

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF the Notice of Proposed Amendment to a Rule, The Gas Distribution Access Rule, dated October 8, 2008

SUBMISSION OF ENBRIDGE GAS DISTRIBUTION INC.

1. This submission is made in response to the Ontario Energy Board's ("OEB" or "Board") Notice of Proposed Amendments to a Rule ("Notice"), which contemplates amendments to the Gas Distribution Access Rule ("GDAR") to add certain provisions to regulate and specify the policies which gas utility companies in Ontario may use for the purposes of setting and collecting security deposits (the "Proposed Amendments").

Executive Summary

2. The Proposed Amendments seek to impose the same requirements for gas distributor security deposits as currently exist for electricity LDCs in Ontario. Enbridge Gas Distribution ("EGD") submits that there is neither any statutory authority, nor any need, for the Proposed Amendments. In short, the Proposed Amendments seem directed at addressing a problem that does not exist, at least insofar as EGD's customers are concerned. If the Proposed Amendments are approved, this will increase EGD's exposure to bad debt, as well as operating costs. Ultimately, EGD's rates will have to increase in response. This is not in the public interest.
3. In the event that the OEB insists on proceeding to regulate EGD's security deposit policies, it is not appropriate to simply apply the rules that relate to electricity LDCs to EGD's customers. This is particularly true in the case of large volume and direct purchase customers, whose accounts represent a significant exposure to bad debt for gas utilities. The Proposed Amendments fail to properly address the circumstances of these customers. On the other hand, EGD has already developed fair and appropriate policies to address the unique circumstances of these groups of customers and to provide sufficient protection to the utility and its ratepayers. Thus, to the extent that any of the Proposed Amendments are approved, they ought to apply only to Mass Market

Customers (residential and small commercial customers who are not also direct purchase customers).

Jurisdiction to regulate gas distributor security deposits does not lie with the OEB

4. As a preliminary matter, EGD respectfully submits that the OEB is not vested with the jurisdiction to regulate the security deposit practices and policies of natural gas distributors.
5. Section 50(4) of the *Public Utilities Act* (the “PUA”) provides natural gas distribution utilities like EGD with the right to require customers to post reasonable security.¹ The PUA is administered by the Ministry of Municipal Affairs², and does not vest rights of review or oversight with the OEB.
6. The Ontario Legislature, through the PUA, has granted to gas utilities the discretion to determine what is a reasonable security deposit policy based upon the unique circumstances of each gas utility. The PUA gives the utilities, not the OEB, the discretion to determine what constitutes reasonable security deposit terms, subject to review by the courts.³
7. The proposed new GDAR security deposit provisions are inconsistent with and conflict with the discretion given to natural gas utilities under the PUA to require and administer security deposits. As a result the OEB is, in effect, fettering the discretion given to gas utilities by the Legislature. For example, if the Board prohibits gas utilities from requesting a security deposit from some customers or requires its return sooner than

¹ Section 50(4) of the *Public Utilities Act*, R.S.O. 1990, c. P.55, provides that : “Any corporation before supplying any public utility to any person or to any building or premises, or as a condition of continuing to supply the utility, may require any consumer to give reasonable security for the payment of the proper charges therefor or for carrying the public utility into the building or premises.”

² See the FAQs on the Ministry of Energy and Infrastructure’s website : “**Does a gas utility have the right to demand a security deposit before providing service?** : Under the *Public Utilities Act*, administered by the Ministry of Municipal Affairs and Housing, a gas utility is allowed to require a customer to pay a reasonable security deposit before receiving service.”
http://www.energy.gov.on.ca/index.cfm?fuseaction=oilandgas.faq&subtopic=naturalgas#question_53.

³ This is an entirely different situation from that which was addressed in a previous challenge to aspects of GDAR in *Enbridge Gas Distribution Inc. and Union Gas Limited v. Ontario Energy Board*, 2005 CanLII 250 (Ont. C.A.). In the previous case, the provisions of GDAR being challenged were not addressed in any other statutes. Here, the proposed amendments relate to powers specifically granted to gas utilities under the PUA.

under current security deposit policies, this amounts to a removal of the discretion given to gas utilities under the PUA.

8. Further, while the *Ontario Energy Board Act 1998* (the “OEB Act”) provides that where there is an inconsistency between two Acts, the OEB Act prevails⁴, this is not such a situation. Here, it is the conduct of the OEB by its proposal to exceed its jurisdiction and adopt rules which are contradictory with or inconsistent with the PUA which gives rise to the conflict. The OEB Act itself is not in conflict with the PUA.
9. Finally, the conclusion that the OEB does not have jurisdiction to regulate gas utility security deposit policies is not inconsistent with the fact that the OEB does regulate the security deposit policies of electricity LDCs. This is because electricity LDCs are no longer subject to the PUA. Indeed, during the process through which the OEB established security deposit policies for electricity LDCs, Board Staff implicitly acknowledged that the OEB does not have the jurisdiction or need to regulate security deposit policies of utilities governed by the PUA, stating:

Security requirements of [electricity] customers were previously addressed by *Part 6, Section 49.4* of the *Public Utilities Act* which gave natural gas and municipal electric utilities (MEUs) the power to require reasonable security from consumers. However, these provisions ceased to apply to electricity LDCs with the passage of the *Energy Competition Act, 1998* and the incorporation of electricity LDCs, under the Ontario Business Corporations Act (OBCA), as commercial entities.⁵

10. Given this context, EGD respectfully submits that the Proposed Amendments to GDAR are not within the OEB’s jurisdiction, and should be rescinded.

There is no need for the proposed GDAR amendments

11. In addition to the belief that the OEB lacks jurisdiction to regulate the security deposit policies of Ontario’s natural gas utilities, EGD submits that there is no compelling basis or need for doing so at this time.
12. The Board’s Notice suggests (on page 1) that issues about the security deposit policies of Ontario’s gas utilities have been the subject of concern raised with the OEB by consumers and consumer groups.

