

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

220 CMR 26.00 SECURITY DEPOSITS AND LATE PAYMENT CHARGES APPLICABLE TO NON-RESIDENTIAL CUSTOMERS

Section

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26.01: Applicability and Definitions

(1) Applicability. 220 CMR 26.00 shall apply to all gas, electric, and water utility companies subject to the jurisdiction of the Department of Public Utilities. Excluded from 220 CMR 26.00 are residential accounts.

If any part of the terms and conditions of any company is in conflict with 220 CMR 26.00, such regulations shall be controlling.

(2) Definitions. The following terms, as used in 220 CMR 26.00, shall have the following meanings:

Account: any agreement for service to a non-residential customer for which there is a separate bill rendered for such service whether or not such separate bill is rendered to the same location as any other bill by the same company.

Bill: a written statement from a company to a customer setting forth the amount of gas, electricity, or water service consumed or estimated to have been consumed for the billing period set forth in the company's tariff and charges therefor.

Company: a gas or electric company as defined in M.G.L. c. 164, or a water company as defined in M.G.L. c. 165.

Customer: any non-residential user of gas, electricity, or water service billed on a commercial or industrial rate as filed with the Department.

Department: the Department of Public Utilities, Commonwealth of Massachusetts.

Late Payment Charge: surcharge assessed by a company on the unpaid past due portion of the balance of a customer bill.

Receipt: in the case of a bill or notice required by 220 CMR 26.00, shall be presumed to be three days after the date of mailing, or if a bill or notice is delivered rather than mailed, on the date of delivery.

26.02: Security Deposit Requirements

Security deposits may only be required from new non-residential accounts; or from non-residential accounts for service of a similar character, at any location, under any name, if this service has been properly terminated during the last 18 months due to non-payment; or if a non-residential account has failed to pay at least two bills, not reasonably in dispute, within 45 days from the date of receipt of each such bill during the same 18-month period.

26.03: Amount of Security Deposit

The maximum amount of any security deposit required shall not exceed the equivalent of either:

- (a) two months' average usage; or
- (b) the usage for any one month, whichever is greater. Such usage shall be calculated on the basis of the immediately preceding 12 months consumption if the same or similar use is being made of the service; or if there is no relevant consumption history to determine the prior usage, then the company and the customer shall utilize their best efforts to determine an average 12 month's consumption upon which to base the maximum security deposit, provided that if the customer and company cannot agree on an amount for the security deposit, then the provisions of 220 CMR 26.06 shall apply.

26.04: Refund of Deposit

The security deposit, plus any accrued interest not previously credited to the account, shall be refunded without request if the customer has paid all bills for usage for any 24-month period from the date of deposit and without leaving such bills unpaid within 45 days of receipt.

Such refund shall occur no later than the next billing cycle after satisfactory completion of the 24-month period.

26.05: Customer Information

All deposit requirements by a company shall be set forth in writing. Such writing shall contain the amount of the deposit required and the basis for the amount. Where the commencement of service is not conditional upon payment in part or in full of the required deposit, the deposit requirement notification may be made initially by means other than writing, provided, however, that such notification is confirmed in writing containing the required information within ten days after the initial deposit request by a company. The format of the writing shall be approved by the Department prior to use by a company.

26.06: Adjustment Procedures

(1) A customer or a company may request an adjustment to a new or existing security deposit at any time, provided, however, that any such adjustment shall not be requested more often than once in any consecutive 12-month period. A customer must demonstrate that the history of usage is different from that used by the company to calculate the deposit. A company must demonstrate that the customer's usage is different from that originally used to calculate the deposit.

(2) Any adjustment made pursuant to 220 CMR 26.06 shall not cause the holding period to begin anew for purposes of refunding any deposit.

(3) The Department, after review of the circumstances of each case, may order an adjustment to any security deposit if it determines that such security deposit is unreasonable, provided that any adjustment sought pursuant to 220 CMR 26.06 shall be subject to the following procedures:

- (a) A customer shall notify a company of the request for an adjustment to the security deposit by mail or in person. The company shall review the requested adjustment and make a decision on the matter within 14 days.
- (b) A company may seek an adjustment by notifying a customer that said company intends to adjust the security. Said notification shall be in writing and shall contain the amount of the adjustment and the reasons for the adjustment.
- (c) If a customer disputes the company's requested adjustment, the customer shall notify the Consumer Division of the Department in writing of such dispute and the reasons therefor. A representative of the Consumer Division shall notify the Company and thereafter shall conduct an investigation. Such investigation shall include an opportunity for each side in the dispute to be heard and may include a pre-hearing conference. Such a hearing shall not be construed as an "adjudicatory proceeding" as defined by M.G.L. c. 30A.

