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**A Model State Regulation for Residential  
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**NOTE TO READERS**

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Fisher, Sheehan & Colton  
Public Finance and General Economics  
34 Warwick Road, Belmont, MA 02478  
(voice) 617-484-0597 \*\*\* (fax) 617-484-0594  
(e-mail) roger@fsconline.com

**The Design of Workable Protections for  
Cash Security Deposits**

Fisher, Sheehan and Colton (FSC) was recently asked to prepare an annotated model state utility commission regulation governing the use of cash security deposits as a response to residential bill nonpayment. FSC's resulting regulation is not unique to low-income customers. It would apply to all residential utility customers.

Its model cash security deposit regulation is presented below:

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**Residential Cash Security Deposits:  
A Model State Commission Regulation**

**December 2012**  
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**SECTION 1. STATEMENT OF POLICY**

- A. The Public Service Commission declares that it is in the public interest for each utility to fairly and without discrimination administer a reasonable policy reflected by written regulations, in accord with these regulations, which will permit an applicant for permanent residential service to establish, or an existing residential customer to re-establish, credit with the utility for the use of its service through posting a cash security deposit.
- B. The Commission further declares that when it is necessary for an applicant or customer to make a cash deposit to establish or re-establish credit in accord with these regula-

tions, the making of the deposit is in the public interest because it avoids, to the extent practicable, the creation of a burden arising from uncollectible bills which would have to be borne ultimately by all the utility's ratepayers.<sup>1</sup>

- C. The Commission further declares that one essential ingredient in each utility's administration of its deposit policy, as expressed by these regulations, is the equitable and nondiscriminatory application of that policy to all applicants for service and to all customers throughout its service area predicated upon the credit risk of the individual.<sup>2</sup>

## SECTION 2. DEFINITIONS<sup>3</sup>

Deposit: "Deposit" means any payment, however designated, that is held as security for future payment or performance.<sup>4</sup>

Existing customer: "Existing customer" means any person that has applied for, been accepted and is either receiving utility service or has agreed to be billed for utility service. This term also includes a person that was a customer of the same utility within the past 30 days and who requests service at the same or a different location.<sup>5</sup>

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<sup>1</sup> The objective and purpose of a utility's cash security deposits is to avoid uncollectible expenses. Deposits, in other words, are not intended to protect against, or compensate for, the costs of unpaid or late-paid bills not associated with uncollectibles. The reasonableness of cash security deposits imposed generally is to be measured both against this objective and against the test of cost-effectiveness imposed in Section 3, *infra*. The reasonableness of the level of cash security deposits for individual customers is measured against this touchstone in addition to the demonstrated connection between the objective and the level of the individual deposit as indicated in Section 3.B

<sup>2</sup> COMAR 20.30.02.01 (Maryland 2012).

<sup>3</sup> This model regulation is intended to apply to all types of utility service, excepting telephone service. It would include electricity, natural gas and water/sewer.

<sup>4</sup> 65-407 CMR Ch. 815, § 2(K) (Maine 2012).

<sup>5</sup> 65-407 CMR Ch. 815, § 2(J) (Maine 2012); see also, 16 NYCRR 90.5(a)(1) (New York 2012).

Residential applicant: "Residential applicant" means any person that applies for residential utility service and who has not been a customer of the utility within the past 30 calendar days.<sup>6</sup>

## SECTION 3. PRE-CONDITION FOR IMPOSING DEPOSITS.

- A. A utility may demand and hold deposits from residential applicants or existing residential customers as a condition of utility service if the commission after investigation and hearing so authorizes such practice, upon a finding that the collection and maintenance of such deposits is cost-effective for the utility as a whole<sup>7</sup> without regard to the utility's cash flow and the availability of capital to the utility.<sup>8</sup>

- B. Deposit or guarantee of payment requirements as prescribed by the utility shall be based upon written criteria which bear a demonstrated relationship to the prevention or avoidance of the risk of loss due to uncollectibles resulting from nonpayment.<sup>9</sup>

## SECTION 4. NON-DISCRIMINATION IN DEPOSITS.

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<sup>6</sup> 65-407 CMR Ch. 815, § 2(D) (Maine 2012).