⁴ OEB Act, s. 128.

⁵ Electricity LDC Consumer Security Arrangements: A Discussion Paper, at page 2. September 20, 2002: http://www.oeb.gov.on.ca/documents/cases/RP-2002-0146/security_deposit_discusspaper.pdf.

13. EGD is not aware of any significant or widespread concerns having been raised by its customers, who comprise more than half of all the natural gas customers in the Province. To EGD's knowledge, there has been no material change in the frequency that consumers have raised questions about security deposit policies. If there were widespread material concerns about EGD's security deposit policies, one would have expected that these would have been raised as an issue in EGD's annual rate proceedings. That has not been the case.
14. Stated simply, there is no evidence that EGD's security deposit policies have been the subject of concern and need to be regulated. As such, contrary to the suggestion at page 5 of the Notice, there is no evidence that the proposed amendments to GDAR are required to protect EGD's customers with respect to the prices and reliability and quality of gas service.
15. As explained below, EGD believes the Proposed Amendments will increase administrative costs and the risk of bad debt by removing the flexibility to retain security deposits longer or in different amounts, depending upon relevant circumstances. EGD submits that any additional costs and bad debt that occur by reason of the Proposed Amendments should be to the account of the ratepayer. This means that the Proposed Amendments could have a negative impact on prices.
16. Similarly, EGD is not aware of such concerns being raised by customers of Union Gas Limited ("Union"), Ontario's other major gas distribution utility. Together, EGD and Union serve more than 95 percent of the more than 3 million natural gas customers in Ontario.
17. The fact that neither Union nor Enbridge are aware of any significant nor increasing concern about their security deposit policies is consistent with the statement in Board Staff's Discussion Paper issued in conjunction with the change in electricity LDC security deposit policies, where Board Staff stated: "with respect to the [security deposit] policies of the "natural gas" LDCs, there have been relatively few complaints from consumers in recent times and those policies have been in place for some time."⁶ (Emphasis added)

⁶ Electricity LDC Consumer Security Arrangements: A Discussion Paper. September 20, 2002, at p. 7: http://www.oeb.gov.on.ca/documents/cases/RP-2002-0146/security_deposit_discusspaper.pdf.

18. EGD is aware, on the other hand, of a significant number of complaints having been raised about the security deposit policies of Natural Resource Gas Limited (“NRG”), a small gas distribution utility with approximately 4,000 customers. For example, EGD is aware that a petition with more than 500 signatures was presented to Aylmer Town Council in NRG’s franchise area, complaining about NRG’s recent security deposit procedures.⁷ Among other things, those complaints relate to the alleged capriciousness of NRG’s approach to security deposits, and issues around the release of these deposits. EGD submits, with respect, that if the OEB believes that it has jurisdiction to regulate security deposit policies of gas utilities, and if its concerns are motivated by and directed at one very small market player, then steps should be taken to directly address the problems being encountered with NRG, rather than taking steps to regulate security deposit policies for all Ontario’s gas utilities.
19. EGD is not aware that there is any basis for the statement at page 5 of the Board’s Notice which claims that harmonization of security deposit policies among gas distributors and consistency of the policies with LDCs will provide customers with greater predictability and better allow them to manage their energy costs.
20. EGD’s customers have not complained that its security deposit policy is unpredictable. Moreover, to EGD’s knowledge, its customers have not been advocating for symmetry between its security deposit policies and Union’s, or the other 3 gas utilities in the Province (NRG, Kitchener and Kingston).⁸ By comparison, there are more than 80 electricity LDCs. Where a need for some continuity in security deposit policies of electricity LDCs may have existed because of the number and small size of many electric utilities, this is not the case in respect of gas utilities.
21. One final comment from the Board’s Notice merits a response under this heading. At page 2 of the Notice, the allegation is made that greater consistency of security deposit policies will serve to minimize over-collection by a gas distributor in a way that might artificially inflate its pool of low cost working capital. It is submitted that there is no basis whatsoever for this statement insofar as EGD is concerned. First, EGD pays a fair rate

⁷ Evidence submitted in EB-2008-02373 proceeding, including Town of Aylmer’s Pre-Filed Evidence.

⁸ EGD is not aware that there is any complaint among its customers that they have switched gas distributors, and are dissatisfied with the new distributor’s security deposit procedures, nor that its customers feel that they are unfairly treated by EGD’s security deposit procedures as compared to those of other gas distributors.

of interest on security deposits, and this interest rate may at times be no different from the Company's own cost of short term capital. Second, there is no evidence that EGD is in any way "over-collecting" on security deposits. If that were the case, one would certainly have expected a substantial number of customer complaints, something that is not the case. Most certainly such a concern would have been raised in a prior rates proceeding, by one or several of the consumer groups. This has not occurred.

22. Importantly, many of EGD's larger customers post letters of credit as security deposits rather than cash, often following contractual negotiations between EGD and a large sophisticated industrial gas user. Letters of credit do not assist EGD's working capital position. Such security deposits exist solely to protect ratepayers and the shareholder from the risk of bad debt.
23. As described in detail later in these submissions, the Proposed Amendments will expose gas utilities and their ratepayers to increased risk of bad debt and materially higher O&M costs administering security deposits as proposed. Contrary to what is alleged at page 6 of the Notice, rather than facilitating the maintenance of a financially viable gas distribution sector, the Proposed Amendments will increase uncertainty as to bad debt exposure and O&M costs. EGD submits that there is no evidentiary basis for the Board to conclude that the costs of coming into compliance with the Proposed Amendments "may not in all cases be material or substantial".
24. Based upon the submissions set out above, there is no need for the Proposed Amendments to GDAR to regulate EGD's security deposit policies, and standardize those policies with all regulated gas and electricity distributors in Ontario. Put another way, it is heavy-handed and harsh to impose 28 new prescriptive rules to govern security deposit policies that are not currently an issue or problematic for EGD's customers.

