



Advocacy Centre for Tenants Ontario
Centre ontarien de défense des droits des locataires

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November 16, 2010

22/11/10
Ms Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, ON
M4P 1E4

Dear Ms Walli:

**Re: Notice of Proposal to Amend a Code: Proposed Amendments to the
Smart Sub-Metering code and the Distribution Code
Board File No.: EB-2010-0321**

The Advocacy Centre for Tenants Ontario ("ACTO") is a specialty legal clinic, established and funded by Legal Aid Ontario, with a focus on residential tenancy issues for low-income Ontarians, including housing-related energy issues. ACTO is a founding member of, and works closely with, the Low-income Energy Network ("LIEN"), a province-wide organization of more than 80 member groups that acts on issues that are of concern to low-income energy consumers. ACTO and LIEN welcome this opportunity to comment on the proposed amendments to the Smart Sub-Metering Code and the Distribution Code (the "Codes").

ACTO and LIEN understand that the principal purpose of the proposed amendments is to create congruency between the Codes and the new legislative scheme, which expands the provision of suite-metering services to include residential rental complexes, and which is scheduled to come into force on January 1, 2011. Accordingly, the proposed amendments represent technical adjustments in language, rather than substantive changes in legislation or policy. ACTO and LIEN, however, ask the Board to use this opportunity to revisit the legislative and policy implications governing the collection of security deposits by unit sub-meter providers.

ACTO and LIEN are concerned over the issue of security deposits and their impact on low-income tenants. ACTO and LIEN invite the Ontario Energy Board (the "Board") to develop and adopt amendments that require unit sub-meter providers to waive the security deposit for consumers who can confirm their low-income status. ACTO and LIEN further invite the Board to develop and adopt a definition of "low-income" based on Statistics Canada's low income cut-offs measure, or LICOs.

ACTO and LIEN are also concerned by the absence of rate regulating provisions in the Codes. Certainly, dramatic increases in energy and distribution rates will have a disproportionate impact on low-income consumers' financial security. Furthermore, Ontario's lowest income residents, principally tenants, share neither equal knowledge nor equal bargaining power with unit sub-meter providers and landlords. Low-income Ontarians are therefore particularly vulnerable to sharp retail practices.

Waiver of Security Deposits for Low-income Energy Customers

The proposed amendments to the Smart Sub-Metering Code continue to permit a unit sub-meter provider to exercise discretion over whether to require a security deposit from a prospective consumer who does not possess a good payment history of at least one year. The Code explains that a consumer is deemed to have a good payment history unless one of several events occur, including the receipt by the consumer of more than one disconnection notice or disconnect/collect trip, or if more than one payment in one year is returned for insufficient funds.

The provisions that allow a unit sub-meter provider to collect a security deposit presume that providers require protection from consumers who refuse to pay their bills. To the best of our knowledge, no evidence has been tendered to demonstrate that non-payment for service results in significant hardship to sub-meter providers, or to any other segment of the energy industry. In the absence of information concerning the default rate among energy consumers and its impact on the stability of Ontario's energy system, we submit that the case for allowing providers to collect security deposits has not been made. The relevant provisions therefore create an apparent bias favouring unit sub-metering providers over energy consumers; a practise which is irreconcilable with the spirit of the *Energy Consumer Protection Act, 2010*.

We are also concerned about the circumstances under which a unit sub-meter provider may collect a security deposit from a consumer. In essence, the conditions- precedent that permit a provider to require the payment of a security deposit are overly broad. Put differently, the bar that permits unit sub-meter providers to require a security deposit is set too low. For example, individuals and families with low incomes are particularly vulnerable to bank or other errors beyond their control, which may result in a payment being returned for insufficient funds. Low-income Ontarians simply do not have the savings or other financial resources to draw upon if, for example, there is an interruption or delay in the receipt of government assistance or other benefits, or if there is a banking error. Certainly, these events are not uncommon. Low-income residents are therefore disproportionately exposed to the collection of security deposits for events that are beyond their control.

Of course, the lack of financial resources available to Ontario's low-income individuals and families informs the most apparent reason for our request for a mandatory waiver of security deposits: low-income residents cannot afford the additional expense of

paying a security deposit. The high marginal value of every dollar to a low-income Ontarian is such that undue hardship will result if, for example, a person in receipt of Ontario Works or other government benefits is required to pay a security deposit for the supply of electricity. This is because every dollar applied to the security deposit means that there will be one less dollar to apply to other necessities of life, such as food and rent. In straitened financial circumstances, such an equation will undoubtedly cause hardship and suffering.

