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November 10, 2003

To: **All Interested Persons**

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

In August 2002, a letter was issued advising that Board staff would be coordinating a working group to consider stakeholder input regarding concerns associated with consumer security deposit policies of electricity local distribution companies (LDCs). The working group, which was comprised of consumer and LDC representatives, provided recommendations including a common set of terms and conditions for security deposits. On June 10, 2003, the Board initiated, on its own motion, a proceeding to consider proposed changes to the Distribution System Code (DSC). New proposed provisions were added with the intent to increase consistency amongst Ontario electricity LDCs in terms of their treatment of consumers with respect to security deposit requirements. The due date for stakeholders to provide written submissions was July 10, 2003.

In response to the proposed DSC amendments, the Board received 48 submissions. The Board has reviewed the comments and has made a number of changes to the proposed amendments. The Board is proposing one substantial change relative to what was proposed on June 10th.

Changes to Proposed DSC Amendments

Large Consumers (> 50 kW)

The most notable change concerns the security deposit requirements of large customers (> 50 kW). This has been the most contentious issue, with the least agreement, from the outset. The large consumers and the LDCs on the working group provided differing recommendations. The LDCs argued for retaining the deposit until closure of account, while the large consumers argued that the deposit be returned upon 7 years of good payment history (GPH). The Board adopted the position of the large consumers in the June 10th proposed amendments. As a result of the comments that were received, the Board is proposing modified provisions that represent more of a middle-ground between the two views. These new proposed provisions include the following:

- The non-residential > 50 kW customer class would be divided into two sub-classes of *over and under 5 MW* (5000 kW).
- The majority of large consumers — *under 5 MW and over 50 kW* — would continue to receive 100% of a deposit refund upon achieving 7 years of GPH, as proposed in the DSC amendments of June 10th.

- Non-residential consumers > 5 MW, which represent the greatest material discrete exposure risk, would receive 50% of a deposit refund after 7 years of GPH. A credit rating would be required to receive a refund that exceeds 50%. If a credit rating was secured, it would replace GPH in determining a deposit refund (ranging from 75% - 100%), with the refund based on the consumer's individual rating. See the table in the proposed amendments for details.

- After the transition period (see below), a credit rating would take effect immediately. For example, if a credit rating was obtained and provided to an LDC, that LDC would be obligated to provide the appropriate refund immediately (i.e., no longer a need for the consumer to wait 7 years).

In addition to providing comments on this new proposal, the Board is also requesting feedback as to whether any non-residential consumers under 5 MW (and over 50 kW) should be permitted to opt-in to this approach that involves a credit rating.

Other Proposed Changes

Other proposed changes to the June 10th amendments include the following:

- The implementation time-frame has been extended from 3 months to 6 months. There was consensus amongst LDC and consumer representatives on this change.
- Section 2.4.19 required an *open-ended and irrevocable* Letter of Credit. Upon further review, it was decided that an "open-ended" Letter of Credit would be too difficult and costly for a business to obtain. It is now proposed that the Letter of Credit be only "irrevocable" and not "open-ended". The rationale for it remaining irrevocable is so an LDC will have some certainty that the Letter of Credit will be on hand if it is needed.
- The Board recognizes that security deposit refunds, resulting from consumers achieving GPH or obtaining an appropriate credit rating, may result in cash flow implications for LDCs. Consequently, the Board has provided an additional transition period for reviews/refunds that provides for at least one budget cycle prior to the pertinent sections being applicable.
- Section 2.4.11 has been revised to clarify that there is a time constraint that a GPH reference can apply (i.e., most recent 12 consecutive months within the past two years). Both consumers and LDCs also supported permitting consumers to obtain GPH references from any other Canadian electric/gas utility (e.g., Hydro Quebec) as opposed to limiting it to Ontario utilities. The Board agrees that this change would also be appropriate.
- The interest rate be changed in s.2.4.21 from the *Prime Business rate* to the *Prime Business rate less 2%*. The primary concern was that LDCs cannot earn Prime on consumer deposits

so it would become an additional cost that may be passed on to all consumers. The Board is of the view that the interest rate paid to consumers should neither result in a cost nor a benefit to LDCs. Security deposits are intended solely for risk mitigation purposes. The *Prime Business rate less 2%* is more comparable to what LDCs may reasonably earn on consumer security deposits and also represents fair compensation to consumers.

