

M A N I T O B A) Order No. 127/08
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 THE PUBLIC UTILITIES BOARD ACT) September 4, 2008

BEFORE: Graham Lane, CA, Chairman
Susan Proven, P.H.Ec., Member
Monica Girouard, CGA, Member

THE PUBLIC UTILITIES BOARD ACT
GENERAL ORDER
SERVICE DISCONNECTIONS BY
WATER AND/OR SEWER UTILITIES

Executive Summary

By this Order, and pursuant to *The Public Utilities Board Act* (Act), the Public Utilities Board (Board) establishes conditions precedent required for water and/or sewer utilities to discontinue service for non-payment of a utility account. These conditions precedent set out requirements for reasonable notice to be provided, the opportunity and ability for a customer facing disconnection to appeal the action, and terms with respect to subsequent restoration of service.

These conditions precedent take effect immediately and supersede such related provisions that may be found in the current by-laws of utilities. These new requirements also supersede, and are to replace, existing practices related to disconnections employed by utilities.

Background and Finding

The Act explicitly addresses the requirements of an owner of a public utility with respect to the withdrawal of service for non-payment. Water and sewer services are essential for the well being of the population and are generally provided in a monopoly environment.

Water and sewer utilities owned and/or operated by municipalities have a particular obligation to operate utility operations on, at minimum, a break-even basis (costs may or may not include charges related to capital expenditures, which, for many utilities are offset by revenues raised through general property tax levies).

An unpaid utility bill represents unfairness to paying customers who may face the additional burden of having reflected in the rates they are paying, the cost of accounts written off by a utility.

And, while customers have the responsibility to keep their utility

accounts current, the utility has a duty to provide adequate and reasonable notice to a customer before withdrawing service.

This Order is provided to represent a balance of interests.

Nearly all water and/or sewer utilities owned and/or operated by municipalities that are subject to the jurisdiction of the Board have by-laws approved by the Board that address billing and collection practices. These provisions and the by-laws in which they are contained differ, and the Board finds continued reliance on such differing provisions to be neither practical or reasonable nor consistent with the intent of the Act.

The nature of billing and collections is generally similar for all public utilities and usually include a requirement for reasonable notice, a right to appeal, and the right to have service restored after settlement.

While the Board could have requested that each utility file its conditions precedent for approval, as there are approximately 200 water and sewer utilities in the Province, the Board determined it to be prudent and efficient to develop standard conditions precedent.

In developing this Order, the Board employed its knowledge and expertise developed over decades of experience with a wide range of utilities and consulted certain representative municipalities, the Association of Manitoba Municipalities, and the Manitoba Municipal Administrators Association.

Collection via taxes

The Board is aware that many municipalities add unpaid utility accounts to the tax accounts of delinquent utility customers.

While this may be an acceptable practice when the customer is the

property owner, it is less so in the case of a rental property. Accordingly, in the case of a rental property, herein the Board directs that the practice be employed only as a last resort.

With respect to all utility accounts, all reasonable efforts should be taken to collect unpaid accounts from the customer. Where the property owner has or takes responsibility for the water and/or sewer utility account, and recovers such costs in the rent, disconnection of service should consider that the Residential Tenancies Branch may be called upon to intervene and may re-direct the payment of rent to the utility to settle arrears and avoid disconnection.

And, notwithstanding arrears may have been added to taxes, the customer may remain eligible for disconnection to prevent an escalation of arrears as a result of ongoing non-payment.

Quarterly Billing

Generally, utilities bill quarterly, though some bill monthly and others annually. The conditions precedent established by this Order recognizes that collection activity occurs at and between billing periods.

Disconnection of Multiple Residences/Properties

Water and sewer services, as they are required for the health and safety of individuals, are not to be discontinued to a community or to multiple residences/properties for any reason without the prior and specific written permission of the Board. Leaving aside the health and safety risks that lie with the disconnection and subsequently unavailability of water and/or sewer service, the costs and implications to wider society (including medical) have to be taken into account.

Applications for disconnection of utility service to a community or multiple residences/properties, as related to the non-payment of bills, must be provided to the Board in advance of action being taken. Such applications are to include a description of the situation, a survey of the options explored prior to seeking permission to disconnect, evidence that the parties to be affected have been advised of the utility's application to the Board, and, as well, as the utility's review of the potential implications of disconnection (financial, social and health).

Owner's Discretion to Discontinue Service

With the exception of the disconnection of a community and/or multiple residences/properties, for which special conditions apply, the discontinuance or disconnection of service for non-payment may be exercised at a utility's discretion. However, if exercised, the utility must comply with the "conditions precedent", attached hereto.

