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NOTICE OF AMENDMENT TO A CODE

AMENDMENTS TO THE DISTRIBUTION SYSTEM CODE

BOARD FILE NO: EB-2006-0030

**To: All Participants in Proceeding EB-2006-0030
All Licensed Electricity Distributors
Canadian Condominium Institute
All Other Interested Parties**

The Ontario Energy Board (the "Board") will amend the Distribution System Code (the "Code") as indicated below, pursuant to section 70.2 of the *Ontario Energy Board Act, 1998* (the "Act").

Background

On February 20, 2006, the Board issued a Notice of Proposal to Amend the Code such that bulk-metered residential condominiums would 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 clarified that the revised good payment history period of one year applies to security deposits that have already been paid. In other words, where an electricity 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 Board received four written submissions in regard to the proposed changes to the Code; three from electricity distributors and one from the Canadian Condominium Institute (the "CCI"). None of the submissions objected to the underlying policy direction associated with the Board's proposed amendments. The CCI took the position that the Board should go further and exempt all residential condominium corporations from the obligation to provide a security deposit. The distributors raised concerns in relation to implementation of the proposed amendments.

Adoption of Revised Amendments

The Board has considered the submissions received in relation to the proposed amendments, and has determined that it will adopt the amendments subject to the two modifications discussed below that the Board considers to be warranted in order to facilitate implementation. The amendments to the Code as adopted are set out in Appendix A to this Notice. Appendix B to this Notice sets out, for information purposes, comparison versions of the relevant sections of the Code as they have been adopted relative to the proposed amendments issued on February 20, 2006.

The Board has noted the CCI's position that residential condominium corporations should not be required to provide a security deposit unless there is positive evidence of real financial risk to distributors. While the Board acknowledges that some residential condominiums may be a lower credit risk than a residential customer in a single dwelling, the Board is of the view that condominiums can pose a risk of non-payment. The Board also notes that distributors will have no way of identifying which condominiums pose a risk since these changes to the Code apply to new condominium corporations that will each have a new Board of Directors with no track record demonstrating prudent financial management. The Board also concurs with the Coalition of Large Distributors that the electricity bills of condominiums are much larger than those of an individual household and there is therefore a risk of a much higher write-off where such a default occurs. The Board therefore remains of the view that a one-year retention period for security deposits paid by residential condominiums strikes the appropriate balance between a condominium corporation's potentially lower risk of default (relative to a single household) and the much higher exposure risk for distributors associated with payment default by a condominium (also relative to a single household).

As indicated in the Board's February 20th Notice of Proposal, the Board considered the provisions of the *Condominium Act, 1998* in assessing the risk profile of a bulk-metered residential condominium. Those provisions allow a clear differentiation between the risk profile of a bulk-metered residential condominium and that of other bulk metered situations, insofar as payment for electricity expenses is concerned. The Board therefore confirms that the amendments to the Code do not apply to any other bulk-metered situation.

Revisions

The implementation concerns raised by distributors stem primarily from one issue. That is, distributors identified that they are unable to differentiate between various types of bulk-metered situations, while the amendments to the Code only apply to one bulk-metered situation – residential condominiums. It was therefore suggested that:

- the implementation period needed to be extended; and
- the customer needs to self-declare its status as a residential condominium corporation, and also provide sufficient evidence to support that declaration. It was further suggested that a form be developed for this purpose similar to the type of self-declaration form used for the purposes of the Regulated Price Plan.

The Board agrees that self-declaration is necessary and that a standardized form is the appropriate vehicle to facilitate an orderly implementation in a consistent manner across Ontario. The Board is also in agreement that an implementation period of more than 30 days is needed. While a period of up to four months was requested, the Board is of the view that 90 days is sufficient. This will allow for the self-declaration form to be completed and distributed. It will also provide additional time for distributors to make any necessary changes to their internal processes.

Coming Into Force

The amendments to the Code (the addition of new sections 2.4.30 and 2.4.31) set out in Appendix A will come into force 90 days from today's date.

Next Steps

In order to promote greater awareness of the amendments, and in particular of the need to self-declare, the Board requests that the CCI assist the Board in communicating the amendments attached to this Notice to its members.

The Board has also asked Board staff to work with electricity distributors to develop the appropriate self-declaration form. Once the Board has approved this form, the Board requests that each electricity distributor post it on its website. It will also be posted on the "Consumer Security Deposits" web page of the "Key Initiatives & Consultations" section of the Board's website at www.oeb.gov.on.ca.

This Notice and the accompanying amendments to the Code are available on the Board's website and at the office of the Board during normal business hours.

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

DATED at Toronto, May 12, 2006.

ONTARIO ENERGY BOARD



Peter H. O'Dell
Assistant Board Secretary

Attachments: Appendix A: Amendments to the Distribution System Code
Appendix B: Comparison version of the relevant Distribution System Code sections

Appendix A

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 May 12, 2006, come into force on the day that is ninety 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 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 provided that the customer has filed with the distributor a declaration in a form approved by the Board attesting to the customer's status as a corporation within the meaning of the *Condominium Act, 1998*.

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.

Appendix B

Comparison Version: Provisions of the Distribution System Code as Amended

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The following comparison version of certain provisions of the Code show the amendments made as set out in Appendix A.

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 May 12, 2006, come into force on the day that is ninety ~~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 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 provided that the customer has filed with the distributor a declaration in a form approved by the Board attesting to the customer's status as a corporation within the meaning of the *Condominium Act, 1998*.

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.