The proposed provision of the Unit Sub-Metering Code that gives a sub-meter provider the discretion to extend payment of the security deposit over four months does not relieve the above-noted hardship, since a low-income consumer will continue to have less available money to purchase other vital goods and services after making a periodic payment towards the security deposit. Indeed, the four-month extension merely results in a shallower, but prolonged period of hardship and uncertainty. This is because the proposed Sub-Metering Code continues to allow a sub-meter provider to cancel service to a consumer if the consumer is in default of a security deposit payment. The ability to cancel service for non-payment of a security deposit exists even in cases where an energy consumer is not in arrears for regular service.

In the alternative, if security deposits are not waived for low-income consumers, we ask that the period to pay the deposit be extended from four months to six, since these minimum periods tend to be treated by energy distributors as maximums. We understand that, since October 1, 2010, distributors have already adopted this practise. We ask the Board to codify the extended period as the minimum period allowable to ensure equal treatment amongst energy consumers. Certainly, however, our principal interest is in having security deposits waived, since a six-month period to pay a security deposit only extends the hardship as set out above.

ACTO and LIEN are further concerned that a sub-meter provider is only “encouraged” to give seven days’ notice to an energy consumer that his or her service will be cancelled. ACTO seeks a mandatory notice with a term of no less than seven days, to be delivered by the provider, where service is to be cancelled.

The definition and treatment of “low-income” energy consumers are central to our request for the mandatory waiver of security deposits. The Board’s September 30, 2010 Notice of Proposal to Amend Codes: Updated Proposed Low-Income and Other Customer Service Amendments to the Distribution Code, the Retail Settlement Code and the Standard Service Supply Code (Board File No.: EB-2007-0722), explains that low-income electricity customer service rules will soon be issued for unit sub-meter providers, and that there will be an invitation from the Board for comments. ACTO and LIEN welcome any initiative that will protect low-income consumers, and look forward to the new rules.

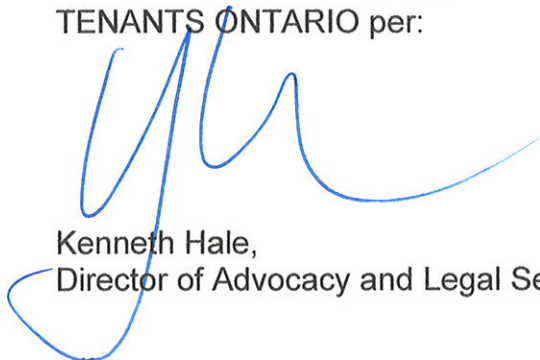
Absence of Rate Regulation

ACTO and LIEN note with concern the absence of rate regulation provisions in the Codes. We ask the Board to take notice that low-income energy consumers will be disproportionately affected when sudden increases in energy and distribution rates occur. Beyond this, the disparities in knowledge and bargaining power between low-income energy consumers (often tenants) and unit sub-meter providers and landlords coupled with the accessibility of a coercive remedy make low-income Ontarians particularly vulnerable to sharp business practices. Although the *Energy Consumer Protection Act, 2010* and its Regulations seek to empower consumers by requiring unit sub-meter providers to provide information to energy consumers and by prohibiting certain behaviour, the protective purpose of the *Act* and its Regulations would be strengthened by adopting regulated rates within the Codes, to which licensed unit sub-meter providers are required to adhere.

Rate regulation would proactively prevent or limit many of the concerns that give rise to the *Act's* provisions that require unit sub-meter providers to produce information packages and avoid unfair business practises. At present, if a low-income energy customer is the victim of an unfair business practice, her remedy is reactive only, and the institutional delay in obtaining a remedy through an application to the Board prolongs her hardship. Rate regulation avoids this scenario and therefore gives real life to low-income energy consumer protection. We therefore strongly encourage the Board to develop and adopt mandatory rate regulation provisions in the Codes.

ACTO and LIEN thank the Board for this opportunity to present these submissions on the proposed amendments to the Smart Sub-Metering Code and the Distribution Code. Through these submissions, ACTO and LIEN seek to work with the Board in developing a code that is responsive to the housing and energy needs of Ontario's lowest income residents.

Yours very truly,
ADVOCACY CENTRE FOR
TENANTS ONTARIO per:



Kenneth Hale,
Director of Advocacy and Legal Services