<sup>7</sup> The reduction of uncollectible accounts is not an end unto itself. The purpose of collecting deposits to control uncollectible accounts is to minimize rates to customers. Accordingly, prior to collecting and holding deposits, a utility must affirmatively demonstrate to the Commission that that deposit practice is cost-effective, in that it reduces the overall cost of service.

<sup>8</sup> New York Comp. Codes R. and Regs. Title 16, section 11.112(e) (New York 2012). Given that the objective of collecting deposits is limited to reducing the overall cost of service by controlling uncollectible accounts, the demonstration of "cost-effectiveness" should be done without regard to the cash flow impacts or the availability of capital to the utility. The purpose of security deposits does not extend to supplementing cash flow or to providing a source of low-cost capital to the utility.

<sup>9</sup> See, Minnesota Rules, part 7820.4200, 7820-4300 (Minnesota 2012).

- A. A utility shall apply nondiscriminatory criteria, specified within its tariff,<sup>10</sup> with respect to the requirement of a cash deposit.<sup>11</sup>
- B. A utility shall not require a deposit or an additional deposit as a condition of new or continued utility service on the basis of a customer or an applicant's source of income, property ownership, residence location, employment tenure, nature of occupation, race, color, creed, national origin, sex, age, marital status, disability, number of dependents, or any other criterion not authorized by these rules.<sup>12</sup>
- C. A utility may not require a residential customer to make or increase a deposit exclusively because of a name change.<sup>13</sup>

**SECTION 5. GENERAL REGULATIONS, EXISTING CUSTOMERS AND NEW APPLICANTS**

- A. A utility's deposit payment and refund procedures, if any, shall be set out in its effective tariff.<sup>14</sup>
- B. A residential utility deposit shall not exceed one-sixth of the customer or applicant's estimated annual bill. The utility's tariff setting forth its deposit criteria shall identify the minimum and maximum deposit that may reasonably be required by the utility<sup>15</sup>

<sup>10</sup> Fla. Admin. Code r. 25-6.097 (Florida 2012).

<sup>11</sup> 4 CCR 723-5:5403(a) (Colorado 2012).

<sup>12</sup> 15 DCMR § 307(2) (DC 2012); IDAPA 31.21.01.102 (Idaho 2012); 4 Mo. Code of State Regulations 240-13.030(4)(H) (Missouri 2012); N.H. Code Admin. R. Puc 1203.03(m) (New Hampshire 2012); WY Rules and Regulations PSC GEN Ch. 2 s 241(b) (Wyoming 2012).

<sup>13</sup> Ark. Admin. Code 126.03.2-4.07 (Arkansas 2012).

<sup>14</sup> Alaska Administrative Code, Section 3 AAC 52-420(a) (Alaska 2012).

<sup>15</sup> The level of deposits for either new applicants (Section 7) or for existing customers (Section 8) are constrained by the *maximums* allowed by these regulations. These regulations provide that deposits are "not to exceed" the stated

and the criteria for setting a deposit at one or the other or in between.<sup>16</sup>

- C. If a utility requires a cash deposit as a condition of providing service, then it shall within three days<sup>17</sup> send a written notice<sup>18</sup> to the applicant or customer stating the precise facts upon which it bases its decision and provide the applicant or customer with an opportunity to dispute and/or rebut such facts.<sup>19</sup> In the event of a dispute, the applicant or customer shall be advised that an informal or formal complaint may be filed with the Commission.<sup>20</sup>
- D. A utility shall provide an installment plan for the payment of deposits in excess of \$50.
  - 1. The installment plan may require a customer to pay the greater of \$50 or one-third of the total deposit by the date that service is provided.
  - 2. A utility shall offer a customer the option to pay a required deposit amount:

