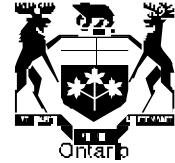


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## **NOTICE OF PROPOSAL TO AMEND A CODE**

### **PROPOSED AMENDMENTS TO THE DISTRIBUTION SYSTEM CODE**

**BOARD FILE NO: EB-2006-0030**

**To: All Licensed Electricity Distributors  
Canadian Condominium Institute  
All Other Interested Parties**

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#### **Background**

The Distribution System Code (the “Code”) contains provisions pertaining to consumer security deposits that may be required by electricity distributors. These provisions have been the subject of consultation and amendments in both 2004 and 2005.

Under section 2.4.9 of the Code, a distributor may require a security deposit from a customer unless the customer can demonstrate that it has a good payment history. The length of the good payment history that must be demonstrated depends on the nature of the customer as follows:

- 1 year for *residential* customers;
- 5 years for *non-residential* customers in a < 50 kW demand rate class; and
- 7 years for *non-residential* customers in any other rate class.

The Code also permits a distributor to retain a security deposit until such time as the customer can demonstrate that it has had a good payment history for the required period of time. For non-residential customers in a rate class other than the < 50 kW demand rate class, this means that the security deposit can be retained for seven years. The Code does not define the term “residential customer” for security deposit purposes.

Concerns have recently been expressed to the Board in respect of the application of the above rules in relation to bulk-metered residential condominiums. Specifically, at least some distributors have been treating new bulk-metered residential condominiums as non-residential customers, with the result that the security deposits paid by such condominiums are being retained for a period of seven years.

As a new entity, a condominium corporation cannot obtain a letter of reference or a credit check. The Board has also been advised that new condominium corporations typically must pay their security deposits in the form of cash since alternatives such as a letter of credit are not viable options. In addition, new condominium corporations do not have credit ratings that could be used to decrease the amount of the security deposit. Among other things, individual unit owners who pay a share of the security deposit must forego use of those funds for a period of seven years. By contrast, when the units in a residential condominium are individually metered and the distributor's account is with the unit owner, the required good payment history period is only one year.

## **Proposed Amendments**

The Board is proposing to amend the Code pursuant to section 70.2 of the *Ontario Energy Board Act, 1998* such that bulk-metered residential condominiums will be treated as residential customers for security deposit purposes. The applicable good payment history period would therefore become one year. The proposed amendments to the Code also clarify that the revised good payment history period of one year applies to security deposits that have already been paid. In other words, where a distributor currently holds a security deposit in relation to a residential condominium, the distributor must apply the Code provisions regarding the review and return of security deposits on the basis of a one-year good payment history requirement. The proposed amendments, which would add new sections 2.4.30 and 2.4.31 to the Code, are set out in Attachment A to this Notice.

The Board has considered the provisions of the *Condominium Act, 1998* and, on that basis, believes that the risk profile of a bulk-metered residential condominium is no worse than that of a consumer in an individually-metered residential dwelling, such as a detached home, insofar as payment for electricity expenses is concerned.

Specifically, the Board has noted the following elements of the legal framework that governs condominiums.

- A condominium building is managed by the Board of Directors of the condominium corporation. The condominium corporation is a corporation without share capital whose activities are restricted by the *Condominium Act, 1998*. The Board of Directors is elected by the individual unit owners and each director is subject to a statutory standard of care.
- The financial affairs of a condominium corporation are subject to regular scrutiny. Under section 66 of the *Condominium Act, 1998*, financial statements must be prepared and independently audited annually. The auditor must be licensed as a public accountant under the *Public Accounting Act, 2004*.
- Where the condominium is bulk-metered, the cost of electricity for the common areas and for all units that are not individually metered is a common expense.
- Under section 84 of the *Condominium Act, 1998*, each unit owner must contribute to the common expenses. Where a common surplus arises, it must be applied against

future common expenses or paid into the reserve fund. It cannot be distributed to the owners or mortgagees of the individual units.

- Under section 85 of the *Condominium Act, 1998*, the condominium corporation has a lien against a unit if the unit owner defaults in the obligation to contribute to the common expenses. With few exceptions (notably encumbrances relating to municipal property and education taxes or a claim of the Crown), such a lien has priority over all registered and unregistered encumbrances even if the encumbrance existed before the lien arose.
- Under section 87 of the *Condominium Act, 1998*, if an owner that has rented a unit defaults on the obligation to contribute to the common expenses, the condominium corporation may on written notice recover the amount owing for common expenses (up to the amount of rent under the lease) from the lessee. The condominium corporation can give notice until such time as the full amount in default has been recovered.
- Under section 88 of the *Condominium Act, 1998*, a mortgagee has the right to collect the unit owner's contribution to the common expenses and is required to promptly pay that amount to the condominium corporation on behalf of the owner. Default in payment of common expenses by a unit owner constitutes a default under any mortgage that covers the unit.