Timing and Incentive Regulation Issues

25. In addition to the fact that there is no evidence of any need to regulate and specify the security deposit policies of Ontario's main gas utilities, EGD submits that the OEB should also take into account the fact that this is not an appropriate time for such changes to be implemented.

26. Both EGD and Union are currently in the first year of five year incentive regulation (“IR”) plans. The rate-setting mechanisms within these plans were set on the basis of a known state of affairs that existed in the “base year” leading into IR.
27. At the time that EGD agreed to the settlement that created the IR rate-setting mechanism, the amount of bad debt that EGD forecast going into the IR period, which it collects in rates, was forecast based upon EGD’s existing security deposit policy and EGD’s ability to adjust its security deposit policy to respond to changing market conditions. Similarly, that portion of EGD’s O&M costs related to administering security deposits assumed that EGD’s security deposit policy would be within the utility’s control.
28. The level of bad debt that EGD can currently recover in rates is effectively fixed for the next four years, under the IR regime. To the extent that EGD is required to change and limit the flexibility of its security deposit policy, and can collect less from its customers as a result, then its bad debt exposure, and its actual bad debt, will rise. In the same way, if EGD is required to collect security deposits from all customers over four months, rather than in one payment, then its exposure to default will increase. Finally, EGD forecast its O&M cost to administer security deposits based upon the security deposit regime it had in place at the time that the IR plan was approved. If the Proposed Amendments are approved, then (as the Notice confirms at page 6) gas utilities will incur ongoing incremental costs administering security deposits in accordance with the Proposed Amendments, “notably in relation to the annual review of security deposits”.
29. In short, none of the likely additional costs that will result from the Proposed Amendment were forecast and included in base rates for the IR formula. Given that the Proposed Amendments are solely for the benefit of ratepayers, and further given the principle that a rate regulated utility should be allowed to recover all reasonable costs of satisfying mandated regulatory requirements, EGD submits that if the Proposed Amendments are mandated, it should be kept whole.
30. As a result, if the Proposed Amendments are approved, EGD should be entitled to recover more from its ratepayers to cover the increased bad debt risk and O & M costs. This will ultimately result in higher rates for all ratepayers. This is not a desirable outcome.

31. In addition, Ontarians are currently facing an uncertain and challenging economic environment. It seems likely that EGD's bad debt exposure will increase over the next months or years, even if its security deposit policies are unchanged. Requiring changes to the policies now, to provide less protection and less flexibility to gas utilities would exacerbate this problem.
32. In these circumstances, EGD submits that the Proposed Amendments are both untimely and not in the interests of ratepayers.

Nature of the natural gas industry and markets

33. In the event that the OEB decides to regulate the security deposit policies of Ontario's natural gas utilities, it is important to appreciate the significant differences between the natural gas and electricity distribution markets in Ontario before simply applying the electricity LDC policies to gas utilities. An examination of these differences leads to the conclusion that an approach to security deposits that treats all electricity and gas distributors (and their customers) in the same fashion is not appropriate.
34. EGD and Union have been in operation for many decades; in the case of EGD for more than 160 years. Over the years, working with its customers, EGD has developed security deposit policies which have protected both EGD's shareholder and EGD's ratepayers from the costs associated with significant bad debt. As noted, the statutory basis for gas distributors to require a reasonable security deposit from its customers is found in the PUA.
35. The need for a security deposit policy is self evident. Natural gas distributors not only provide gas distribution services, in many cases they supply a valuable commodity to customers and subsequently seek payment for both the distribution services and the commodity. Most customers are billed on a monthly basis and are then allowed a period of time in which to make payment. Even where customers do not make payment, EGD sends out reminders and warnings about the potential of the discontinuance of service before any steps of this nature are taken. Customers may have benefited from several months of distribution services and the use of natural gas before service is discontinued.
36. One major difference between natural gas and electric distribution companies is the additional risk which natural gas distributors face in the case of direct purchase

customers, which often involve large industrial customers. Unlike electricity, which is a commodity that is delivered instantaneously upon demand, and billed in full each month, natural gas utilities maintain banked gas accounts (“BGA”) for direct purchase customers which may involve significant quantities of natural gas. This puts a natural gas utility at even greater risk in the event of default.

37. Briefly, a BGA records any imbalances between the supply of gas delivered to a gas distributor by one of its customers pursuant to a direct purchase contract and the amount of gas actually consumed by the customer. Using the example of a customer whose demand increases during the winter heating season, it is not uncommon that customers will consume significantly greater volumes of natural gas during the heating season than they deliver to a gas distributor under their direct purchase contracts. This creates a negative balance in the BGA. Should a customer with a negative BGA default, the utility is at risk, not only for unpaid distribution services but also for the natural gas it has, in effect, loaned to the customer during the period of high demand. BGAs reach equilibrium by the customer delivering greater volumes of natural gas during the warmer parts of the year, achieving a zero balance in the BGA at the contract renewal date.
38. Unlike electric LDCs, natural gas distributors are exposed to BGA risks in addition to the amounts outstanding on a customer’s bill in that the gas distributor must pay for or replace the gas which the defaulting customer used, which is recorded in the BGA. In the case of large industrials, the BGA can reach negative balances involving millions of dollars of natural gas. Accordingly, to protect both ratepayers and the shareholder, gas utilities must have the ability and flexibility to apply a security deposit policy that is reasonable and appropriate in all economic climates and circumstances.
39. Another example of a material difference between gas and electric distributors can be seen in the Budget Billing Plan (“BBP”) that EGD offers to its Rate 1 (Residential) customers. Briefly, under the BBP, a consumer pays 11 equal monthly amounts from September to July⁹, with a true up in August to reflect any over or underpayment by the consumer. The BBP is, in effect, a form of BGA in that by the end of March a typical residential customer will have consumed about three-quarters of the natural gas typically used in a 12-month period (October 1 to September 30). Accordingly, if a typical BBP

⁹ The amount of the equal monthly payments may be re-adjusted twice in a year to reflect changing gas commodity costs.

customer defaults on his or her February bill (which generally means that service will not likely be discontinued until April) this customer will only have paid for 1276m³ yet will have used 2331m³ or more. In those years where natural gas prices rise significantly during the course of a year, this exposure is compounded.¹⁰

40. It also bears note that the rate structures which natural gas distributors must administer relative to electric LDCs are far more complicated.
41. Given the seasonality of natural gas use, the risks inherent with the BGA, the potential volatility of natural gas commodity pricing and the number of natural gas rate classes, a one-size fits all type security deposit is not well suited for the natural gas industry.

