

Submissions of the Consumers' Association of Canada

To: The Ontario Energy Board

Re: Customer Security Deposit Policies - RP-2002-0146

Introduction:

On June 10, 2003, the Ontario Energy Board (Board) initiated a proceeding to consider issues around the customer security deposit policies of electric local distribution companies (LDCs). Specifically, the Board has proposed changes to the Distribution System Code (DSC) to reflect a new framework for electric security deposit policies. These are the submissions of the Consumers' Association of Canada (CAC) regarding those proposed changes.

A consideration of issues related to security deposit policies was undertaken by a working group coordinated by Board Staff. The proposed changes reflect deliberations of the working group as set out in its options paper dated April 10, 2003. CAC was not a formal member of the working group, but did provide the group with some input.

CAC is generally supportive of the Board establishing a framework for security deposit policies. CAC has a number of general concerns, however, about the overall framework. CAC will set out its views on the broader issues below.

General Comments:

With respect to residential customers it is CAC's understanding that the following customer security deposit policies are proposed:

1. Whether a customer is required to provide a deposit would be based on a customer's good payment history (GPH) which may come from another Ontario electric or natural gas LDC.
2. If a deposit is required (ie non GPH available) residential customers would provide a deposit for up to a maximum of one year.
3. A consumer is deemed to have good payment history, if during the one-year period the consumer has received no more than one disconnection notice from the distributor, no

cheque given to the distributor by the consumer has been returned for insufficient funds, no pre-authorized payment to the distributor has been returned and no disconnect/collect trip has occurred. If any of the preceding occurs due to an error by the distributor, the consumer's GPH shall not be affected.

4. A distributor shall not require a security deposit where a consumer provides a satisfactory credit check made at the customers' expense.
5. The maximum amount of security deposit which a distributor **may** require a residential customer to pay shall be calculated by taking the billing cycle factor x estimated total electricity bill based on the average load for the class or sub-class in the LDC's area measured over the last 12 month period for which information is available. Where usage information is not available for 12 months within the last two years the consumers average monthly load shall be based on a reasonable estimate made by the distributor.
6. 4.3 cents per kilowatt hour should be used to calculating the commodity price for low volume or designated consumers.
7. The distributor may in its discretion reduce the amount of a security deposit which it requires a consumer to pay for any reason.
8. The form of payment should be cash or cheque at the discretion of a consumer. The payment may also be made in installments over no more than 4 months.
9. Interest shall accrue at the Prime Business Rate and should be paid out at least every 12 months or on return whichever comes first.
10. Once a GPH has been established the consumer may demand a return of the deposit. The LDC must also return the deposit upon closure of an account subject to the LDC's right to use it to set off any amounts owing and if a customer switches to a competitive retailer under retailer consolidated billing or from distributor consolidated billing to retailer consolidated billing or split billing.

CAC submits that the provisions dealing with residential consumers represent a fair policy. They are generally consistent with the policies in place for gas utilities in Ontario and CAC is of the view this type of consistency is important. However, CAC has some general concerns about

the implications of the residential requirements and the potential impact of the policies applicable to other customers on residential consumers. CAC's central concerns relate to the fact that the LDCs continue to maintain discretion to apply the requirements as proposed or in the alternative apply something less; that the OEB is silent on who is responsible for the recovery of defaults should they occur; and that the OEB is silent on the issue of disconnection of service for non-payment of a security deposit. CAC also provides some comments on the proposals advocated on behalf of low-income consumers.

Discretionary Provisions:

The Board has indicated that even with the prescribed provisions the LDCs may implement less stringent terms and conditions. In effect, the provisions represent the maximum terms and conditions that can be imposed. CAC view this as problematic for a number of reasons.

The working group identified that one of the issues that was necessitating a need to consider changes to the current code provisions related to security deposits was the fact that the policies across the Province differed and the application of those policies differed. In effect, customers of a similar risk profile have been treated differently across the Province. It was CAC's expectation that once the Board determined what policy was appropriate it would be applied consistently across the Province. With the provision that the requirements represent the maximum that can be applied and the provision that allows for a reduction in the amount that a customer must pay at the discretion of the LDC, CAC believes that such discretion could result in discrimination among customers with similar risk profiles. Applying different policies in different service territories should be based on justifiable differences.

In addition, there is the possibility that LDCs could use their security deposit policies for commercial and industrial customers as an economic development device. LDCs could implement less stringent policies with the intent of encouraging investment. If the responsibility for defaults rests with non-defaulting customers this may result in cross-subsidization that could adversely affect residential consumers.

Default Responsibility:

The purpose of requiring security deposits is to ensure that until a customer can prove its creditworthiness and its ability to pay for its electricity supply other customers or potentially the shareholders are protected from defaults. The Board has been silent in drafting the DSC

amendments as to who, the non-defaulting customers or the shareholders, is responsible for defaults.