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The Consumer Division representative shall rule on the matter and notify the customer and the company of his decision and of the right to appeal the decision to the Department for an adjudicatory proceeding as defined by M.G.L. c. 30A. Such appeal must be filed in writing with the Secretary of the Department within seven days of the decision by the Consumer Division representative.

26.07: Method of Payment

A security deposit required by any company pursuant to 220 CMR 26.00 shall be payable in cash, certified check, bond, irrevocable letter of credit, or any other guaranteed means of payment. Where such deposit is paid by means other than cash, such means shall be renewed as necessary in order to maintain the security deposit. A company may condition service upon the verification of the enforceability of any non-cash means of payment, provided that such non-cash means is not enforceable on its face or does not appear to be a generally accepted manner of guarantee. A company shall have available to it all forms of enforcement provided for in 220 CMR 26.00 if such non-cash security deposit is determined to be unenforceable and is not cured within ten days of a request by a company.

26.08: Termination for Non-payment of Security Deposits

A company may terminate service to a customer if such service was furnished conditionally upon payment of the required security deposit. Said termination of service shall be allowed, provided that proper notice was given to the customer in accordance with 220 CMR 26.05 and a statement is issued to the customer that indicates that service will be terminated neither earlier than ten days nor more than 14 days after receipt of the notice, and provided further that termination of service under 220 CMR 26.00 shall be effected only between the hours of 8:00 A.M. and 4:00 P.M., Monday through Thursday, provided that such day is not a holiday as defined in M.G.L. c. 4, § 7, or the day before such a holiday.

26.09: Interest Rate Paid on Deposits

(1) All cash or cash-equivalent security deposits held for more than six months from the date of deposit shall be paid interest thereon, commencing from the date of payment to the date of refund. The rate of interest shall be the equivalent of the rate paid on two-year, United States Treasury notes for the preceding 12 months ending December 31<sup>st</sup> of any year.

(2) Such rate shall be the rate published during the first week of January in the Federal Reserve Statistical Release, H.15 Selected Interest Rates. The company shall determine said rate and file with the Department the rate to be paid on all security deposits within 15 days after such rate is reported in the Federal Reserve Statistical Release. This rate shall be the rate paid on all deposits held during the remaining calendar year or other applicable time period regardless of when such security deposit was paid during that period.

(3) Said interest shall be compounded annually on December 31<sup>st</sup> and the accrued interest shall be applied toward a customer's bill during the next billing cycle, provided, however, that only deposits made by cash or cash equivalent shall be paid interest thereon. Deposits made by other acceptable means shall not be paid interest.

26.10: Late Payment Charges on Unpaid Balance of Bills in Arrears

(1) A company may assess a late payment charge on the unpaid past due portion of the balance of a customer bill.

(2) For the purpose of calculating the late payment charge, a company may consider a portion of a balance past due when payment has not been received by the company for that portion of the balance within the period specified in the company's Terms and Conditions.

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(3) The late payment charge shall be calculated at an annual rate of interest which is the equivalent of the rate paid on two-year United States Treasury notes for the preceding 12 months ending December 31<sup>st</sup> of any year, plus 10%, *i.e.* 1000 basis points.

(4) Such two-year United States Treasury note rate shall be the rate published during the first week of January in the Federal Reserve Statistical Release, H.15 Selected Interest Rates. A company shall determine said rate and file with the Department the rate to be charged on all overdue portions of balances within 15 days after such rate is reported in the Federal Reserve Statistical Release. Revisions to the annual late payment charge rate shall become effective on February first of each year.

(5) Each company shall notify its customers of changes in the late payment charge rate in the month a new rate becomes effective.

REGULATORY AUTHORITY:

220 CMR 26.00: M.G.L. c. 164, §§ 76C, 94 and 128; c. 165, §§ 1B and 4.