Effective Date

These conditions precedent are effective immediately and, as noted earlier, supersede provisions and/or practices of all utilities subject to the Board's jurisdiction.

The Board regulates water and sewer utilities owned not only by municipalities but also by co-operatives and private owners, upon the Board declaring a utility to be a public utility pursuant to the Act.

Legislative Framework

The Board's general supervisory powers with respect to public utilities may be found in Section 74(1) of the Act, as noted hereunder:

"74(1) The board has a general supervision over all public utilities and the owners thereof subject to the legislative authority of the Legislature, and may make such orders regarding equipment, appliances, safety devices, extension of works or systems, reporting, and other matters, as are necessary for the safety or convenience of the public or for the proper carrying out of any contract, charter, or franchise involving the use of public property or rights."

And, pursuant to Section 78(1)(b) of the Act, the Board may provide a directive regarding the provision of service, also as noted hereunder:

"(b) to furnish safe, adequate, and proper service, and to keep and maintain its property and equipment in such condition as to enable it to do so"

Section 104.1(5) through to and including 104.1(8) of the Act, refer to the responsibility of utilities to have Board-approved conditions precedent for the discontinuance of service, as noted below:

"Conditions and procedures for discontinuance

104.1(5) No owner and no agent of an owner shall carry out a discontinuance or removal under subsection (1) except after complying with such conditions precedent and following such procedures as may be approved by the board under subsection (6).

Board approval of conditions and procedures

104.1(6) An owner of a public utility may prepare and submit to the board for approval a list of such conditions precedent and procedures as the owner deems necessary for the purposes of subsection (5), and the board may in its absolute discretion approve or refuse to approve any list so submitted.

List of conditions and procedures

104.1(7) Without restricting the generality of subsection (6), a list of conditions precedent and procedures prepared under that subsection shall include provisions specifying

- (a) the number of notices that shall be given to affected persons preceding a discontinuance or removal under subsection (1);
- (b) the manner of giving each notice;
- (c) the required length of each period of notice;
- (d) the terms and conditions, and required circumstances, for the resumption of any supply or service discontinued under subsection (1);
- (e) the content and frequency of reports that an owner or the agent of an owner shall provide to the board respecting any discontinuance or removal carried out or proposed to be carried out by the owner or agent under subsection (1).

Order to resume supply or service

104.1(8) Notwithstanding any other provision of this section or anything done thereunder, the board may at any time order the cessation of any discontinuance or removal that may be in progress under subsection (1), or the resumption of any supply or service that has already been discontinued under subsection (1), and in determining whether or not to make such an order the board shall consider all reports respecting the discontinuance or removal provided pursuant to clause (7)(e) and all factors that it deems relevant including

- (a) the likelihood of danger to life or health;
 - (b) the likelihood of serious damage to property;
 - (c) the amount due and owing to the owner;
 - (d) the length of time that payment of the amount has been in default;
 - (e) the health and family circumstances of the occupants of the affected premises;
 - (f) the financial circumstances of the person in default;
 - (g) the nature, condition and usage of the affected premises;
 - (h) whether or not the owner has complied with the conditions precedent and followed the procedures required to be complied with and followed under this section;
- and the owner shall comply with the order."

IT IS THEREFORE ORDERED THAT:

1. All utilities subject to *The Public Utilities Board Act* shall comply with the Conditions Precedent for water and/or sewer service disconnection, as attached hereto and marked as Appendix "A".
2. Reference to the Public Utilities Board's Conditions Precedent shall be included in all by-laws of municipalities governing rates charged for water and/or sewer service and all terms and conditions of service established by water and/or sewer utilities regulated by the Board.
3. The Conditions Precedent attached hereto shall be effective immediately.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA."

Chairman

"G. BARRON, FCGA"

Acting Secretary

Certified a true copy of Order No.
127/08 issued by The Public
Utilities Board

Acting Secretary

Conditions Precedent Allowing for Collection and Disconnection of Water and/or Sewer Services for Non-Payment of Accounts

POLICY AND PROCEDURES

1.0 PURPOSE:

The purpose of this document is to outline and define the disconnection and reconnection policies and procedures for customers with water and/or sewer services.

Disconnection, in accordance with the steps outlined in the following policy and procedures may occur if a customer is in arrears and full payment or payment arrangements suitable to the utility have not been made and if so, such disconnections must occur in conformance with these conditions precedent.