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maximum amounts. This "not to exceed" language, however, does not permit a utility to routinely set the level of residential deposits at the maximum. If that were intended, the regulatory language would have permitted the deposit to be "equal to" (rather than "not to exceed") the stated amount. The "not to exceed" language, particularly when coupled with the regulatory language providing that deposits are to be "predicated upon the credit risk of the individual," clearly intends for the utility to exercise judgment on the creditworthiness of each specific customer or applicant. This section makes even more explicit that each individual's deposit is to be established between the minimum and the maximum and the utility must document the reason for setting the deposit at the particular amount chosen.

<sup>16</sup> N.M. Admin. Code 17.9.560(12)(B) (New Mexico 2012).

<sup>17</sup> 4 CCR 723-3:3403(g) (Colorado 2012).

<sup>18</sup> See also, Wis. Adm. Code s PSC 113.0402(5) (Wisconsin 2012).

<sup>19</sup> 170 IAC 4-1-15 (Indiana 2012); see also, 15 DCMR § 307 (D.C. 2012); 4 CCR 723-3:3403(g) (Colorado 2012); Minnesota Rules, part 7820.4500(1) (Minnesota 2012); Wis. Adm. Code s PSC 113.0402(5) (Wisconsin 2012).

<sup>20</sup> IDAPA 31.21.01.104 (Idaho 2012).

- a. Between \$50 and \$150 in even installments over a period of at least 8 weeks; or
  - b. Over \$150 in even installments over a period of at least 12 weeks.
3. The customer shall be notified of this right at the time of the initial deposit request.<sup>21</sup>
- E. A utility shall refund any deposit and all accrued interest within 30 days after 12 months' continuous service, if the customer would not be subject to the request for a new or expanded deposit pursuant to Section 8(A).
- F. Interest shall be paid by the utility to each customer required to make a deposit. A utility shall compute interest on customer deposits at 7.5 percent per annum, compounded annually.<sup>22</sup> Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent, relative to an account treated as an uncollectible account, is the most recent date the account became delinquent.<sup>23</sup>
- G. A utility may require a separate deposit for each meter installed.<sup>24</sup>

- H. A utility may require a customer or an applicant to furnish adequate assurance of payment<sup>25</sup> in the form of a deposit or other security<sup>26</sup> if the customer or applicant has filed for bankruptcy and listed the utility as a creditor under the filing,<sup>27</sup> and the filing has been accepted, in which case the required adequate assurance of payment shall be in accordance with [11 U.S.C. 366](#).<sup>28</sup> The utility shall comply with the United States Bankruptcy Code in refunding or retaining the adequate assurance of payment.<sup>29</sup>
- I. The establishment or re-establishment of credit under the provisions of these rules shall not relieve the applicant or customer from compliance with the regulations of the utility company regarding payment of bills by the due date, and shall not modify any regulations of the utility company as to the discontinuance of service for nonpayment.<sup>30</sup> A utility is not required to apply any cash deposit to any indebtedness of the customer to the utility, except for utility services due or past due after service is terminated.<sup>31</sup>

**SECTION 6. LIMITATIONS ON IMPOSING DEPOSIT REQUIREMENTS.**

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<sup>25</sup> "Adequate assurance" is a term of art within the law of bankruptcy. The reasonableness of a deposit is to be determined based on the law of bankruptcy rather than on the Commission's regulations.

<sup>26</sup> Ark. Admin. Code 126.03.2-4.01(b)(5), 126.03:2-4.02(a)(7) (Arkansas 2012); see also, Code Me. R. 65-407 Ch. 815, § 7(c)(1) (Maine 2012);

<sup>27</sup> Under this regulation, the mere fact of a customer filing bankruptcy is not sufficient to allow a utility to impose a deposit. The customer must have both filed bankruptcy and named the utility as an affected creditor.

<sup>28</sup> N.H. Code Admin. R. Puc 1203.03(e)(4) (New Hampshire 2012).

