

SECTION 4. DEPOSITS

Rule 4.01. Deposits from Applicants

A. Conditions

A utility may require a deposit from any applicant to guarantee payment for service, subject to the conditions in Subsections A.(1) and (2).

- (1) A utility may not require a deposit or other guaranty based upon income, residential location, race, color, home ownership, creed, sex, marital status, age, or national origin.
- (2) A utility shall not demand a deposit as a condition of service from an applicant for residential service unless one or more of the following criteria applies:
 - a. the applicant cannot provide proof of a satisfactory payment history with the same kind of utility for the previous 12 months.
 - b. the applicant has a past due, unpaid account for previous utility service with the utility which is not in dispute.
 - c. the applicant did not pay bills from the utility by the close of business on the due date 2 times in a row or any 3 times in the last 12 months.
 - d. the applicant gave the utility 2 or more checks in payment for previous utility service within the most recent 12 month period of service which were returned unpaid for reasons other than bank error.
 - e. the applicant's service from the utility has been suspended during the last 24 months for one or more of the following reasons:
 - (i) nonpayment of any undisputed past due bill(s); or,
 - (ii) misrepresentation of the applicant's identity for the purpose of obtaining utility service; or,

- (iii) failure to reimburse the utility for damages due to negligent or intentional acts of the customer; or,
 - (iv) obtaining, diverting, or using service without the authorization or knowledge of the utility.
- f. information provided by the applicant upon application for service or within the previous 2 year period is materially false or materially misrepresentative of the applicant's true status, and the misrepresentation is relevant to the conditions under which the applicant may obtain utility service.

B. Amounts

Utilities shall determine the amount of a deposit as follows:

- (1) The deposit shall not be more than 2 average bills as defined in Rule 4.03. if payment for utility service is due after service begins;

EXCEPTION:

A utility may receive from a landlord a deposit which shall not exceed the estimated bill for 3 average billing periods.

- (2) The deposit shall not be more than 1 average bill as defined in Rule 4.03. if payment for utility service is due before service begins;
- (3) If a utility discovers that an applicant has used the utility's service without authorization or tampered with the utility's equipment, it may charge that applicant a total deposit of not more than 6 average bills, plus the potential damage to utility equipment. The utility may not charge this deposit if the customer has received more than 2 years cumulative service since the utility discovered the unauthorized use or tampering;
- (4) If the utility has proof of a misrepresentation to the utility by the applicant relevant to the conditions under which the applicant obtained utility service, it may charge that applicant a total deposit of not more than twice the maximum

bill. The utility may not charge this deposit if the customer has received more than 2 years cumulative service since the utility discovered the misrepresentation.

- (5) In accordance with the United States Bankruptcy Code, U.S.C.A. Title 11 § 366, the utility may require an applicant to furnish adequate assurance of payment in the form of a deposit or other security.
- (6) If the applicant has previously left the utility's service owing a bill and that bill is unpaid at the time of application, the utility may require a deposit equal to twice the maximum billing.

C. Payment Procedures

Except for deposits under Rule 4.01.B.(3), applicants shall be allowed to pay the deposit in 2 installments - $\frac{1}{2}$ of the deposit before receiving service and the remaining $\frac{1}{2}$ with the first bill.

D. Receipts

Utilities shall give customers receipts for their deposits upon customer request.

Rule 4.02. Deposits from Customers

A. Conditions

A utility may only require a new deposit or an increase in the amount of a deposit from a customer for the following reasons:

- (1) The customer failed to pay a bill before the close of business on the shut-off date within the last 12 months;
- (2) The customer gave the utility 2 or more checks which were returned unpaid for reasons other than bank error in the last 12 months;
- (3) The customer did not pay bills by the close of business on the due date 2 times in a row or any 3 times in the last 12 months;
- (4) During the last 24 months, the customer misrepre-

sented his identity or other facts relevant to the conditions under which the customer obtained or continued utility service;

- (5) The customer used service without authorization, tampered with utility equipment, or inflicted damage to utility equipment during the last 2 years;
- (6) The customer used more service than the estimate on which the utility based the deposit. The utility may not charge any additional deposit under Subsection A.(6) after the first 12 months of service unless the customer moves the service to a new location or expands the business or scope of operation at the original location;
- (7) In accordance with the United States Bankruptcy Code, U.S.C.A. Title 11 § 366, the utility may require a customer to furnish adequate assurance of payment in the form of a deposit or other security. This deposit may be in addition to all other deposits posted with the utility before the bankruptcy filing.