Reconnection, in accordance with the following policy and procedures will occur as soon as it is reasonably possible after the account returns to good standing. This Policy and Procedure does not apply to disconnection practices for routine maintenance of the utility including emergencies.

2.0 SCOPE:

The policy and procedures apply to customers receiving water and/or sewer services. The procedures are detailed to reflect the variety of situations that may occur for each of the following customers.

- 2.1** All property owners and/or tenants responsible for water and/or sewer services.
- 2.2** All landlords responsible for providing tenant water and/or sewer services covered under The Residential Tenancies Act (C.C.S.M. c R119).
- 2.3** Where water and/or sewer services are added to taxes.
- 2.4** Where water is sold in bulk.
- 2.5** Where sewage is dumped into a treatment facility.
- 2.6** Where water and/or sewer service is provided beyond the boundaries of a municipality, if applicable.

3.0 DEFINITIONS:

Account Holder/Customer – shall refer to the person or persons who have applied for water and/or sewer service at a particular residence, whether it be the property owner or renter

Property Owner – shall refer to the person or persons who are listed on the title of a specific property.

Renter – is not the property owner of the subject property and shall refer to the utility account holder/customer of the subject property.

Security Deposit – shall be based on the risk to the utility and should not exceed an estimated bill for three months.

POLICY AND PROCEDURES

4.0 Policy:

- 4.1** The Utility will normally confine collection activity to the person(s) identified on the account who requested the service(s) with an implied agreement to pay or the person or agency who has agreed to pay for the service(s), with the following exception: where a reasonable person would expect that a customer not named on the bill is implicitly responsible for the service(s), i.e. husband or wife (legal or common-law), that person will also be presumed to have liability for the outstanding balance.
- 4.2** In order to satisfy provisions of *The Freedom of Information and Protection of Privacy Act*, Utilities are encouraged to develop an agreement between the utility and the account holder/customer, with provisions that establish at minimum conditions for service, recourse for unpaid bills, deposits required, and for renter's acknowledgement that information relating to their account status and other information may be released to the property owner to assist with collections.
- 4.3** The Public Utilities Board (Board) may, on its own initiative, or at the request of a customer, review a Utility's action and make recommendations and/or orders with respect to same as the Board may determine.
- 4.4** Every effort is to be made by the Utility to resolve outstanding accounts, disconnection and reconnection issues directly with its customer(s). If a solution cannot be reached the customer may apply to the Board for dispute resolution.
- 4.5** The Utility must make special application to the Board prior to disconnecting service to a community or multiple residences/properties. Such an application must be shared with the affected community (ies) and/or multiple residences/properties. The Board will consider the circumstances and particulars of the application and provide the Utility with direction, following such process as the Board may deem appropriate.
- 4.6** If a landlord is responsible for the provision of water and/or sewer services to tenant occupied premises, arrears will be based on the outstanding account balance and will be subject to Residential Tenancy Branch (RTB) procedures at the tenant occupied premises. Landlords failing to bring their outstanding account balance to good standing will be subject to disconnection of services of the same utility at their personal residence and any vacant premises under the same name.
- 4.7** This policy does not affect the Utility's right to disconnect in times of emergency and/or for reasons of safety or for failure to comply with water rationing requirements.
- 4.8** The Utility will keep current data of all disconnected customers in accordance with the following procedures.
- 4.9** The Utility may seek Board exemption from full disconnection procedures when faced with customers who consistently and deliberately show patterns of payment avoidance and who clearly understand the consequences of their actions.

POLICY AND PROCEDURES

5.0 PROCEDURES

5.1 DISCONNECTION PROCEDURE

Steps 1, 2 and 3 must be followed on water and/or sewer services in arrears.

Step 1

Customers shall receive a billing statement each billing cycle for services. In some cases the bill is for past consumption and/or minimum quarterly bill for the prior quarter and in other cases, for past consumption over the minimum quarterly bill in the prior quarter plus the next minimum quarterly bill in advance. The due date which appears on the bill shall be no less than 14 days after the billing date. Bulk water customers or customers dumping sewage may have special billing arrangements. However, failure to pay an outstanding bill may result in the removal of the right to use the service.

Step 2

If payment is not received within 31 days from the last billing date, a message similar to the following shall appear on a reminder statement:

“Our records indicate your account is past due. Please give this your prompt attention. If payment or payment arrangements have been made, kindly disregard this notice.”

[The following is applicable to residential premises.]

“Information on service disconnection, payment arrangements and financial assistance is enclosed.”