<sup>29</sup> Ark. Admin. Code 126.03.2-4.06(a)(2) (Arkansas 2012).

<sup>30</sup> OAC 4901:1-17-03(B) (Ohio 2012); see also, S.C. Code of Regulations R. 103-338 (S.Carolina 2012).

<sup>31</sup> 4 CCR 723-3:3403(m) (Colorado 2012); see also, NAC 704.328 (Nevada 2012).

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<sup>21</sup> COMAR 20.30.02.04(H) (Maryland 2012).

<sup>22</sup> See also, Ga Comp. R. & Regs. 515-3-1-10 (Georgia 2012) (7%); A.A.C. R14-2-403 (Arizona 2012) (6%); 26 Del. Admin. Code 2001-6.0 (Delaware 2012) (6%); 170 IAC 4-1-15 (Indiana 2012) (6%); Mont.Admin.R. 38.5.1107 (Montana 2012) (6%); Mich. Admin. Code R. 460.111(Michigan 2012) (7%).

<sup>23</sup> Iowa Admin. Code 199-19.4(476) (Iowa 2012).

<sup>24</sup> Alaska Administrative Code, Section 3 AAC 52-420(b) (Alaska 2012); see also, A.A.C. R14-2-203 (Arizona 2012).

A. As part of any residential deposit request, the utility shall inform the customer, orally and in writing, of the following:

1. That the deposit shall be waived if the customer provides evidence of financial hardship unless the customer has previously interfered with, or diverted, the service of the utility situated on, or delivered on or about, the customer's premises;
2. That a customer claiming financial hardship shall present evidence of financial hardship to the utility on an annual basis.<sup>32</sup>

B. Financial hardship is defined as:

1. A person receiving local, state, or federal public assistance including but not limited to:
  - a. aid to the blind;
  - b. aid to families with dependent children;
  - c. old age assistance;
  - d. aid to the disabled;
  - e. medicaid;
  - f. supplemental security income;
  - g. federal fuel assistance;
  - h. supplemental nutrition assistance;
  - i. telephone lifeline service; or
  - j. general assistance.
2. A person whose sole source of financial support is derived from social security, veterans' administration or unemployment compensation benefits;
3. A person whose income falls below two hundred percent of the poverty level as

determined by the federal government in accordance with the income poverty guidelines from the United States department of health and human services or its successor agency; or

4. A person whose circumstances threaten a deprivation of the necessities of life for himself/herself or dependent children of his/her household if payment of a security deposit is required.<sup>33</sup>

C. No utility shall demand or hold a deposit from any residential applicant or existing residential customer it knows to be 62 years of age or older unless such customer has had service terminated, disconnected or suspended by the utility for nonpayment of bills within the preceding six months.<sup>34</sup>

#### **SECTION 7. DEPOSITS FOR RESIDENTIAL APPLICANTS**

- A. A utility shall not require a deposit from a person who has never been a customer of the utility.
- B. A utility shall not require a deposit as a condition of new service to a person who has been a customer of a utility before, except under the following circumstances:
  1. The service of the customer has been disconnected for nonpayment of a past due balance not in dispute within the previous twelve (12) months; or
  2. The customer has in an unauthorized manner, used, diverted or interfered with

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<sup>32</sup> N.H. Code Admin. R. Puc 1203.03(g) (New Hampshire 2012); see also, Wis. Adm. Code s PSC 185.36(1)(b) (Wisconsin 2012).

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<sup>33</sup> Regs. Conn. State Agencies § 16-11-68(b) (Connecticut 2012); see also New York Comp. Codes R. and Regs. Title 16, section 11.112(f) (New York 2012); see also, OAC 4901:1-17-03(A)(4) (Ohio 2012).

<sup>34</sup> New York Comp. Codes R. and Regs. Title 16, section 11.112(g) (New York 2012); see also, NAC 704.328(2) (Nevada 2012).

the service of the utility situated or delivered on or about the customer's premises within the twelve (12) months immediately preceding the customer's request for new service.