Given the elimination of the ability for MEUs to tax roll amounts related to electricity arrears there is an increased risk of defaults. Other factors associated with restructuring the electricity sector have also contributed to an increased risk in default. Included in rates are amounts related to bad debt risk. The existence of the rate freeze does not currently allow for those amounts to be adjusted to reflect that increased risk. CAC submits that the Board needs to set out what is an appropriate policy for the LDCs to follow and what constitutes prudence in this regard. In effect, the Board should be explicit about what is recoverable from LDC customers and what is not with respect to defaults.

The landscape has changed, but it is not clear from the proposed changes as to where the responsibility for defaults rests. CAC's concern with establishing a maximum requirements, and then giving the LDCs flexibility to apply something less is that it could result in increased defaults. These issues must be considered in the context of "who pays?" CAC would have no objection to allowing increased flexibility if the shareholders of the LDC were prepared to cover the increased risk associated with less stringent policies. If an LDC decides to apply a less stringent policy, and the result in an increase in defaults, the LDCs shareholders should bear that cost. If, however, the costs of defaults are borne by non-defaulting customers then CAC would not support such increased flexibility. Also, if it were clear that defaults in the commercial and industrial sectors were to be borne by non-defaulting customers in the commercial and industrial sectors CAC would be more amenable to granting the LDCs more flexibility. Clearly the challenge for the Board is to create policies that are fair to all customers.

Until the OEB establishes where the responsibility lies the DSC changes should not be finalized. There needs to be a clear assessment of default risk and the potential impact on non-defaulting LDC customers. A consideration of the impact on non-defaulting customers of allowing the LDC complete flexibility in the implementation of its customer security deposit policy should be required before an LDC is allowed such flexibility.

Disconnection Policy:

The DSC changes are silent on the issue of whether the LDC has the ability to disconnect a customer that refuses to post a security deposit. Although CAC views disconnection a very serious measure it is questionable to what extent there is a need for a deposit policy if there is no

way to enforce it. Customers that choose to follow the rules will then be treated differently than those that refuse to follow the rules. CAC believes it is imperative for the Board to determine to what extent and under what conditions disconnection for non-payment of a security deposit should be applied.

Low-Income Issues:

CAC is very sensitive to the fact that posting security deposits for a low-income consumer can represent a significant financial hardship. CAC also recognizes that the proposed amendments to the DSC could also create a barrier for those low-income consumers to obtain electricity service.

The working group considered input from the Advocacy Centre for Tenants Ontario and concluded that exempting low-income customers from posting security deposits would be a social policy decision. The group concluded that administering social policy should be undertaken by the government.

One of the more practical issues would be how the LDCs would administer a policy that would exempt "low-income" consumers from posting security deposits. In addition, there has been no assessment as to the potential impact on non-defaulting customers if these customers defaulted in the absence of a security deposit. Such an analysis is a relevant consideration.

CAC notes that the Board has considered issues such as "life-line" rates for gas LDCs. Traditionally, the Board has rejected such rate proposals on the basis that the establishment of such rates is a matter of social policy to be determined by government. Although this issue is clearly outside of the scope of the Board's review, CAC urges the Board to bring it to the attention of the Government as soon as possible.

Implementation Issues:

The Board has set out a number of questions regarding implementation. Although many of these questions are directed to LDCs CAC has two comments. CAC is of the view that the DSC changes should include a more specific definition of what constitutes an acceptable credit check. If this has been determined by the Board there will be no question on the part of customers as to what is required.

In addition, the DSC changes are silent on any differences between new and existing customers. Although the Board has indicated that the requirements represent maximum requirements, it would be appropriate for the Board to indicate how it expects new and existing customers to be treated.

Conclusions:

1. CAC submits that it is important for the Board to establish requirements which support a consistent approach to customer security deposit policy throughout Ontario. Before that approach can be finalized there must be clear direction from the Board as to where the responsibility of non-payment rests. The Board should be explicit about what constitutes a prudent policy and what might or might not be recoverable in rates.
2. If the Board determines that the risk of non-payment is to be borne by non-defaulting customers CAC supports a more prescribed policy. In addition, the costs associated with bad debt should be allocated on a class basis. Residential consumer debt should be borne by residential consumers and defaults incurred in the industrial and commercial sectors should be allocated to the appropriate commercial and industrial rate classes.
3. If LDCs are prepared to take the risk associated with less stringent policies, then those types of policies might be appropriate. Having said that CAC remains concerned with the issue of having different policies being applied across the Province.
4. CAC urges the Board to determine to what extent a customer can be disconnected in the event they refuse to post a security deposit. Until that is determined it may be inappropriate to apply any deposit policy.
5. CAC is sensitive to the fact that the proposed policies may present a significant financial hardship for some low income consumers. CAC is of the view that the exemption of low income consumers is a social policy issue which lies outside the scope of the Board's review. If the Board concurs this issue should be immediately brought to the attention of the Ontario Government.