

Advocacy Centre for Tenants Ontario
Submission to Ontario Energy Board written hearing
on proposed amendments to Distribution System Code and Retail Settlement Code
(Consumer Security Deposit Policies – RP-2002-0146)

The Advocacy Centre for Tenants Ontario (ACTO) is a specialty legal aid clinic, funded by Legal Aid Ontario to engage in test case litigation and law reform advocacy to better the housing situation of low-income residents (including tenants, co-op members and homeless persons) across Ontario. We also exercise this mandate on behalf of the 78 Legal Aid Ontario clinics in respect of their work representing the interests of low-income residents.

ACTO and community legal clinics support a complete exemption for low-income residential consumers from the security deposit requirements of local distribution companies (LDCs) for electricity service. We advised the Minister of Energy and the Chair of the Ontario Energy Board (OEB) about our support for this complete exemption in a letter dated November 21, 2002 (attached). ACTO staff also attended the October 9, 2002 meeting of the Consumer Security Deposit Working Group, co-ordinated by the OEB to consider stakeholder input, to discuss our position.

We are writing to express our main concerns about the OEB's proposed changes to the Distribution System Code and the Retail Settlement Code which, if implemented, will consolidate all requirements associated with consumer security deposits within the Distribution System Code. Our concerns are focused in the following areas:

1. There is no provision for a mandatory exemption or waiver for low-income residential consumers from LDCs' consumer security deposit requirements in their Conditions of Service.
2. In the absence of an explicit exemption for low-income residential consumers, a number of the OEB's proposed amendments could result in disproportionate, adverse impacts on these vulnerable households with respect to access to electricity service.
3. There is a lack of clarity and/or authority regarding methods of enforcement where a security deposit is not paid.

1. Mandatory security deposit exemption for low-income residential consumers

As you know from our November 21, 2002 letter to the OEB Chair, ACTO and community legal clinics have proposed that low-income residential consumers, for the purpose of an exemption from security deposit requirements, be defined as those persons and families with household income levels at or below the Low-Income Cut-offs (LICOs) published by Statistics Canada, using pre-tax, post-transfer household income.

The pre-tax, post-transfer LICOs vary according to family size and size of community. Persons and families living at or below these income levels are widely considered to be living in straitened circumstances. Both the Canadian Council on Social Development (CCSC) and the National Council of Welfare (NCW) have adopted the Statistics Canada pre-tax, post-transfer LICOs as poverty lines.

According to Statistics Canada data, 11.7% of persons in Ontario (or 1,378,000 individuals) were living in low-income at or below the pre-tax, post-transfer LICOs in 2001.¹ ACTO is in the process of obtaining updated custom data from Statistics Canada about the characteristics, type and number of households living at or below the pre-tax, post-transfer LICOs. We are also seeking information about the housing tenure of those households and the percentage of their income they spend on electricity and related shelter costs.

Data from the 1996 Census indicated that two-thirds of all low-income people in Ontario lived in tenant households. Of these 1.2 million low-income tenants, 36% were children. We anticipate similar findings in the 2001 Census data and will be sharing this information with the Board. We also expect that the data will indicate an over-representation in low-income households of persons on social assistance, single-parent mothers, elderly women, visible minorities, immigrants, and persons with disabilities.

For low-income households in Ontario, it is a daily struggle to pay for the basic necessities of life. They are particularly vulnerable to increases in shelter and utility costs – increases which are difficult to absorb and which could put their housing in jeopardy.

For example, recent Statistics Canada 2001 Census data show that 20% of Ontario tenant households (265,995 out of 1,338,850 tenant households) pay 50% or more of their household income on shelter costs.² The risk of homelessness increases where rental costs consume more than 50% of pre-tax household income for a tenant household.³ The median income of Ontario's renter households is less than half of the median income of homeowner households (\$32,194 vs. \$66,392).⁴

The City of Toronto's Homelessness Action Task Force reported in 1999 that about 60% of all households paying more than half of their income on rent are on social assistance.⁵ The Task Force also reported that these households, when faced with urgent and unexpected expenditures, are vulnerable to falling into arrears and possible eviction.⁶

Two of the legislative objectives guiding the Board in carrying out its responsibilities with respect to electricity are:

“2. To provide generators, retailers and consumers with non-discriminatory access to transmission and distribution systems in Ontario.

