

# **ASSURANCE OF VOLUNTARY COMPLIANCE**

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

**Newmarket-Tay Power Distribution Ltd.**

**Licence No. ED-2007-0624**

**OEB File No. EB-2020-0216**

**September 15, 2020**

## I. INTRODUCTION AND SUMMARY

The Ontario Energy Board (“OEB”) commenced an inspection of Newmarket-Tay Power Distribution Ltd. (“Newmarket-Tay Power”) on December 4, 2019, in relation to Newmarket-Tay Power’s customer disconnection procedures. Following the inspection, OEB staff identified, and Newmarket-Tay Power verified, specific instances of the utility’s non-compliance with its customer disconnection obligations under the Distribution System Code (“DSC”). In response to being notified of the contravention, Newmarket-Tay Power initiated an internal review and external audit of its customer disconnection practices. In resolution of the contravention, Newmarket-Tay Power 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

Newmarket-Tay Power is an electricity distributor that operates under OEB licence ED-2007-0640.

The OEB received a customer complaint on May 28, 2019 relating to a disconnection notice issued to the customer by Newmarket-Tay Power. In the process of reviewing the complaint, OEB staff identified material deficiencies in the disconnection notice.

On December 4, 2019, the OEB advised Newmarket-Tay Power that it was commencing an inspection to assess Newmarket-Tay Power’s compliance with section 4.2 of the DSC and related provisions, and with its electricity distribution licence, in order to determine if enforcement action would be necessary. The letter also required Newmarket-Tay Power to provide additional information in relation to the allegations of non-compliance.

Newmarket-Tay Power responded to the OEB’s letter on December 18. Newmarket-Tay Power stated that it had undertaken 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 3, 2019. Based on this review, Newmarket-Tay Power advised OEB staff as follows:

- i. Newmarket-Tay Power issued 4,745 disconnection notices to 2,953 customers during the period May 1, 2019 to July 3, 2019, each of which failed to provide the minimum 10-day notice period as prescribed by section 4.2.2 (b) of the DSC. These customers were inadvertently provided notice periods ranging from 5 to 9 days.
- ii. Each of the disconnection notices identified in (i) above contained a total amount due that included water/sewer arrears. Accordingly, the affected customers were not provided 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.
- iii. Of the customers identified in (i) above, 56 ultimately had their electricity service disconnected and were charged reconnection fees totaling \$2,100.

Newmarket-Tay Power admits that, with regard to the foregoing customers, it failed to comply with its obligations under sections 4.2.2(b) and (c), and section 4.2.3 of the DSC. Newmarket-Tay Power 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.

**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.

In breach of sections 4.2.2 (b) and (c), Newmarket-Tay Power provided 4,745 disconnection notices that contained false and misleading amounts overdue for payment to avoid electricity disconnection, as well false and misleading “earliest date on which the disconnection may occur”. The notice did not specify the amount of arrears required to be paid for electricity, in order to avoid electricity disconnection, rather the notice provided one total amount due, which Newmarket-Tay Power confirmed included water/sewer arrears with electricity arrears. As such, Newmarket-Tay Power failed to ensure that its customers who were at risk of being disconnected understood the amount due to avoid electricity disconnection for non-payment. Newmarket-Tay Power also 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.

**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.

Newmarket-Tay Power did not comply with section 4.2.3 of the DSC, in that the disconnection notice failed to provide the required 10 days' notice prior to the earliest date upon which the customer is advised that disconnection may occur. Newmarket-Tay Power breached its obligation under section 4.2.3 (b) by disconnecting 56 customers without providing them the minimum 10-day window within which to make arrangements to settle their outstanding accounts.

Newmarket-Tay Power confirms that, immediately following the review of its disconnection and reconnection practices, the affected 56 customers were refunded their reconnection fees in full.

### **III. ASSURANCE**

Newmarket-Tay Power hereby assures the OEB that it is aware of its obligations under section 4.2 of the DSC related to disconnections and reconnections, and that it takes these obligations seriously. Newmarket-Tay Power 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.

Newmarket-Tay Power has initiated an internal review and an external audit to further assess and improve its disconnection and reconnection processes. As a result of the inspection, the internal review and the audit, Newmarket-Tay Power will update its business practices, including training, customer complaint policies, conditions of service, and website FAQ. Newmarket-Tay Power will also be extending a moratorium on disconnections of its residential customers pending the completion of the external audit.

Newmarket-Tay Power will deliver a letter to the 56 customers that it disconnected in 2019 pursuant to a non-compliant disconnection notice. The letter, to be reviewed and approved by OEB staff, will advise these customers of (a) Newmarket-Tay Power's non-compliance with the DSC, (b) Newmarket-Tay Power having provided the OEB with this Assurance of Voluntary Compliance, and (c) Newmarket-Tay Power's obligation thereunder to make an additional payment of \$5,600 to the LEAP Program agency serving its customers in the Newmarket-Tay Power service territory. The letter will advise each of these customers that they will receive a bill credit of \$100 on the next bill following their receipt of the letter.

Newmarket-Tay Power will implement changes to ensure that its customers receive an electricity disconnection notice that only includes electricity arrears and associated charges, and does not include water/sewer arrears.

Newmarket-Tay Power 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**

Newmarket-Tay Power agrees to pay an administrative monetary penalty to the OEB in the amount of \$32,000. Payment will be made by cheque or electronically, together with notice sent to the Registrar and Board Secretary, within two weeks of Newmarket-Tay Power being given notice of the acceptance of the Assurance of Voluntary Compliance 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 Newmarket-Tay Power Distribution Ltd. to the terms set out in this Assurance of Voluntary Compliance.

Name: Ysni Semsedini  
Title: President and CEO  
Company: Newmarket-Tay Power Distribution Ltd.

Signature: \_\_\_\_\_ Original Signed by Ysni Semsedini \_\_\_\_\_

Dated this \_\_\_\_\_ 15<sup>th</sup> day of September, 2020