3. The customer's account has been delinquent in excess of sixty (60) days<sup>35</sup> more than three (3) times<sup>36</sup> within the previous twelve (12) months.
4. The customer has an outstanding balance due the utility for utility services. In any such event, the provision of new service may be conditioned upon payment of the outstanding balance.<sup>37</sup>

#### **SECTION 8. DEPOSITS FOR EXISTING RESIDENTIAL CUSTOMERS**

- A. A utility shall not require a deposit as a condition of continued service to a customer, except under the following circumstances:
  1. The service of the customer has been disconnected for nonpayment of a past due balance not in dispute within the previous twelve (12) months; or
  2. Utility service at the customer's residence has been used, interfered with, or

<sup>35</sup> This criterion assumes monthly billing. If bills are rendered on a less frequent basis, the age of the arrears would need to be adjusted accordingly.

<sup>36</sup> See also, 4 Mo. Code of State Regulations 240-13.030(2)(c) (Missouri 2012) ("The customer has failed to pay an undisputed bill on or before the delinquent date for five (5) billing periods out of twelve (12) consecutive monthly billing periods"). See also, N.H. Code Admin. R. Puc 1203.03 (New Hampshire 2012) (Deposit may be required for existing customer "in the following circumstances: (1) When the customer has received the following number of disconnect notices for nonpayment from the utility within a 12 month period: a. For customers billed monthly, 4 disconnect notices. . .") See also, 83 Ill. Adm. Code 280.60(a) (Illinois 2012) ("A utility may request a deposit. . .from a present residential. . .customer during the first twenty-four months that the customer receives utility service from the utility if the customer, during any twelve month period, pays late four times if billed monthly. . .")

<sup>37</sup> 15 DCMR § 307.1 – 307.3 (DC 2012).

diverted in an unauthorized manner within the previous twelve (12) months; or

3. The customer's account has been delinquent in excess of sixty (60) days more than three (3) times within the previous twelve (12) months.<sup>38</sup>
- B. A utility requesting a deposit for any of the reasons stated in this Section shall make such request within forty-five (45) days after the event giving rise to the request takes place. In the event the customer's wires, pipes, meters or other service equipment have been tampered with and the customer enjoyed the benefit of the tampering, the request for deposit shall be made within forty-five (45) days after the discovery of the tampering.<sup>39</sup>
  - C. Prior to requesting a deposit under this section, the utility shall give the customer written notification of its intent to request a cash deposit if current and future bills continue to be paid after the due date.
    1. Notification shall clearly indicate that a deposit is not required at this time but that if bills continue to be paid after the due date a deposit will be required.
    2. Notification may be mailed or delivered to the customer together with a bill for public utility service.
    3. Notification shall set forth the address and phone number of the public utility office where complaints or questions may be registered.<sup>40</sup>

<sup>38</sup> 15 DCMR § 307.5 (DC 2012).

<sup>39</sup> 83 Ill. Adm. Code 280.60(d) (Illinois 2012).

<sup>40</sup> 52 Pa. Code § 56.41(1)(i) (Pennsylvania 2012); see also, NAC 704.331 (Nevada 2012).

## SECTION 9. ADJUSTMENT OF DEPOSITS

- A. If a utility will or may retain a cash security deposit for eighteen (18) or more months, the utility shall recalculate the deposit every twelve (12) months based on actual billings of the customer. If the deposit on account for a residential customer differs by more than ten (10) dollars from the deposit calculated on actual billings, the utility shall refund any over-collection and may collect any underpayment. Refunds shall be made either by check or by credit to the customer's bill, except that a utility shall not be required to refund any excess deposit if the customer's bill is delinquent at the time of recalculation.<sup>41</sup>
- B. The amount of the deposit shall be adjusted either at the request of the customer or of the utility at any time when:
1. The character or degree of use of the service materially changes or when it is clearly established that the character or degree of use of the service will materially change in the immediate future;<sup>42</sup> or
  2. Based upon actual charges for services rendered, at any time after service has been provided.<sup>43</sup>

<sup>41</sup> 807 Ky. Admin. Regs. 5:006, Section 7(c) (Kentucky 2012).

