

Ontario Energy
Board
P.O. Box 2319
26th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

Commission de l'Énergie
de l'Ontario
C.P. 2319
26e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone: 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY PRIORITY POST

February 2, 2004

TO: ALL INTERESTED PERSONS

RE: COMPANION POLICY DOCUMENT - [\[oeb:12XY9-0:1\]](#)
CONSUMER SECURITY DEPOSIT POLICIES - RP-2002-0146

The Board has approved amendments to the Distribution System Code (DSC) pertaining to consumer security deposit policies of electricity local distribution companies. This document discusses the process and rationale for these amendments.

Why did Consumer Security Deposit Issues Arise?

A number of changes in Ontario's electricity sector that coincided with market opening had an impact on utilities' need for security deposits from their customers.

Under previous legislation, municipal electric utilities (MEUs) had the power to require reasonable security from consumers. If a customer of an MEU could not pay a bill because of bankruptcy or any other reason, and the MEU did not hold enough security, distributors had access to the municipal tax roll (that is, they were reimbursed when the property was sold by the municipality). There were also provisions for MEUs to apply to Ontario Hydro for recovery within rates.

With the passage of the *Energy Competition Act, 1998* and the incorporation of electricity local distribution companies (LDCs) as commercial entities, LDCs kept the right to require deposits but lost access to the municipal tax roll. At the same time, the Independent Electricity Market Operator (IMO) imposed obligations that require LDCs to provide prudentials (i.e., security) to the IMO on behalf of their retail customers.

Because of these changes, LDCs increasingly turned to their customers for security deposits. Various parties, including LDCs, large customers, residential consumers and groups representing these parties, raised a range of concerns.

A major concern was that the policies of Ontario's 95 electricity LDCs were inconsistent, and the differences were not minor:

- Some LDCs required a deposit from large customers only, while others required a deposit from all customers, including residential consumers, in perpetuity and without regard for the customer's credit-worthiness.

- In addition, LDCs used different ways of calculating the deposit amounts and paid different rates of interest on deposits (if they paid interest at all).

These and many other differences resulted in widely differing treatment of consumers across the province. Among other problems, this put business customers of LDCs with the most stringent requirements at a competitive disadvantage.

The Board's Response to Stakeholder Concerns

Research

The Board looked first at the practices of similar industries and other jurisdictions that have restructured their electricity market. Among the findings, for the telecom industry:

- Bell Canada cannot require a security deposit unless the customer has no credit history with Bell and will not provide satisfactory credit information or the customer has an unsatisfactory payment history with Bell within the past two years. A deposit cannot exceed three months' charges and all deposits earn interest.
- Bell must show the total amount of the deposits held (with accrued interest) on each customer's monthly account.
- Bell must review the appropriateness of deposits at six-month intervals and must immediately refund the deposit (with interest) when service ends.

In jurisdictions outside Ontario that have among the most mature restructured electricity markets, such as the UK and Australia (New South Wales and Victoria), there are also relatively prescriptive rules around security deposits. For example, in the UK:

- The amount of the deposit is based on 1.5 times the value of the consumer's average quarterly consumption.
- A supplier must return the deposit with interest within 14 days as long as the customer has paid each bill in full for 12 consecutive months.

A discussion paper on the OEB web site provides further details at www.oeb.gov.on.ca/documents/security_deposit_discusspaper.pdf.

Working Group

In August 2002, after this research was done, the Board announced that staff would coordinate a working group on the security deposit issue. This working group, representing consumers and LDCs, reached a consensus: “First and foremost, the Working Group does not consider the status quo to be a viable option.”

The working group’s options paper noted that the significant differences in policies across the province had some perverse consequences, such as businesses locating (or choosing not to locate) in certain municipalities. As a result, it recommended a common set of terms and conditions for consumer security deposits across Ontario electricity LDCs.

Broader Consultations

The Board agreed with the working group that change was needed. Consequently, on June 10, 2003, the Board initiated the process of getting broad stakeholder input on proposed changes to the Distribution System Code (DSC) that would bring greater consistency to security deposit requirements.

Following the working group’s efforts and an extensive further process that included two rounds of consultation, resulting in a total of 72 submissions, the Board has approved amendments to the DSC to deal with consumer security deposits.

What is included in the Code Amendments?

These amendments govern the terms and conditions of LDC security deposit policies including, but not limited to, setting: the maximum dollar amounts, the length of time a deposit can be held, how deposits are to be calculated, refund provisions, the forms of security permitted, exemption requirements and how interest owed is to be determined. Many of these terms and conditions differ by customer class.