Risks of using the electricity LDC security deposit model for gas utilities

42. Before proceeding to discuss the individual Proposed Amendments to GDAR, EGD has some high-level comments about the negative impact that it will experience, particularly with respect to direct purchase, contract and large volume customers, if the Proposed Amendments are approved. Given the comment in the Board's Notice that issues related to security deposits for low-income customers will be addressed in the EB-2008-0150 proceeding, EGD will not address such matters in these submissions.
43. The Proposed Amendments, for the most part, would require EGD to apply the same security deposit policies to all of its customers. A number of concerns exist in respect of a prescriptive one-size-fits-all approach to security deposits particularly in respect of large volume customers and in respect of direct purchase customers (whose use of the BGA imposes additional risk and exposure on EGD). In the balance of these submissions, EGD will refer to these customers collectively as "Large Volume Customers". EGD will refer to all other customers, who are predominantly residential and small commercial gas users, as "Mass Market Customers".
44. EGD submits that it must retain the flexibility and discretion to consider all relevant factors in determining security deposits, particularly in respect of Large Volume Customers. For example, in the same way as the Proposed Amendments should not be

¹⁰ Using the typical customer volume profiles from page 9 of EGD's Rate Handbook effective October 1, 2008 (HTG. & WTR.HTN), volumes consumed during the 6 months of October through March inclusive, total 2331m³ which is 76% of a typical usage of 3064m³.

used to over-ride existing contractual terms to allow EGD to request increased security deposits, the Proposed Amendments also should not automatically result in a reduction or the complete return of a security deposit provided by a Large Volume Customer.

45. Unfortunately, the Proposed Amendments do not give gas utilities the required flexibility and discretion. This is contrary to language used at page 4 of the Notice which states:

the Board believes that flexibility should also be maintained in relation to the calculation of security deposits and is therefore proposing that the amount of security deposits be left to the discretion of each gas distributor, subject to a maximum that cannot be exceeded.

With respect, the impact of the Proposed Amendments is not consistent with this statement.

46. Among the problems that would be created by the application of the Proposed Amendments to Large Volume Customers (which includes all direct purchase customers, regardless of their size) are the following:

- (a) Most importantly, the significant impact of the BGA for direct purchase customers is not even contemplated by the Proposed Amendments. The Proposed Amendments do not allow EGD to seek any security deposit to protect itself and its ratepayers from the exposure created by customers' BGA balances, because outstanding BGA balances are not reflected on a direct purchase customer's monthly bills from the utility. The failure to take the risk of BGA default into account means that gas distributors could find themselves exposed to millions of dollars in risk because there will be no security deposit protection for the BGA balances that accrue over the course of a year.
- (b) Gas utilities will be prohibited or significantly restrained in their ability to request a sufficient security deposit from Large Volume Consumers (above 100,000m³) that have a credit rating of BBB- or above. Despite the fact that the reliability of credit rating agencies is being questioned due to such things as the ratings afforded asset backed securities, gas utilities will have little or no flexibility to require a proper security deposit from a company that has a credit rating of BBB- or above. EGD raises as a further concern the speed at which credit rating agencies change a company's current business profile. Recent experiences

confirm that credit ratings are backward looking indices which do not necessarily reflect the current health and creditworthiness of commercial enterprises.¹¹

- (c) Limiting the security deposit to 2 ½ times a consumer's average monthly bill fails to take into consideration the seasonality of many consumers. The average monthly consumption of gas by a seasonal consumer is significantly lower than the actual consumption during the winter months. This means that a security deposit limited to only 2½ times a consumer's monthly average consumption does not provide adequate protection for ratepayers and the shareholder because the exposure during winter months will be significantly higher than the amount of the security deposit. This concern applies equally to Mass Market Customers.
- (d) EGD submits, based upon recent economic history, that the assumption made by the Board at page 4 of the Notice that "customers with a good payment history generally do not represent a material non-payment risk for the gas distributor" should be questioned in today's business climate. Stated differently, the fact that a Large Volume Customer has had some years of good payment history is not reason enough to stop holding a security deposit from that customer. Canadian manufacturing and industrial companies have been affected by the global financial crisis and economic slow-down. There is no question that many companies pose a significantly greater risk of default today than is reflected in

¹¹ By way of an example, Standard and Poor's downgraded Lehman Brothers Holdings Inc. ("LBHI") on June 2, 2008 from a A+ to a A. LBHI filed for Chapter 11 Bankruptcy protection on September 15, 2008. On September 25, 2008, Standard and Poor's rating services announced that it had withdrawn its ratings on LBHI. Five days before the Chapter 11 filing, Standard and Poor's released the following:

We will continue to monitor the company's [LBHI] for a possible downgrade [from its current "A long term and A-1 short term counterparty credit ratings] following Lehman's just announced larger than expected third quarter loss and proposed asset sales to boost capital and reduce certain troubled asset exposures said Standard and Poor's analyst, Scott Sprinzen

Under the Proposed Amendments, EGD would not be permitted to require a security deposit from LBHI until it filed for Bankruptcy Protection despite the clear earlier warnings that the firm was in trouble.