3. To protect the interests of consumers with respect to prices and the reliability and quality of electricity service.”⁷

In view of these legislative objectives, ACTO is unclear about the basis and rationale for the Consumer Security Deposit Working Group's *Options Paper* recommendation that the:

“Ontario government should decide on security deposit exemptions for low income residential consumers. If the government decides in favour, incorporate in legislation and/or issue directive to OEB including identification of individual qualifying consumers to LDCs. Any defaults resulting from exemptions would qualify for recovery.”⁸

We are also unclear about the status of this *Options Paper* recommendation and who has, or who will take, the responsibility to bring this matter forward to the Ontario government.

ACTO believes the OEB has the legislative authority to research, consult with stakeholders, and consider the impact of LDCs' security deposit policies on low-income residential consumers and whether those policies will result in barriers to accessing electricity service. We believe the OEB can decide to move forward on an exemption for low-income residential consumers, and that it should take a proactive role in this matter to ensure equity for this vulnerable group of consumers.

Various new proposed sections of the Distribution System Code appear to allow LDCs individual discretion in terms of waiving a provision of its Conditions of Service in favour of a consumer or potential consumer (see proposed new section 2.4.1) or limiting the amount of security required (see proposed new section 2.4.6.1). ACTO does not believe this matter should be discretionary. We strongly recommend that the OEB should make the following amendments to the Distribution System Code to implement a system-wide explicit mandatory exemption for low-income residential consumers:

- **Amend section 1.2 of the Distribution System Code to add the following definition:**

“low-income residential consumer” is a person with a household income level at or below the Low-Income Cut-offs (LICOs) published by Statistics Canada, using pre-tax, post-transfer household income.

- **Amend section 2.4.1 to add in the following sentence at the end of the section:**

A distributor shall waive all security deposit requirements of its Conditions of Service for a low-income residential consumer.

- **Amend proposed section 2.4.11 to add in the following:**

(c) verification that s/he is a low-income residential consumer.

In terms of the process and administration of the verification of low-income status, ACTO recommends that this would be developed in consultation with all interested stakeholders.

2. Disproportionate, adverse impacts on low-income residential consumers

The intent of the OEB's new proposed provisions is to "increase consistency amongst Ontario electricity LDCs in terms of their treatment of consumers with respect to security deposit requirements". The proposed security deposit policies, if implemented, would be subject to the Canadian *Charter of Rights and Freedoms*, as well as the Ontario *Human Rights Code*, and may violate the human rights of low-income residential consumers who are disproportionately affected by security deposit requirements.

Security deposit policies can create a discriminatory barrier to service for low-income households even if LDCs uniformly implement the common terms and conditions being proposed by the OEB. A requirement that a deposit be given in order that service be provided may result in many low-income residential consumers not accessing electricity.

For example, in the proposed new section 2.4.12, the OEB has set a maximum amount for a security deposit that a distributor may require a residential consumer to pay. LDCs can charge less, but not more than this maximum amount. For residential consumers who use 1000 kWh of electricity per month, LDC total electricity bills (including GST) currently range from \$83 to \$142, with an unweighted overall average bill being approximately \$100. Based on this average monthly \$100 electricity bill, and using the calculation formula set out in the proposed sections 2.4.12 and 2.4.16, the maximum security deposit for the residential consumer would be:

- \$250 for the residential consumer billed monthly,
- \$350 for the residential consumer billed bi-monthly, and
- \$450 for the residential consumer billed quarterly.

A single mother with two children on social assistance in Ontario is, with few and perhaps no exceptions, living on a household income below the pre-tax, post-transfer LICOs. Under Ontario Works (OW), she receives a maximum monthly shelter allowance of \$554 and a basic needs allowance of \$532 for herself and her children – for a grand total of \$1086 monthly. Ontario Works benefits were cut by 21.6% in 1995 and in most communities across the province, the maximum shelter allowance does not cover average rents in the conventional rental market. This means OW recipients use all of the shelter component and part of the basic needs component to pay for housing costs, e.g. rent and utilities.

A security deposit requirement at the maximum amount would obviously have a disproportionate financial impact on this vulnerable low-income household as compared

to a moderate income household. The requirement will force low-income people to make difficult choices between electricity services and other essentials like food and clothing.