### **Anticipated Costs and Benefits**

The Board anticipates that the proposed changes to the Code would result in the following benefits:

- consumers in bulk-metered residential condominiums will be treated in a manner that is in keeping with the risk of non-payment and that equates with the treatment accorded to consumers living in individually-metered residential condominium units;
- greater consistency will be achieved across all Ontario electricity distributors with respect to their treatment of residential condominiums in relation to security deposit requirements; and
- the treatment of residential condominiums would promote the Board's policy intent, as reflected in section 2.4.6.2 of the Code, of ensuring that customers with similar risk profiles or risk related factors are treated in the same manner for security deposit purposes.

For the reasons noted above in relation to the legal framework governing condominium corporations, the Board does not anticipate that the proposed amendments to the Code will materially increase the financial exposure of distributors in relation to the payment of electricity bills.

Cash security deposits are not intended to be used by electricity distributors for cash flow purposes. It is for this reason that the Board's 2006 Electricity Distribution Rate Handbook does not require distributors to take such security deposits into account in the calculation of working capital allowance. As indicated in the Report of the Board on the 2006 Electricity Distribution Rate Handbook, the Board regards security deposits to be in the nature of funds in trust. On that basis, the Board does not anticipate that the return of a security deposit earlier than the originally contemplated seven-year period will result in electricity distributors incurring any incremental material costs.

### **Coming Into Force**

The Board proposes that the amendments to the Code (the addition of new sections 2.4.30 and 2.4.31) set out in Attachment A come into force thirty days after notice of adoption of the amendments is published on the Board's website. This is reflected in the amendment to section 1.7 of the Code that is also set out in Attachment A to this Notice.

### **Invitation to Comment**

Written submissions are invited on the proposed amendments to the Code. Any person who wishes to make a written submission with respect to these proposed amendments **must** file seven (7) paper copies of the submission, and an electronic copy in Adobe Acrobat (PDF) and Word, if possible, with the Board Secretary by **4:30 pm** on **March 13, 2006**. Your submission must quote file number **EB-2006-0030** and include your name, address, telephone number and, if available, your e-mail address and fax number.

Written submissions should be sent to:

John Zych  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street  
Suite 2700  
Toronto, Ontario  
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Electronic copies may be submitted on diskette or by e-mail to: [boardsec@oeb.gov.on.ca](mailto:boardsec@oeb.gov.on.ca).

This consultation is not intended to provide an opportunity for interested parties to revisit the Board's previous policy decisions on the other sections of the Code related to consumer security deposits. Accordingly, the Board requests that comments be restricted to the amendments proposed in Attachment A to this Notice.

This Notice, including the proposed amendments to the Code, and all written submissions received by the Board will be available for public inspection at the office of the Board during normal business hours and on the Board's website at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca).

If you have any questions regarding this Notice or these proposed amendments to the Code, please contact Chris Cincar at 416-440-7696 or [Chris.Cincar@oeb.gov.on.ca](mailto:Chris.Cincar@oeb.gov.on.ca) or toll free at 1-888-632-6273.

**DATED** at Toronto, February 20, 2006.

ONTARIO ENERGY BOARD

*Original signed by*

John Zych  
Board Secretary

**Attachment:** Proposed Amendments to the Distribution System Code

## Attachment A

### Proposed Amendments to the Distribution System Code

#### EB-2006-0030

1. Section 1.7 of the Distribution System Code is amended by adding the following paragraph at the end of the section:

Sections 2.4.30 and 2.4.31 of the Code, made by the Board on *[insert date]*, come into force on the day that is thirty days after they are published on the Board's website after having been made by the Board.

2. Section 2 of the Distribution System Code is amended by adding a new section 2.4.30 and a new section 2.4.31 as follows:

2.4.30 A customer that is a corporation within the meaning of the *Condominium Act, 1998* who has an account with a distributor that:

- (a) relates to a property defined in the *Condominium Act, 1998* and is comprised predominantly of units that are used for residential purposes; and
- (b) relates to more than one unit in the property,

shall be deemed to be a residential customer for the purposes of sections 2.4.9 and 2.4.18.

2.4.31 Sections 2.4.22 and 2.4.23 shall be applied on the basis that a customer referred to in section 2.4.30 is a residential customer even if the customer paid the security deposit prior to the date on which section 2.4.30 came into force.