Source: Press Release, Standard and Poor's, New York, September 10, 2008/PR Newswire. The June 2nd, 2008 rating reduction, Source: Standard and Poor's Research Update, June 2, 2008, www.standardandpoors.com/ratings direct "Lehman Brothers Holdings Inc. rating lowered to A from A+; Outlook negative."

their credit rating. Simply relying upon historical credit ratings puts a gas utility and its ratepayers at significantly increased exposure. In fact, EGD currently finds it necessary, in today's deteriorating economic environment, to decline to exercise its discretion to waive security deposits and to instead require and collect increased security deposits from large customers whose own financial circumstances are worsening. If EGD were unable to do so, this would put itself and its ratepayers at risk of substantial increases in bad debt exposure and costs.

- (e) The requirement to substantially reduce the security deposits available from those Large Volume Customers who provide a letter from another gas or electric utility in Canada confirming a good payment history would erode EGD's flexibility to seek appropriate security deposits from Large Volume Customers. Stated differently, regardless of the consumer's size, the prevailing economic climate and other information available to a gas utility which draws into question the credit worthiness of a Large Volume Consumer (such as the timeliness of a customer's past payment history and the state of the customer's business activities and finances), gas utilities will be prohibited from requesting a sufficient security deposit from such a consumer. To be clear, EGD believes that a letter from a credible utility confirming good payment history is relevant however, it should not necessarily always be determinative. There usually are other relevant indices and these should be considered as well.
47. In sum, largely because of the differences between the natural gas and electricity distribution sectors, simply applying the security deposit policies applicable to electricity LDCs does not work for gas distributors, particularly in relation to Large Volume Customers.
48. EGD's current security deposit policies for Large Volume Customers are posted on its website¹² and attached as Appendix "A" to these submissions. As is the case with the Proposed Amendments, EGD is not required to collect security deposits from all Large Volume Customers but, in the event that it decides to do so, the maximum permissible security deposit is that which is set out in the written policies. EGD is currently permitted

¹² https://portal-plumprod.cgc.enbridge.com/enbridge/files/security_deposit_policy.pdf

to require a security deposit up to a maximum of the customer's estimated charges for the four months each year when those charges are highest. In addition, where customers contract directly with the Company for direct purchase services, EGD is also permitted to require an additional security deposit equal to the maximum estimated debit balance in the BGA during the relevant year valued at the future price of gas in the month of the maximum risk. This approach, which recognizes the different risk profiles to EGD from different types of Large Volume Customers, provides proper protection to the utility and its ratepayers.

Specific Comments on Proposed Amendments

49. In the sections that follow, EGD sets out its specific comments on each of the Proposed Amendments to GDAR. These comments are made in the alternative and must be read in the context of the discussion set out above. As explained, EGD does not accept the OEB's jurisdiction to make these additions to GDAR, and does not see the need for such changes. That said, if changes are to be made to GDAR to regulate security deposits, EGD has concerns with many of the specific provisions being proposed.
50. EGD notes that the Proposed Amendments are meant to apply to all customers. As already explained, though, there are particular concerns with regulating and changing the rules related to security deposits for Large Volume Customers and for other customers that contract directly with the Company for direct purchase services. EGD's current approach to those customers, which is substantially different from that contemplated by the Proposed Amendments, has been in place for some time, and provides a proper level of protection to EGD and its ratepayers. In the event that the OEB finds it necessary to regulate and impose requirements on gas distributor security deposit policies, EGD respectfully submits that such requirements ought to apply only to Mass Market Customers (which includes residential and small commercial customers who are not direct purchase customers).
51. EGD's comments, set out below, are organized in the same groupings as used by the OEB in the Notice. For ease of reference, EGD has repeated these groupings, and the OEB's general comments on each (in italics), before setting out its response to each proposed provision.

52. **Documentation and Communication of Security Deposit Policy** (Sections 2.4.2 to 2.4.6): *The Board is proposing that each gas distributor be required to document its policies in a “Security Deposit Policy”, file a copy of its Security Deposit Policy with the Board and make its Security Deposit Policy available to the public and to any customer or prospective customer that requests a copy. Where a gas distributor proposes changes to its Security Deposit Policy, the distributor must give customers advance notice of those proposed changes and provide a reasonable opportunity for comment.*
- (a) **Section 2.4.1 EGD response:** while EGD has no comments on the specifics of these provisions, it repeats its position that if any of the Proposed Amendments are to be adopted, they should apply only to Mass Market Customers.
- (b) **Section 2.4.2 EGD response:** If any of the Proposed Amendments are adopted, EGD does not object to a provision requiring it to develop and maintain a security deposit policy for Mass Market Customers.
- (c) **Section 2.4.3 EGD response:** EGD is prepared to include all of these items as part of its security deposit policy for Mass Market Customers. In response to section 2.4.3(f), EGD believes that the consequence of a security deposit being unpaid is disconnection.
- (d) **Section 2.4.4 EGD response:** If any of the Proposed Amendments are adopted, EGD does not object to a provision requiring it to make its security deposit policy for Mass Market Customers publicly available, presumably by posting the policy on its website. EGD should not be put to the expense of providing hard copies to 1.7 million or more customers.
- (e) **Section 2.4.5 EGD response:** EGD believes that these provisions are overly prescriptive. If GDAR is to specify maximum parameters for security deposit provisions, then as long as a gas distributor’s policy continues to fit within those parameters, there is no need for a notice and customer comment process when the gas distributor makes changes to its security deposit policy.
- (f) **Section 2.4.6 EGD response:** In the event that it changes its security deposit policy for Mass Market Customers, EGD is prepared to file the revised policy, and a letter summarizing the changes, with the OEB.