- Section 2.4.12 be revised to allow for “customer-specific” calculations for residential customers. The reference to “class” and “sub-class” has been replaced with “a reasonable estimate made by the distributor” to provide for circumstances which result in “customer-specific” calculations not being possible (e.g., billing system or data constraints) . However, LDCs shall use customer-specific” calculations where their systems and data availability allows for them, and a “reasonable estimate” should be a relatively accurate approximation of a specific customer’s consumption. 21
- The method to calculate non-residential under 50 kW security deposits in s.2.4.13 has been changed to also permit “a reasonable estimate made by the distributor”. However, again, LDCs should use “customer-specific” calculations where their systems allow for it, as noted above. Sections 2.4.12 and 2.4.13 became duplicative and, therefore, there is now only one section addressing the calculation for all consumer classes. 22
- The reference to 4.3¢ has been replaced with more generic language in s.2.4.14. 23
- Section 2.4.20 has been amended to clarify that, where a deposit is provided in installments, it shall be in equal amounts. This clarification should reduce the potential for disputes on this matter. 24
- The definition of “Disconnect / Collect Trip” has been amended to include a reference to “load limiters”. The rationale is to avoid the need for an LDC to resort to a full disconnection as a prerequisite to requesting a deposit. To address a possible misconception, where s.1.2, in part, states “*disconnect/collect trip*” is a visit to a *customer’s premises by an employee or agent of the distributor to demand payment of an outstanding amount and to shut off... electricity to the customer failing payment*”, this does not necessarily mean that disconnect trips and collect trips are the same nor does it require an LDC to disconnect a consumer prior to demanding a security deposit. 25
- Sections 2.4.23 and s.2.4.24 have been revised to clarify that: (1) LDCs may credit a customer’s bill with the deposit refund (i.e, no requirement to issue a cheque and incur additional administrative costs); (2) Requests for refunds must be “in writing” to ensure that the deposit is returned to the appropriate person/consumer; and (3) A deposit refund must be provided by an LDC to a consumer within 1 month of account closure. Previously, there was no time constraint 26
- The term “consumer” has been changed to “customer” in many of the sections of the proposed amendments. The reason for this change is to clarify that parties which are not end- 27

use consumers may also be required to provide a deposit; for example, an apartment landlord.

- A provision has been added to ensure the appropriate treatment of farm customers. Similar to seasonal customers, the provision deems some farms to be treated as residential customers for the purpose of security deposits. The wording used is consistent with Reg.442/01 which requires a dwelling to be occupied as a residence continuously for at least 8 months of the year to be deemed a “residential premises”. This should address the concern that all farms may be treated as non-residential consumers for the purpose of determining the required GPH.

- The Board recognizes that requiring a review of each deposit annually on each customer's anniversary date would be labour intensive in entailing daily reviews for large numbers of customers. It would also require billing system changes and, therefore, has the potential to impose significant costs on LDCs. Consequently, it is proposed that reviews be required once annually within each calendar year. At the same time, with this change, the Board was concerned that some consumers may be forced to wait almost an additional year for a possible refund where the deposit is provided just prior to the LDC's annual review. As a result, the Board has added a provision that would require an LDC to undertake a review or annual adjustment on a customer's specific anniversary date, if it is requested by the customer.

- A number of other changes have been made that are administrative in nature.

Prudence

On the issue of prudence, a number of parties noted that there was still a need to define “prudent” in the code and/or asked whether complying with the amendments would automatically deem them to be prudent and guarantee full recovery of all defaults. One LDC stated “*We accept that an all-inclusive definition of prudence is problematic in a quasi-judicial environment.*” This is consistent with the Board staff Discussion Paper (September 20, 2002). That LDC further stated “*... it is important for the OEB to provide some reasonable assurance to LDCs who apply the proposed (maximum) security deposit requirements.*” The Board is currently reviewing this issue and will provide further guidance to LDCs on the issue of prudence, in a comprehensive manner, that goes beyond the issue of security deposits.

Next Steps in the Proceeding

The Board has reviewed, in detail, the extensive submissions that were provided in the first round. The Board would be most assisted by any further submissions focussing on the major changes resulting from the previous consultation, primarily the proposed amendment for large consumers. The Board also requests that any further submissions not be a re-iteration of the comments submitted to-date. The assistance of parties in this regard will assist the Board in reaching a quick decision on this matter.

Any person who wishes to participate in this written proceeding **must** file two (2) paper copies of the written submission, and an electronic copy, in WordPerfect or Word, with the Board Secretary at the address given below by **4:30 p.m. on November 24, 2003** (or 2 weeks from the date that these amendments are published on the Board's website). If possible, please also provide an electronic version in PDF format. Your submission must quote the file number **RP-2002-0146** and include your name, address, e-mail address and fax number.

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If you have any questions regarding this proceeding, please contact Chris Cincar at 416-440-7696 or by e-mail at chris.cincar@oeb.gov.on.ca or toll free 1-888-632-6273.

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Yours truly,

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Paul Pudge
Assistant Secretary