



SENT BY EMAIL: clerks@essex.ca

August 30, 2024

Council for the Town of Essex
C/o Joe Malandrucolo, Director, Legal and Legislative Services/Clerk
33 Talbot Street South
Essex, Ontario N8M 1A8

Dear Members of Council for the Town of Essex,

RE: Water and wastewater billing and collection

As members of our Office discussed with Town of Essex staff on May 17, 2024, our Office received a complaint about the Town's water and wastewater billing (previously administered by E.L.K. Energy Inc.) and collection for a tenanted water account.

During our review of this complaint, we identified some fairness concerns with the water and wastewater billing and collection practices and procedures of the Town of Essex and E.L.K. Energy Inc. The purpose of this letter is to provide council and staff with a summary of our review and to share some information on best practices.

Complaint

A property owner leased their property to a tenant and, as a condition of the lease agreement, the tenant was responsible for paying for the utilities. The property owner contacted our Office in June 2023, after discovering that the Town had added the tenant's unpaid water and wastewater charges to the property tax bill, without notifying the property owner. As the water account was in the tenant's name, E.L.K Energy Inc. would not provide the property owner with information about the account or the unpaid charges without the tenant's consent, which the tenant was unwilling to provide. The property owner also complained that neither the Town nor E.L.K. would disconnect the water, leading to more arrears accumulating when the tenant failed to pay the bills.



The Ombudsman's authority

The Ontario Ombudsman is appointed under the *Ombudsman Act* as an Officer of the Legislative Assembly of Ontario, and is independent of political parties and government administrators. Our Office has the authority to conduct impartial reviews and investigations into the administrative conduct of municipalities, provincial government organizations, school boards, publicly funded universities, as well as services provided by children's aid societies and residential licensees, and services provided in French under the *French Language Services Act*.

When reviewing complaints about municipal government administration, the Ombudsman may consider whether or not an organization's policies or processes were followed, and if they were fair. If he identifies concerns, he may share best practices to improve municipal processes, as well as strengthen local governance, transparency and accountability.

Review

In reviewing this complaint, we considered correspondence between the property owner and the Town. We reviewed the Town's new Water and Wastewater Billing and Collection Policy, the Town's new Water Supply By-Law 2303, E.L.K. Energy Inc.'s Privacy Policy, and the *Municipal Act, 2001*. We also spoke with the Town's legal counsel and the Director of Corporate Services, as well as the Chief Executive Officer (Acting) and the Supervisor of Customer Service and Business at E.L.K Energy Inc. Finally, we examined water and wastewater billing practices at other municipalities.

We acknowledge and appreciate the Town's co-operation during our review.

Analysis

Notification to property owners of water/wastewater arrears for tenanted water accounts

The *Municipal Act, 2001* allows municipalities to add fees and charges imposed by the municipality, including water and wastewater arrears, to the tax roll for a property and collect them as municipal taxes. Ontario Regulation 581/06 permits these charges, when added to the tax roll, to have priority lien status.

When our Office initially spoke with Town staff in August 2023, we were told that the Town did not have a policy or by-law for adding water and wastewater arrears to the tax roll for a property. Staff told us that when the Town received notification from E.L.K Energy Inc. of outstanding water and wastewater arrears on an account, it sent a notice to the property owner about this and referenced its ability and authority to add these amounts to the



property's tax roll for collection. If the arrears remained unpaid after 21 days, the Town added them to the tax roll for that property.

In the case that we reviewed, the Town sent the property owner a notice saying that there were outstanding water and wastewater arrears on the property. The notice did not indicate the timeframe of the arrears or explain the Town's practice of allowing the property owner 21 days to pay the balance to avoid the arrears being added to the tax roll for collection.

After discovering that the Town had added the tenant's water and wastewater arrears to the property's tax roll, the property owner contacted the Town. The Town referred the property owner to E.L.K., which told the property owner that it could not share information about the account without consent from the account holder.

Water disconnection

Staff at E.L.K. told our Office that the Town is responsible for processing requests for water disconnection. Town staff told our Office in September 2023 that the Town did not have a policy or procedure with respect to water disconnections and does not permit water disconnections in the case of a dispute over arrears between a property owner and a tenant.

The Town's water and wastewater billing and collection policy and Water Supply By-Law

The Town assumed the billing function for water and wastewater services from E.L.K. on January 22, 2024. Shortly before this handover, and during our review, council adopted a Water Supply By-Law 2303 (the "By-Law") and a Water and Wastewater Billing and Collection Policy (the "Policy") on January 15, 2024. The By-Law regulates the use and supply of water in the Town and references staff's discretion with respect to disconnecting the water supply to a premise.

The Policy incorporates Council's resolution (No. R23-10-406) of October 16, 2023 to only allow new water accounts to be set up in a property owner's name, instead of in a tenant's name, as of January 1, 2024. Tenant accounts created prior to January 1, 2024 continue to exist until the property owner becomes the account holder when the tenant vacates the property. The Policy also formalizes the Town's water and wastewater arrears collection process, including notice periods. Specifically, it states that when an account has an outstanding balance, the account holder is sent a reminder notice three days after the bill is due, and a final notice after 30 days or more. Where an account remains unpaid for 60 days or more, the Town will add the arrears to the tax roll and notify the property owner.

Information on best practices

As our review found in this case, once the property owner discovered that water and wastewater arrears had been added to their property's tax roll for collection, they contacted the Town. However, they could not get information from the Town or E.L.K. about the water account and the arrears.

We applaud the Town for taking steps to implement a policy for water and wastewater billing and collection. In particular, we are pleased to see that the Town's policy appears to address key fairness issues that we identified, specifically that people should be notified in advance, and given adequate information, if a decision or action will directly affect them.

As a best practice, it will be important for the Town's notices to property owners to clearly explain that there are arrears, the timeframe of their accumulation, and that they will be transferred to the tax roll for collection if they remain unpaid. The notice should also specify how to make payment and the due date to avoid any applicable penalties, such as interest, on unpaid amounts. When the Town adds water/wastewater arrears to a property owner's tax roll, the Town's notice to the property owner should confirm this and include the date the arrears were added. Additionally, the Town's practice of only allowing new water accounts to be set up in a property owner's name, instead of a tenant's name, as of January 1, 2024, should be publicly posted in a dedicated section on its website.

Our review noted that the Town's new Policy and By-Law do not address water disconnection requests from property owners.

The Town of Collingwood has a process that allows landlords to request a disconnection of water in certain circumstances, such as when a tenant's water account is in arrears and a tenant's water and wastewater arrears have been transferred to the property owner's tax roll twice in the preceding six months.¹

Given the potentially significant financial impact on property owners for accumulating water and wastewater arrears incurred by a tenant, the Town of Essex may wish to consider the above-noted example, and if the Policy should allow for water disconnection requests for tenanted accounts in appropriate circumstances.

Conclusion

We appreciate the time taken by Town of Essex staff and E.L.K. Energy Inc. to discuss these issues with our Office. We hope that the information in this letter will help inform

¹ Request for Consideration of Water Shut-Off <<https://www.collingwood.ca/town-services/water-sewer-services>>



any further steps council and staff may wish to take to prevent similar situations in the future.

We kindly request that this letter be added to the next council agenda.

Should you have any questions or concerns about this letter, please contact Lorelle Vase, Investigator, at 416-586-0051 or lvase@ombudsman.on.ca.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Kallideen'.

Carmen Kallideen
Manager, General Investigations
Ombudsman of Ontario