100,000 members strong
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July 10, 2003

Mr. Paul B. Pudge,
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 26th Floor
Toronto, Ontario M4P 1E4

Re: Consumer Security Deposit Policies – RP-2002-0146

Dear Mr. Pudge:

On behalf of The Canadian Federation of Independent Business (CFIB) and its over 41,000 members in Ontario, I write to you in response to your letter of June 10, 2003, regarding **Consumer Security Deposit Policies – RP-2002-0146.**

First, we would like to take this opportunity to thank the Ontario Energy Board (OEB) for engaging stakeholders on this important issue through the Consumer Security Deposit Policy Working Group. It is with some compromise, and negotiations that these amendments have been proposed. It is commendable that the OEB and the stakeholders involved in this process are willing to consider changes to security deposit policies that will allow for the viability of a competitive electricity market, by providing a fair and level playing field for all participants.

By way of background, the CFIB first began raising serious concerns about security deposits prior to market opening in May 2002. Concerns from our members regarding the lack of information and services being provided to them by electricity providers, coupled with the unfair competitive and financial burden that the security deposits placed on small- and medium-size businesses, topped the list of issues requiring immediate attention.

Subsequent to market opening, concerns over security deposits were again highlighted in a survey that CFIB undertook of its Ontario membership in the fall of 2002. The results, published in CFIB's *Static on Electricity from Small Business* report in December 2002 (attached), revealed that the majority of our members did not feel that the deposits being requested were geared towards their firm's credit-worthiness.

Based on these survey results, including anecdotal evidence from member calls into our member services department, we continued our efforts to bring this issue to the attention of the government and other relevant stakeholders, including the Electricity Distributors Association (EDA). Direct communication with the EDA led to the CFIB and the EDA jointly putting forth a set of principles for how to address concerns over security deposits.

Those necessary principles are as follows:

(a) Reduce or otherwise handle LDC's payment obligations to the IMO, which are at the root of pressure for retail deposits (eg. define prudence, remove LDC responsibility for uncollected commodity amounts, ensure LDCs are not required to underwrite commodity transactions on deals to which they are not party, allow pass through charge for reasonable uncollectible accounts in regulated rates).

(b) Deliver a security deposit protocol for all LDCs that are supportable by local electricity distribution firms and small- and medium-size enterprises (SMEs) and is fair to new entrepreneurs. (eg. deposit rules must reflect even-handed risk analysis – including payment history of the business/individual new start, expected usage patterns – an specify period for which deposit may be held/accrued interest credited, etc.)

While considerable efforts have been made through the Consumer Security Deposit Policy Working Group to address the latter issue, it is unfortunate that no steps have been taken to address LDC payment obligations to the Independent Market Operator (IMO), since it is the onerous IMO prudentials that lie at the heart of the security deposit issue. Again, the CFIB calls upon the OEB, at the very least, to help facilitate discussions amongst the relevant parties, including the EDA to resolve this issue.

With regards to the specific questions and recommendations outlined in RP-2002-0146, CFIB's comments are as follows:

First, we would like to acknowledge the efforts that have been made by the working group to address small business concerns, including the adoption of some of the recommendations cited by our members. In particular, rules around credit-worthiness factors, interest, disconnection and payment options are all welcome developments. There are, however, still some areas of concern, and others that require further clarification. These comments and concerns are reflected in the following pages under the responses provided to each of the questions posed in the letter.

1. **Are there any sections in the proposed amendments that require clarification?**

   Each area where clarification is required has been outlined with the corresponding question.

2. **Is 3 months an appropriate period of time for LDC's to bring their security deposit policies into compliance and properly communicate those changes to their customers? If not, explain how much time is required and provide a rationale.**

We must emphasize the importance of clear communication to, and education of business consumers. Rights and responsibilities under the potential new requirements must be explicitly provided.

In addition, clarification will be needed for LDCs, and consumers, who have already posted a deposit, as to how they will be affected by the new requirements. Since it is important that all business consumers be treated even-handedly, the 3-month time frame maybe inadequate. First and foremost, consideration must be given to effectively communicating the new requirements.