53. **Collection and Payment of Security Deposits** (Sections 2.4.8 to 2.4.10, 2.4.13 and 2.4.16): *While the Board believes that greater consistency amongst gas distributors is desirable, the Board also believes that some flexibility should be maintained. Therefore, the Board is not proposing that gas distributors be required to collect security deposits. However, the Board is proposing that a gas distributor waive the requirement for a security deposit in respect of a customer that has or can demonstrate a good payment history, that provides a satisfactory credit check or that has an AAA- or better credit rating. Customers with a good payment history generally do not represent a material non-payment risk for the gas distributor, and in the Board's view it is unreasonable to require that they provide a security deposit as a condition of obtaining service from a gas distributor. The Board is also proposing that customers be permitted to provide any required security deposit in equal instalments over four months.*

- (a) **Section 2.4.7 EGD response:** EGD has no comment on this section in respect of Mass Market Customers. In respect of Large Volume Customers, EGD notes that their risk profile is complex, and cannot be defined or determined simply through a credit rating issued at a moment in time. Relevant factors such as the nature of a Large Volume Customer's business, gas usage profile, pending litigation, audited financial statements, other credit reports and payment history are relevant matters to consider.
- (b) **Section 2.4.8 EGD response:** It is not clear to EGD which customers this section is targeting, and which customers it excludes. EGD should be entitled to collect security deposits from all customers to whom it issues a bill. EGD notes that it requires two years (not one) of good payment history before returning security deposits held from Mass Market Customers. EGD does not see a need to specify to each Mass Market Customer the circumstances that lead EGD to require a security deposit. Customers will be protected by the fact that utilities will have to follow their own published security deposit policies. If the Proposed Amendments are approved to regulate security deposits for Large Volume Customers, EGD notes that "good payment history" on its own does not justify waiving security deposit requirements for Large Volume Customers. Instead, EGD prefers its current approach, where a good payment history qualifies customers for a reduction in security deposit otherwise payable.
- (c) **Section 2.4.9 EGD response:** This list of what constitutes "good payment history" is rather narrow in scope. Good payment history for Mass Market Customers is also impacted by continual late payment (requiring utility follow up), missed payments, partial payments, broken payment arrangements, etc. Each

utility should define good payment history for each of its various market segments depending on the matters that are relevant for each customer group. In the case of Large Volume Customers, it should be noted that “good payment history” cannot be used as the sole measure of whether a security deposit is required. Such things as changes in a customer’s business activities, financial status and corporate structure may also lead to a requirement to obtain security from that customer, even if its payment history has been otherwise satisfactory.

- (d) **Section 2.4.10 EGD response:** These provisions should only apply to Mass Market Customers. Waiver criteria for Large Volume Customers are based on a wider range of factors.
- (e) **Section 2.4.13 EGD response:** In the event that the OEB finds a need to regulate security deposits for Large Volume Customers, EGD strongly disagrees with the proposed approach mandating reductions in security deposits for some Large Volume Customers with credit ratings above BBB-. The very modest protection offered to EGD by the OEB’s chart in this section is not sufficient. The prospect that an entity with a questionable credit rating of BBB- would be entitled to a 75% reduction in its security deposit causes EGD great concern that its bad debt could increase substantially if and when such customers became unable to pay their accounts. While the use of a credit rating factor may be one consideration used to assess business risk going forward, there are other factors that a prudent utility should take into account. The utility should be permitted to develop its own criteria for calculating security deposits based on business risk. If some level of reduction in security deposit based on a Large Volume Customer’s credit rating is to be mandated, the reductions should be much smaller than contemplated in the Proposed Amendments. EGD’s current approach is to reduce security deposits by between 5% and 25% depending upon a customer’s credit rating.
- (f) **Section 2.4.16 EGD response:** EGD strongly disagrees with the proposal to allow a Mass Market Customer to pay its security deposit over four months. While EGD has and will exercise discretion in the case of hardship, EGD’s practice is that the security deposit in full is billed and due on the first bill. This is an important principle given that the security deposit is intended to mitigate risk

for services and commodity that has already been consumed. In other words, if a customer defaults in the first four months of having an EGD account, then EGD will lack the protection it would otherwise have had if the security deposit were paid with the first account. In addition, this proposal would be administratively onerous for the distributor in the management of payment plans and application of payments. This would increase operational costs, and EGD would be forced to pass on its increased costs to its ratepayers. For the same reasons, EGD objects to this proposal as it would relate to Large Volume Customers.

54. **Maximum Amount of Security Deposits** (Sections 2.4.11 to 2.4.13, 2.4.27 and 2.4.28): *The Board believes that flexibility should also be maintained in relation to the calculation of security deposits, and is therefore proposing that the amount of a security deposit be left to the discretion of each gas distributor, subject to a maximum that cannot be exceeded. The maximum amount is to be determined based on the customer's average monthly gas consumption. The Board is also proposing that larger non-residential customers with a credit rating of at least BBB- be entitled to a reduction in the amount of the security deposit that could otherwise be required based solely on the customer's consumption. The Board is also proposing that a customer that is a residential condominium be treated as a residential customer for purposes of determining the form and maximum amount of the security deposit that can be required.*
- (a) **Section 2.4.11 EGD response:** For Mass Market Customers, the amount of the deposit should be based on the billing cycle factor times the customer's highest monthly bill, rather than the average monthly bill. This will provide proper protection to the utility in the event that a customer default occurs during high-use months. In the event that the OEB chooses to regulate the maximum amount of security deposits for Large Volume Customers, the proposed levels are not sufficient. First, the deposit should be calculated based upon the customer's highest monthly bills, rather than the average bill. Second, the deposit should be equal to sum of the customer's four highest monthly bills within a one year period. Finally, since the exposure faced by a gas utility for outstanding BGA balances is not something that is reflected on a direct purchase customer's monthly bills from the utility, there must also be an ability to increase the amount of the allowable security deposit for such customers to include the maximum estimated balance in the BGA during the relevant year.
- (b) **Section 2.4.12 EGD response:** See comment immediately above. This paragraph is not necessary.