<sup>42</sup> 83 Ill. Adm. Code 280.70(c)(3) (Illinois 2012); see also A.A.C. R14-2-203(B)(7) (Arizona 2012); 52 Pa. Code § 56.51(d) (Pennsylvania 2012); 170 IAC 5-1-15(c)(1)(F) (Indiana 2012); see also, A.A.C. R14-2-203(B)(9) (Arizona 2012); COMAR 20.30.02.04 (Maryland 2012); S.C. Code of Regulations R. 103-332(B) (S.Carolina 2012); see also, N.J.A.C. 14:3-3.4(c) (New Jersey 2012).

<sup>43</sup> 170 IAC 5-1-15(c)(1)(F) (Indiana 2012); see also, A.A.C. R14-2-203(B)(9) (Arizona 2012); COMAR 20.30.02.04 (Maryland 2012); S.C. Code of Regulations R. 103-332(B) (S.Carolina 2012); see also, N.J.A.C. 14:3-

- C. When a customer who has previously paid a deposit to the electric utility switches to a competitive retail electric service provider and is no longer served under an electric utility's bundled service or standard offer service, the electric utility shall apply the electric utility's generation service portion of the deposit<sup>44</sup> and the accrued interest to the amounts due and payable on the next bill and refund any amount remaining to the customer, unless the amount of the refund is less than one dollar.<sup>45</sup>
- D. A utility shall promptly refund the deposit plus interest of an existing residential customer who is 62 years old or older<sup>46</sup> provided the customer:
1. Requests refund of the deposit;
  2. Presents satisfactory proof of age;<sup>47</sup> and
  3. Does not have a past due or uncollected bill owing to the utility.<sup>48</sup>

## SECTION 10. NON-CASH DEPOSIT ALTERNATIVE

- A. A utility requiring deposits shall offer residential customers at least one non-cash alternative in lieu of a cash deposit.<sup>49</sup>

3.4(c) (New Jersey 2012); OAC 4901:1-10-14(E)(2) (Ohio 2012).

<sup>44</sup> A corresponding adjustment should be made to the supply side of natural gas bills should a residential customer switch to a competitive natural gas supplier.

<sup>45</sup> OAC 4901:1-10-14(L) (Ohio 2012); see also, A.A.C. R14-2-203(B)(9) (Arizona 2012); 16 NYCRR 14.11(c) (New York 2012).

<sup>46</sup> See, the age limitation on deposits set forth in Section 6(C), *supra*.

<sup>47</sup> This language allows a residential customer turning age 62 to request a deposit refund *at any time*. This language supplements and does not supplant the age limitations set forth in Section 6(C).

- B. As part of any deposit request to a residential customer, the utility shall inform the customer, orally and in writing, of the option to provide a third-party guarantee in lieu of deposit.
- C. The utility shall accept the written guarantee of a responsible party,<sup>50</sup> such as<sup>51</sup> a social service organization,<sup>52</sup> a municipal or other governmental public assistance agency, a bank, nonprofit entity<sup>53</sup> or<sup>54</sup> a customer in good standing of the utility as a surety for a customer service account. Any such guarantee shall:
  - 1. Be in writing;
  - 2. Include the maximum amount guaranteed; and

- 3. Specify that the utility shall not hold the guarantor liable for sums in excess of the maximum amount guaranteed unless agreed to in a separate written agreement;<sup>55</sup>

- D. The term of the guarantee contract shall be for no longer than one year, but it shall automatically terminate after the residential customer has closed his or her account with the utility, or on the guarantor's request upon 30 days' written notice to the utility.