3. **As noted above, the focus on maximum requirements is to prevent an LDC from being forced to require consumers to post a security deposit or pay a higher deposit than an LDC already requires. Has this goal been accomplished?**

   It is our understanding, that the working group discussed wording around both concepts of maximum and minimum, and it was agreed that the minimum would be applied to the deposit options (e.g. at minimum an LDC must accept these forms of payment for the deposit), and the maximum was applied to the security deposit (e.g. Section 2.4.12 & 2.4.13 - the maximum security deposit that an LDC can request is equal to billing cycle factor times the highest average bill for that customer from the previous 12-month period). To the extent that these requirements are reflected under the new rules, the goal has been accomplished.

4. **Consumer deposits would be reviewed and updated annually by each LDC. Would such a requirement have implications for any LDCs? If so, please explain.**

   Although this question does not apply to us directly, it points to two areas where we have serious concerns, annual billing and automatic deposit returns. In particular, we think it is unfair for consumers to have to demand that their deposits be returned, after they have established a GPH (Good Payment History) with their LDC.

   In both areas, the OEB points to the additional administrative burden and cost to the LDCs, that may result in increased distribution system charges. We would suggest, however, that there are positive implications from renewal of computer billing systems.

   Under Section 2.4.23, it states that the LDC shall undertake an annual review of security deposits, and that if, as stated under section 2.4.24, should an annual review deem that some or all of the deposit is to be returned to the consumer it shall be promptly returned.

It is obvious that consumer information regarding payment history, and deposit status will be readily available to LDCs. Therefore, if there is little preventing the return of the deposit upon a successful annual review, why then can the systems not be modified to alert the LDC that a consumer has met the requirements for a deposit refund, and automatically issue the return?

In communicating with consumers, the deposit can be framed as an incentive for conservation of energy. If the customer lowers consumption each year, it is foreseeable that a review would find that some of the deposit should be returned to the consumer prior to full 5 or 7 year term of GPH. As well, offering the deposit back to the consumer without their prodding will breed trust and loyalty.

In addition, Section 2.4.25 does not give any time frame for returning the deposit upon closure of account. In order to facilitate the necessity to finalize bills and review the account, a time frame should be put in place that is reasonable for both the consumer and the LDC.

5. **Consumers would be able to provide a GPH reference from any other Ontario utility. Would this have implications for any LDCs including the requirement to provide the reference? If so, please explain.**

Section 2.4.11 allows consumers to provide GPH reference from another Ontario electric utility. Limiting reference from Ontario-only distributors, however, will add another costly element to the bottom line for potential outside investors looking to locate their business to Ontario.

Consumers could potentially locate in Ontario from other places, including other Canadian provinces. While efforts should continue to be made to find ways of accepting international reference letters, immediate steps should be taken to put in place a process to accept letters of references from other Canadian utilities.

Reference letters should be more widely accepted from other 'utility-type' companies, such as telecommunications companies, city water works, cable television companies and municipal property taxes.

6. **Is a more specific definition of what constitutes an acceptable credit check required in the code?**

Yes. Section 2.4.11 lacks definition of what constitutes a satisfactory credit check, leaving it instead to the discretion of the LDC to choose a credible credit-reporting agency, and the level of scoring that is deemed satisfactory. A uniform standard of what constitutes a satisfactory credit rating, however, would provide a level playing field for all business consumers across the province.

Additionally, under section 2.4.10, clarification is needed on what constitutes "an error by the distributor".

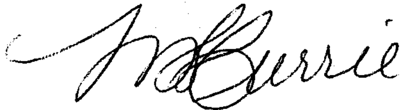
7. **Is the method for calculating a security deposit for non-residential <50 kW consumers using customer specific average consumption appropriate or would the use of a class (and/or sub-class) average usage be more acceptable?**

   Consumers should be charged for what they use. Given the range of business types, and sizes, it is understandable why an LDC might prefer to use a class and sub-class structure. However, for many businesses this can result in subsidizing larger consumers. Using customer specific consumption is a more fair and equitable option, and more likely to lead consumers to conserve.

Consideration of these concerns and comments are of great importance to the small- and medium-size business sector. We look forward to your response.

Finally, we would again like to take this opportunity to thank the OEB for helping to facilitate this process, and we look forward to continuing work with all parties, as amendments to the Distribution and Retail Settlement Codes are finalized.

Sincerely,



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Enclosure