- (c) **Section 2.4.13 EGD response:** See comment above (paragraph 53(e)).
 - (d) **Section 2.4.14 EGD response:** This provision seems unnecessary.
 - (e) **Section 2.4.27 EGD response:** No comment on this section.
 - (f) **Section 2.4.28 EGD response:** No comment on this section.
55. **Form of Security Deposits and Interest** (Sections 2.4.15 and 2.4.17): *For all customers, the Board is proposing that gas distributors be required to accept payment of security deposits in the form of cash or a cheque. In the case of non-residential customers, distributors would also be required to accept a letter of credit. Gas distributors would retain the discretion to accept other forms of security deposit if they wish. The Board is also proposing that interest accrue monthly at a prescribed rate on security deposits that are in the form of cash or a cheque, and that interest accrued be paid out at least once every 12 months or earlier in some circumstances.*
- (a) **Section 2.4.15 EGD response:** No comment on this section.
 - (b) **Section 2.4.17 EGD response:** EGD believes that the description of the amount of interest that should be paid on security deposits is overly complicated. EGD is not aware that there are any issues with its current practice of applying a simple interest method to calculate interest on security deposits. EGD suggests that the interest rate should be pegged to the savings rate paid by the utility's primary financial institution. That way, customers are receiving the same interest on their security deposit as on any other savings. EGD does not object to a requirement that this interest be credited to customers at least once each 12 months.
56. **Review and Return of Security Deposits** (Sections 2.4.18 to 2.4.26): *The Board is proposing that each gas distributor be required to review each security deposit at least once annually, and to return or adjust the amount of a customer's security deposit where warranted based on more current circumstances. For example, a security deposit would need to be returned when a customer has achieved the required number of years of good payment history, or would need to be adjusted where a customer's credit rating has improved. The Board is also proposing that a gas distributor be required to conduct a security deposit review at the request of a customer, which request cannot be made more than once annually. A security deposit would be required to be returned with interest (where applicable) within six weeks of closure of a customer's account, subject to the gas distributor's right to use the security deposit to offset amounts owing by the customer to the distributor. Where a security deposit was paid by a third party on a customer's behalf, the Board is proposing that, where certain conditions are met, the security deposit be returned to the third party, with interest where applicable.*

- (a) **Section 2.4.18 EGD response:** EGD currently holds Mass Market Customer deposits for 2 years. If payment history has not been good, the deposit will be retained and not returned before a minimum of 12 consecutive months of good payment history. EGD does not believe that there is a need to change this approach, as changes will provide less protection and result in new operational costs that will have to be passed on to ratepayers. Similarly, EGD does not believe that there is any reason why the amount of the security deposit held from Mass Market Customers needs to be reviewed on an annual or other basis, as the costs associated with such an exercise would exceed the benefits. Given the complexities of assessing the security requirements of Large Volume Customers, as previously discussed, EGD does not believe that this provision ought to apply to Large Volume Customers.
- (b) **Section 2.4.19, 2.4.20, 2.4.21, 2.4.22 and 2.4.23 EGD response:** To allow Mass Market Customers to request a review of their security deposit annually will add operational cost in incremental calls and administration work. EGD does not agree with the concept of re-calculating a security deposit for Mass Market Customers on an annual basis as a matter of standard practice. This would add incremental operational cost, with modest benefits to customers (in some cases customers might find that their security deposit would actually be increased). EGD does not believe that this provision ought to apply to Large Volume Customers.
- (c) **Section 2.4.24 and 2.4.25 EGD response:** EGD accepts that a security deposit is to be returned with interest (where applicable) within six weeks of closure of a customer's account, subject to the gas distributor's right to use the security deposit to offset amounts owing by the customer to the distributor, or to apply to a new account being opened by the customer.
- (d) **Section 2.4.26 EGD Response:** EGD does not currently have systems in place that would allow it to track and return security deposits that are paid by third parties on behalf of account holders. In addition, there could be costs associated with investigating and ensuring the legitimacy of such third parties' claims to the returned security deposits. EGD therefore objects to any requirement that would mandate the return of security deposits paid by third parties to those third parties,

rather than to the account holder as this would impose additional costs which EGD would then have to recover from all ratepayers.

Customer Account Security Policy
Large Volume Distribution Customers

Revision Date: November 30, 2005

Background

The Company may require, from any customer or contracting parties, a security or guarantee for payment of bills.

“Any Corporation, before supplying any public utility to any person or to any building or premises, or as a condition of continuing to supply the utility, may require any consumer to give reasonable security for the payment of the proper charges therefor or for carrying the public utility into the building or premises.” (Public Utilities Act R.S.O. 1990, C. P52, S. 50(4))

Such a security or guarantee shall be in an amount determined and required by the Company to secure the payment of previous or estimated future utility charges, in accordance with this Account Security Policy.

1. Determination of Security Requirements

The Company may, but is not obligated to, require security from the Customer.

The factors which the Company will take into consideration in determining whether or not security is required from a particular Customer include payment history and credit rating of the Customer.

In general, new or additional security will only be required from the following Customers:

- (i) all new Customers without established good payment records with the Company;
- (ii) all Customers in arrears who do not have adequate security on file;
- (iii) as a condition of restoring service to a Customer whose gas supply is disconnected for non-payment of outstanding bills; or
- (iv) if a Customer’s payment history and/or credit rating have changed such that the Company determines, acting reasonably, that the Customer’s ability to make payment and perform under the Applicable Agreement has been impaired or will be impaired in the future.

Should the Company determine that security is required, the security shall be governed by the requirements of this Account Security Policy.