Changes from the November 10, 2003 Proposed Amendments

The approved amendments reflect certain changes from the proposed amendments that were circulated for the second round of consultation. The Board was of the view that the nature of these changes did not require a further round of consultation. The changes are:

- With respect to large consumers (>50 kW), there is no change except that all such consumers which are under 5000 kW will be provided with an “option” to obtain a credit rating to facilitate a quicker deposit refund.

- Section 2.4.10 was revised to permit more than one NSF cheque or more than one missed pre-authorized payment (PAP). This change was made to be consistent with allowing more than one disconnection notice and the fact that an NSF cheque or a missed PAP can be the result of a simple administrative error or oversight. 36
- A minor revision was also made to section 2.4.11 to clarify that residential customers do have the option of providing a satisfactory credit check. The proposed amendments had been revised in the second round of consultation to remove this as an option for general service customers exceeding 5 MW. However, the wording used may have inadvertently implied that this option was no longer available to residential consumers. This was not intended. 37
- Section 2.4.19 has been revised to add an automatic renewal provision for irrevocable Letters of Credit. This automatic renewal feature, used by wholesale market participants for virtually all Letters of Credit in the IMO-administered markets, should reduce the administrative burden associated with this form of security for both consumers and LDCs. 38
- Section 2.4.20 was also revised to make a minor change from "installments over no more than 4 months" to "installments over at least 4 months". This change was made to provide LDCs with the flexibility to allow more than four installments, especially where it involves low-income consumers. 39
- In section 2.4.21, clarification was added as to how frequently the interest rate must be updated in each LDC's Customer Information System (CIS), for security deposit purposes, as the interest rate can change quite frequently. The Board decided a quarterly change would be appropriate. This clarification removes any ambiguity and eliminates the potential administrative burden from LDCs of the requirement to check the Prime Business rate daily. It should also bring about consistency across LDCs, in terms of their treatment of consumers, as well as capture virtually every change in the Prime rate and ensure it is not changed on only an annual basis, as was suggested by some LDCs. 40
- Clarification has been provided in section 2.4.25 that the requirement to allow for installments does not apply where the amount of a security deposit is only adjusted. The provision for installments was intended for only the initial deposit. 41
- Section 2.4.26 previously proposed a refund within "1 month" of account closure. It was raised that this timeframe was too tight since there is a 10 business day delay in LDCs receiving market pricing (after the actual meter reading) from the IMO. It was noted that large LDCs can be faced with thousands of account closures every week. An extension of up to two months was suggested. However, the Board is of the view that six weeks is an adequate period of time for LDCs to receive market pricing, bill the account for all final charges, make sure there are no arrears and return any remaining deposit amounts. 42
- Section 2.4.28 was causing some confusion. Consequently, it has been revised to clarify that this section only applies to LDCs that have separate Board approved farm rate classes. 43

Implementation

The Board agreed with the working group that, while greater consistency was required, there was also a need to provide some degree of flexibility within the DSC amendments.

Consequently, as the working group had recommended, the security deposit provisions represent maximums. An LDC may require a deposit of any amount up to the maximum, including no security deposit at all, but may not exceed the maximum.

While the Board does not require electricity LDCs to collect a security deposit from consumers, it has provided guidelines and mandated maximums for those instances where the electricity distributor's judgement has determined that a security deposit is appropriate.

In addition, under section 2.4.24, the Board has provided a transition period for LDCs to address cash flow concerns. The Board is confident that LDCs will provide their customers with a similar transition period.

Specifically, the Board expects all LDCs to be reasonable and apply these rules only on a prospective basis. For example, for customers with a good payment history and who are not in violation of section 2.4.10:

- If a deposit has not been required to date, a deposit should not be required now, even if the payment history does not yet extend to the full period set out in section 2.4.9. A deposit should only be requested if that customer fails to meet the requirements set out in section 2.4.10.
- If a customer has already provided a deposit that is less than the allowed maximum, the LDC should not increase the amount required unless that customer fails to meet the section 2.4.10 requirements.

The Board will monitor implementation to ensure that existing customers are not unjustly affected. If necessary, the Board will not hesitate to take action (such as further code amendments).

Next Steps

The Board notes that LDC bad debt and working capital allowances should be reviewed. Should the Board regain its full distribution rate-making authority, it will undertake such a review to determine if any changes should be made and, subsequently, will review the DSC security deposit provisions to ensure they are still appropriate. The Board will also review them if any related market design or market rule changes are put in place.

On the issue of prudence, as the Board said in its letter on November 10, 2003, accompanying the proposed DSC amendments, the Board is currently reviewing this issue and will provide further guidance to LDCs on the issue of prudence in a manner that goes beyond the issue of security deposits.

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Please see the associated Backgrounder which includes Questions & Answers and is posted on the Board's web site. These Q&As discuss the various provisions in the code amendments.

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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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Peter H. O'Dell
Assistant Secretary