Sample Insert:

<p>If your account is past due and you have not made payment arrangements, your water and/or sewer service could be disconnected.</p> <p>The Public Utilities Board adopted Order No. --/08 governing the disconnection of water and/or sewer service for non-payment of account.</p>	<p>To make payment arrangements, please contact the utility at:</p> <p><i>[Insert contact information here]</i></p> <p>If you have already made payment arrangements, please disregard this notice.</p>	<p>Financial assistance may be available through Employment and Income Assistance:</p> <ul style="list-style-type: none">• 1-800-626-4862 <p>Additional financial counseling and support may be available through Community Financial Counseling Services:</p> <ul style="list-style-type: none">• 1-888-573-2383
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Step 3

If payment is not received within 45 days of the last billing date, a message similar to the following shall appear on the second and final reminder notice. Reconnection fees will be charged as approved by the Board from time to time:

IMPORTANT PAST DUE NOTICE

Your **account** is past due. If suitable payment arrangements or full payment of the arrears are not made on or before (*enter Date {14 calendar days from date of issue}*) your account will be subject to disconnection. If payment of the arrears has already been made, please notify us immediately. If

POLICY AND PROCEDURES

payment arrangements have already been made kindly disregard this notice.

If your service(s) is disconnected, full payment of the arrears balance plus a reconnection fee will be required before service is fully restored. A security deposit may also be required.

Customers may appeal the Utility's action by contacting the Public Utilities Board.

The Utility is not responsible for any damages or losses that may occur as a result of services which are disconnected for non-payment. Please ensure you protect people, animals and property that may be impacted by disconnection of service.

Reconnect Fees are \$_____.

Your service will be disconnected on _____ in the a.m. or p.m.

5.2 Where the Utility bills the minimum quarterly bill in advance, and where service is not reconnected, the bill should be adjusted and prorated accordingly, for the period from the date of disconnection to the end of the next quarter.

5.3 The following are exceptions to the above notice requirements before disconnection:

(a) Where the customer's account was past due and where a payment arrangement was made and subsequently broken, the Utility may disconnect the customer's service with 7 calendar days notice.

(b) Where the customer's account was past due for services billed at a previous premise, the Utility may, with 10 days notice, disconnect the customer's service at the new premise if the customer fails to make a payment arrangement.

The Utility shall take all reasonable steps to collect the arrears from its account holder/customer before adding any arrears to taxes.

5.4 A message similar to the following shall appear on any future billing statements where services have been disconnected:

"Your account remains outstanding despite previous requests for payment. Failure to pay the outstanding account balance may make your account subject to legal action. Please call the phone number on the front of your billing statement or pay in person. If payment of the arrears has already been made please notify the Utility immediately. If payment arrangements have already been made kindly disregard this notice."

POLICY AND PROCEDURES

6.0 RECONNECTION OR RESTORATION OF SERVICE PROCEDURE:

- 6.1** No reconnection of service(s) shall occur unless full payment of the arrears or payment arrangements is made suitable to the Utility including a reconnection fee. Reconnection terms may also include the payment of a security deposit.
- 6.2** All reasonable efforts shall be made to reconnect or restore the service as soon as possible.

7.0 GENERAL GUIDELINES FOR RENTAL PROPERTIES:

- 7.1** The renter and property owner are both responsible for providing notice and meter readings to the utility when vacating or renting a premise for the first time.
- 7.2** If the new renter has an unpaid amount, the utility may refuse service to the tenant.
- 7.3** The departing tenant will be responsible for services to the date of departure and the arriving tenant or the property owner will be responsible on the date the new tenant takes occupancy.
- 7.4** If there is a period of time between departing tenant and the arriving tenant the property owner will be responsible for the service charge.
- 7.5** The renter's deposit, if applicable, will be applied to the utility bill at this time.
- 7.6** In the case where the amount of the deposit, if applicable, exceeds the amount of the final bills and a credit is shown on the utility account, the credit is then refunded to the renter in the form of a cheque.

8.0 REPORTING REQUIREMENTS:

- 8.1** The Utility shall record the following information which the Board may request at any time:
- (a) the name of the account holder disconnected;
 - (b) efforts made by the Utility to contact the customer (bill messages, letters, telephone calls, personal visits) and the results of such efforts;
 - (c) any evidence of the customer either contacting, or being encouraged to contact an appropriate social agency;
 - (d) if known, details of any follow-up action being undertaken by a social agency; and
 - (e) information indicating the presence of children, the elderly and the disabled.

Where there are children 12 and under, the matter will be referred in writing to Child and Family Services as soon as the facts are known.