- 1. Upon termination of a guarantee contract, or whenever the utility deems the guarantee insufficient as to amount of surety, a cash deposit or a new or additional guarantee may be required upon 20-day written notice to the customer.
- 2. The service of any customer who fails to comply with these requirements may be disconnected upon 10 days' written notice.<sup>56</sup>

- E. The liability of the guarantor shall be limited to the amount guaranteed and shall be discharged under the same conditions and at the same time as would result in the refund of a deposit posted by the customer.

- F. The utility shall allow a responsible party to guarantee more than one account.<sup>57</sup>

- G. The guarantor shall receive copies of disconnection notices sent to the customer whose account has been guaranteed, unless waived in writing by the guarantor:<sup>58</sup>

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<sup>48</sup> COMAR 20.30.02.05(D) (Maryland 2012).

<sup>49</sup> 4 CCR 723-3:3403(e) (Colorado 2012); see also, OAC 4901:1-10-14(F) (Ohio 2012).

<sup>50</sup> The West Virginia regulations also reference a “financially responsible guarantor.” W. Va. Code St. R. § 150-3-4.2.b.1 (West Virginia 2012).

<sup>51</sup> The language “such as” indicates that this list is intended to be illustrative and not comprehensive and that other entities might qualify under this section *sui generis*.

<sup>52</sup> Community-based organizations such as community action agencies, community development corporations, fuel funds, local churches, and the like, would qualify as either a “social service organization” or as a “nonprofit entity” pursuant to this section. It would not be unreasonable for the state PUC to establish standards for such agencies or entities to be certified or somehow pre-approved as qualified to provide guarantees, or to promulgate a pre-approval process. For example, the Montana PUC lists as a possible “responsible party” “any special fund approved by the Commission.” Mont.Admin.R. 38.5.1111 (Montana 2012).

<sup>53</sup> A.A.C. R14-2-203(B)(1)(c) (Arizona 2012).

<sup>54</sup> The use of the word “or” indicates that being a “customer in good standing with the utility” is an additional alternative, and may not be imposed as a further requirement of entities previously listed in this section. For example, a nonprofit fuel fund need not also be a customer of the utility in order to provide a guarantee in lieu of a cash deposit.

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<sup>55</sup> N.H. Code Admin. R. Puc 1203.03(i) (New Hampshire 2012).

<sup>56</sup> Wis. Adm. Code s PSC 113.0402(3) (Wisconsin 2012). See also, 65-407 CMR Ch. 660, § 7(F)(1)(d) (Maine 2012).

<sup>57</sup> Ark. Admin. Code 126.03.2-4.04 (Arkansas 2012).

<sup>58</sup> W. Va. Code St. R. § 150-3-4.2.b.1 (West Virginia 2012); see also, Wis. Adm. Code s PSC 185.36(3)(c) (Wisconsin 2012), ARSD 20:10:19:06 (S.Dakota 2012).



- H. When a residential customer substitutes a third-party guarantor for an existing cash deposit, the utility shall refund any deposit previously collected from the customer, including accrued interest, up to the limits of the guarantee.<sup>59</sup>

#### SECTION 11. TRANSFER OF SERVICE

- A. When a customer transfers service from one location to another location, an existing deposit may be transferred to the new location and shall be adjusted according to the anticipated usage at the new location.
1. If the anticipated usage at the new location is lower than the old location, the utility shall either refund the difference to the customer or shall apply the difference to the customer's account as a credit. If the amount of the refund is equal to or less than the cost the utility will incur to issue a refund check to the customer, the utility may credit the customer's account. If the refund is greater than the cost to cut a check, the utility shall send the customer a check for the refund amount or, if the customer so chooses, the refund may be applied as a credit to the customer's account.
  2. If the usage is higher at the new location, the utility may require the customer to pay a deposit reflecting the incremental usage amount.
- B. The transfer of the cash deposit and any subsequent adjustment shall be made within

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<sup>59</sup> 65-407 CMR Ch. 815, § 7(d) (Maine 2012).