If this single mother with two children receives more than one disconnection notice in a relevant 12 month period, then a LDC may increase the maximum amount of security deposit required from her, as proposed by the OEB in the new section 2.4.17. In addition, under the proposed new section 2.4.20, her security deposit installment payments cannot be collected over more than 4 months. As well, a LDC may increase her security deposit following the distributor's "at least once every 12 months" review, as proposed in new sections 2.4.23 and 2.4.24.

3. Methods of enforcement where security deposit is not paid

In the new section 2.4.6.1 of the Distribution System Code, the OEB proposes that a LDC's Conditions of Service must include "methods of enforcement where a security deposit is not paid". However, the Board does not give LDCs direction on what those methods of enforcement should be, or provide for restrictions or limits on enforcement methods.

In the August 14, 2002 letter sent by the OEB to all electricity distributors regarding consumer security deposits and related matters, it states that the "Board has not made a determination on whether non-payment of a consumer security deposit is grounds for termination of service pursuant to section 31 of the *Electricity Act, 1998*."

The Consumer Security Deposit Working Group recommended in its Options Paper dated April 10, 2003 that:

"If a consumer does not comply with a security deposit requirement as prescribed in the OEB security deposit policy "terms and conditions", LDCs should be given the ability to limit or disconnect service. If this is beyond the jurisdiction of the Board, this needs to be clearly specified by the government in Section 31 of the *Electricity Act, 1998*."

ACTO and community legal clinics are very concerned about the lack of clarity and/or authority regarding actions that LDCs may take in response to non-payment of a security deposit by a low-income residential consumer. In cases where a low-income residential consumer has not paid a security deposit and has not defaulted in paying electricity bills, we oppose disconnection or load limiters being used as enforcement methods by LDCs.

ACTO looks forward to the Ontario Energy Board's response to the concerns we have raised in our submission to the proposed amendments and to our recommendation for a mandatory explicit exemption for low-income residential consumers from LDC security deposit requirements.

¹ Statistics Canada, CANSIM II, Table 202-0802: Persons in low income before and after tax, showing rate (v1561689) and number (v1561690)

² Table: Gross Rent as a Percentage of 2000 Household Income (10), Age Groups of Primary Household Maintainer (8) and Household Type (4) for Private Households With Household Income Greater than Zero, in Tenant-occupied Private Non-farm, Non-reserve Dwellings, for Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2001 Census - 20% Sample Data. Ottawa: Statistics Canada, May 13, 2003. 2001 Census of Canada. Catalogue number 97F0021XCB01008.

³ Dunphy, Noreen and Lapointe, Linda. *Where's Home: A picture of housing needs in Ontario*. A Project to raise housing awareness in Ontario, sponsored by the Ontario Non-Profit Housing Association and the Co-operative Housing Federation of Canada. March 1999. Page 9

⁴ Table title: Household Income Groups (14A), Owner's Major Payments (13), Housing Affordability for Owners (4), Condition of Dwelling (4), Household Type (4) and Tenure (3) for Private Households With Household Income Greater than Zero, in Owner-occupied Private Non-farm, Non-reserve Dwellings, for Canada, Provinces, Territories and Census Metropolitan Areas, 2001 Census - 20% Sample Data . Ottawa: Statistics Canada, May 13, 2003. 2001 Census of Canada. Catalogue number 97F0021XCB01010

and

Table title: Household Income Groups (14B), Gross Rent (13), Housing Affordability for Tenants (4), Condition of Dwelling (4) and Household Type (4) for Private Households With Household Income Greater than Zero, in Tenant-occupied Private Non-farm, Non-reserve Dwellings, for Canada, Provinces, Territories and Census Metropolitan Areas, 2001 Census - 20% Sample Data. Ottawa: Statistics Canada, May 13, 2003. 2001 Census of Canada. Catalogue number 97F0021XCB01011.

⁵ *Taking Responsibility for Homelessness: An Action Plan for Toronto*. Report of the Mayor's Homelessness Action Task Force. City of Toronto (Ont.). January 1999. Page 81.

⁶ Ibid.

⁷ Section 1, paragraphs 2 and 3, *Ontario Energy Board Act, 1998*

⁸ Consumer Security Deposit Working Group *Options Paper* (as of April 10, 2003). Page 16.