2. Determination of Security Requirements

The minimum and maximum amount of security to be provided by a Customer will be determined by the Company in the following manner:

- (a) for Customers purchasing both gas distribution services and gas commodity from the Company:
 - (i) the minimum security amount will be calculated by dividing the sum of the Company's estimate of the Customer's gas distribution charges and gas commodity charges for the Contract Year by 3, rounded to the nearest \$100; and
 - (ii) the maximum security amount shall not exceed the sum of the Company's estimate of the Customer's gas distribution charges and gas commodity charges for the four months in the Contract Year having the highest estimated charges;
- (b) for Customers purchasing only gas distribution services from the Company (other than as contemplated in Subsection 2(c) below):
 - (i) the minimum security amount will be the sum of:
 - A. the amount calculated by dividing the sum of the Company's estimate of the Customer's gas distribution charges for the Contract Year by 3, rounded to the nearest \$100, plus
 - B. the Company's maximum estimated debit banked gas account applicable to the Customer for the relevant Contract Year, valued at the Applicable Rate; and
 - (ii) the maximum security amount shall not exceed the sum of:
 - A. the Company's estimate of the Customer's gas distribution charges for the four months in the Contract Year having the highest estimated charges, plus
 - B. the Company's maximum estimated debit banked gas account applicable to the Customer for the relevant Contract Year, valued at the Applicable Rate; and
- (c) for Customers purchasing only gas distribution services from the Company, where the Company is providing gas distributor consolidated billing services to the Customer or the Customer's agent/gas supplier:
 - (i) the minimum security amount will be calculated by dividing the sum of the Company's estimate of the Customer's gas distribution charges and gas commodity charges for the Contract Year by 3, rounded to the nearest \$100; and

- (ii) the maximum security amount shall not exceed the sum of the Company's estimate of the Customer's gas distribution charges and gas commodity charges for the four months in the Contract Year having the highest estimated charges.

The minimum amounts identified in this Section may be increased if the Company determines, in its sole discretion acting reasonably, that, as a result of the Customer's payment history or credit rating, the risk of non-payment is excessive.

3. Allowable Forms of Security

The form of security shall be:

- (i) irrevocable letter of credit;
- (ii) cash deposit;
- (iii) pre-payment; or,
- (iv) a combination of the above,

at the discretion of the Customer.

At its discretion, the Company may accept some other form of security, including a parental guarantee. Prior to acceptance of any form of security and prior to the processing of any service transaction request submitted to it by the Customer, the Company will review and satisfy itself as to the enforceability of the applicable security documents.

4. Interest on Cash Deposits

Interest shall accrue monthly on security provided in the form of a cash deposit. The interest rate shall be the Company's short term cost of debt associated with the Company's Ontario Energy Board approved rates. The interest accrued shall be paid out at least once every 12 months, or on return or realization of the security, whichever comes first.

5. Reductions to the Maximum Security Amount

The Customer's maximum security amount as calculated pursuant to Section 2 shall be reduced in accordance with the calculations set out in this Section 5.

Where a Customer has an established credit rating from a third-party credit agency, the security adjustment set out in Subsection 5(a) shall apply, and in all other circumstances the security adjustment set out in Subsection 5(b) shall apply. For certainty, the reductions in a Customer's maximum security amount contemplated in Subsection 5(a) and Subsection 5(b) are not cumulative.

(a) Credit Rating Adjustment

The Customer's credit rating will be used to reduce the maximum security amount under section 2, in accordance with Table 1 - Credit Rating Adjustment Table. If the Customer is only able to provide the credit rating of its parent company, the reduction to the Customer's maximum security amount shall be 50% of that indicated in Table 1 - Credit Rating Adjustment Table; provided that the Customer has provided security in the form of a parental guarantee.

Table 1 - Credit Rating Adjustment Table

Credit Rating (applying Standard & Poor's terminology)	Allowable Reduction of Maximum Security Amount
AAA- and above (or equivalent)	20%
AA-, AA, AA+ (or equivalent)	15%
A-, from A and A+ to below AA (or equivalent)	10%
BBB-, from BBB and BBB+ to below A (or equivalent)	5%
below BBB- (or equivalent)	0%

(b) Good Payment History Adjustment

The length of time the Customer has maintained a good payment history with the Company or with another company in Canada shall reduce the maximum security amount under Section 2 in accordance with Table 2 - Good Payment History Adjustment Table. Despite the foregoing, the Company shall only consider the Customer's good payment history with another company in Canada where the Customer provides the Company with a reference letter from the Customer's previous company confirming the Customer's good payment history for the relevant period.

Table 2 - Good Payment History Adjustment Table

Operating History in Canada	Allowable Reduction of Maximum Security Amount
all payments owing by the Company were received on or before the due date for 5 years or more	15%
all payments owing by the Company were received on or before the due date for more than 2 years but less than 5 years	10%
all payments owing by the Company were received on or before the due date for more than 1 year 1 but less than 2 years	5%
all payments owing by the Company were received on or before the due date for less than 1 year	0%

Notwithstanding any other provision of this Account Security Policy, in no event shall the Company be obligated to reduce the amount of security it requires from a Customer below the minimum amount of security provided for in Section 2 of this Policy.

6. Frequency and Timing for Updating Security Arrangements

The Company may review the security arrangements and recalculate the Customer's maximum security amount at any time, but shall do so no less than once annually. As a result of these reviews, the amount of security shall be revised upwards or downwards if the maximum security amount applicable to the Customer has changed.

The Customer shall provide to the Company any increase in the value of security required by the Company within thirty (30) days of the Company giving written notice to the Customer of the change in the value of required security.

The Company shall provide to the Customer any decrease in the value of security required by the Company, plus applicable interest, within thirty (30) days of the Company giving written notice to the Customer of the change in the value of required security.

Where regardless of the Customer's maximum security amount , where the Company determines that all or a part of the security is no longer required, the Company shall provide to the Customer the value of the security that is no longer required, plus applicable interest, within thirty (30) days of the Company giving written notice to the Customer of the change in the value of required security.

7. Realization of Security

The Company reserves the right realize the security provided to it by the Customer upon the Customer failing to meet any of its financial obligations set out in the applicable Agreement.