30 calendar days of the date the service is transferred.<sup>60</sup>

#### SECTION 12. REFUND OF DEPOSIT

- A. A utility shall immediately refund a customer's cash deposit and accrued interest after 12 months of continuous service,<sup>61</sup> under the following circumstances:
1. The service of the customer has not been disconnected for nonpayment of a past due balance not in dispute within the previous twelve (12) months; or
  2. Utility service at the customer's residence has not been used, interfered with, or diverted in an unauthorized manner within the previous twelve (12) months; or
  3. The customer's account has not been delinquent in excess of sixty (60) days more than three (3) times within the previous twelve (12) months.
- B. Except as otherwise specifically provided in this section, any deposit refunded to a residential customer shall be refunded by check unless both the customer and the utility agree to a credit on the regular billing.
- C. On termination of residential service, the utility shall credit the deposit, with accrued interest, to the customer's final bill and return the balance within 30 days of issuing the final bill.<sup>62</sup>

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<sup>60</sup> 65-407 CMR Ch. 660, § 7 (Maine 2012); 65-407 CMR Ch. 815, § 7 (Maine 2012).

<sup>61</sup> The "12 months of continuous service" terminology is intended to make clear that a refund is to occur after *any* period consisting of 12 months of continuous service. A review, in other words, does *not* occur only at 12-month intervals of the immediate past 12 months.

<sup>62</sup> Wis. Adm. Code sec. PSC 134.061 (Wisconsin 2012).

D. A utility shall treat unclaimed or abandoned deposits as provided by law,<sup>63</sup> except that:<sup>64</sup>

1. A utility shall provide each residential customer posting a cash security deposit with the utility an opportunity to assign the right to receive the refund of his or her deposit, should the deposit otherwise be deemed to be unclaimed or abandoned by operation of law in the absence of such assignment, to a financial assistance program which assists the utility's low income and disadvantaged customers with payment of utility bills.
2. A utility may apply to the Commission for approval to pay unclaimed deposits presumed to be abandoned to a financial assistance program which assists the utility's low income and disadvantaged customers with payment of utility bills.<sup>65</sup>

### SECTION 13. RECORD KEEPING

A. Each utility shall maintain a record of each applicant or customer making a deposit that shows the following:

1. The name of the customer.

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<sup>63</sup> Most states provide that unclaimed or abandoned utility deposits shall escheat to the state in the same manner as other abandoned property. The exceptions provided in this regulation provide alternatives, consistent with statute, to capture those unclaimed or abandoned deposits for use as low-income energy assistance.

<sup>64</sup> Two alternatives are provided in the subsections below. The first prevents a deposit from being declared to be unclaimed or abandoned in the first instance. The second provides a treatment for those deposits that are deemed to be unclaimed or abandoned.

<sup>65</sup> IDAPA 31.21.01.110.02 (Idaho 2012); see also, 4 CCR 723-3:3403(p) (Colorado 2012).

2. The current address of the customer so long as he or she maintains an active account with the utility in his or her name.
3. The amount of the deposit.
4. The date the deposit was made.
5. A record of each transaction affecting such deposit.

B. Each customer shall be provided a written receipt from the utility at the time his or her deposit is paid in full or he or she makes a cash partial payment. The public utility shall provide a reasonable method by which a customer who is unable to locate his or her receipt may establish that he or she is entitled to a refund of the deposit and payment of interest thereon.<sup>66</sup>

For more information on the use of cash security deposits by public utilities, please write:

roger[at]fsconline.com

Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) provides economic, financial and regulatory consulting. The areas in which FSC has worked include energy law and economics, fair housing, affordable housing development, local planning and zoning, energy efficiency planning, community economic development, poverty and telecommunications policy, regulatory economics, and public welfare policy.

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<sup>66</sup> 170 IAC 4-1-15(g)(4) (Indiana 2012); see also, Mont.Admin.R. 38.5.1109 (Montana 2012).