers, upon having been reviewed and approved by OEB staff, advising them of (a) E.L.K. Energy Inc.'s non-compliance with the DSC and the reason for providing the refund of reconnection charges, (b) E.L.K. Energy Inc. having provided the OEB with this Assurance of Voluntary Compliance, and (c) E.L.K. Energy Inc.'s obligation thereunder to make an additional payment of \$5,000 to the LEAP Program agency serving customers in the E.L.K. Energy Inc. service territory.

E.L.K. Energy Inc. 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

E.L.K. Energy Inc. agrees to pay an administrative monetary penalty to the OEB in the amount of \$18,000. Payment will be made by cheque or electronically, together with notice sent to the OEB Registrar, within two weeks of E.L.K. Energy Inc. 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 E.L.K. Energy Inc. to the terms set out in this Assurance of Voluntary Compliance.

Name: Mark Danelon
Title: Chief Financial Officer, Director Stakeholder Relations
Company: E.L.K. Energy Inc.
Signature: Mark Danelon

Dated this 11 day of November, 2020