B. Amounts

When a utility charges a new or additional deposit, the total amount on deposit at any time shall not be more than the total of the customer's 2 highest bills during the last 12 months.

EXCEPTIONS:

(1) Deposit for Fraud or Tampering

If the reason for requiring a deposit is unauthorized use of service or tampering with utility equipment, the total amount on deposit with the utility shall not be more than the estimated bill for 6 average billing periods plus the cost of potential damage to utility equipment.

(2) Bankruptcy

See Rule 4.02.A.(7) above.

C. Written Notice

A utility shall explain in writing the reason for charging any new or additional deposit, the amount of the deposit, when the deposit must be paid, and the consequences of failing to pay the additional deposit.

D. Payment Procedures

Except for deposits under Rule 4.02.A.(5), a customer may pay $\frac{1}{2}$ of any new or additional deposit in equal installments with the next 2 bills.

E. Receipts

Utilities shall give customers receipts for their deposits upon customer request.

Rule 4.03. Calculation of Average Bill

A. All Utilities

(1) Seasonal Customers

The average bill is the total of the monthly bills during the "season" as defined in the utility's tariff -- for example, irrigation season or ginning season -- divided by the number of months of usage during the season.

(2) Non-Seasonal Customers

The average bill is the total of the last 12 months' bills divided by 12.

B. For Inadequate Billing History

If a customer or an applicant for service has fewer than the required number of months' billing history with the utility, the average bill shall not be more than the average monthly usage for that class and character of service.

Rule 4.04. Guaranty in Place of a Deposit

A. Requirements

(1) Residential Customers

Instead of a deposit, a utility shall accept the written guaranty of a qualified third party to pay an amount equal to the deposit. If a third party is a residential customer of the utility and meets the following conditions, he is qualified to act as a guarantor on one residential account:

- a. the customer presently has no deposit on file on his own account;
- b. the customer has had service for at least 12 months;
- c. the customer has not paid late more than two times in the last 12 months; and,
- d. the customer has not had service suspended for failure to pay in the last 12 months.

(2) Non-residential Customers

Instead of a deposit, a utility may accept the written guaranty of another customer to pay an amount equal to the deposit.

(3) Residential and Non-residential Customers

The utility may allow a customer to guarantee more than one account.

B. Liability

- (1) The liability of a guarantor shall be limited to the amount required for a deposit when the guaranty was made, or a revised amount allowed by Rule 4.02. and agreed to by the guarantor.
- (2) The guaranty shall end when a deposit would be refunded as outlined in Rule 4.06. or when the guarantor's account is closed.
- (3) The utility shall provide the guarantor a copy of the Guaranty Agreement Form which clearly states the

amount of the guarantor's liability and which has been signed by the guarantor and the utility. The guarantor's agreement shall be in the form set out in Subsection D. of this Rule.

C. Collection

A utility may collect the guaranteed amount on the guarantor's account as if it were a charge for service.

D. Guaranty Agreement Form

A guaranty agreement shall be in the following form and must be signed by the guarantor and the utility representative:

GUARANTY AGREEMENT

In consideration of _____ (utility) providing service to the below named person(s), I agree to be liable for an amount not to exceed \$_____ in lieu of a deposit for the following person(s):

NAME: _____

ADDRESS: _____

ACCOUNT #: _____

I also understand that _____ (utility) may transfer up to the above amount to my active account if the above-named person does not pay all of the final bill after the account has been closed. I understand I will be responsible for the lesser of the deposit or the amount the above-named person actually owes _____ (utility). This guaranty will transfer to my account (at other locations) should I change my service address. The guaranty on a residential account shall expire under the same conditions as would result in the refund of a deposit. I understand that utilities are not required to refund deposits on business or commercial accounts until the account is closed. I understand that I cannot terminate this guaranty before that time unless my account is closed. The amount of the guaranty is limited to the amount required for a deposit when the guaranty is made.

Signed: _____
Utility Representative

Signed: _____
Guarantor

Date: _____ Name: _____
Address: _____
Account #: _____
Date: _____
Witness: _____

Rule 4.05. Interest Payment on Deposits

- A. A utility shall pay interest annually on deposits pursuant to Ark. Code Ann. § 23-4-206.
- B. Interest shall not accrue on any deposit after the date the utility has made and documented a good faith effort to return the deposit to the depositor.

Rule 4.06. Refunding Deposits

- A. If a residential customer has paid all bills by the due date for the last 12 months, a utility must promptly refund the deposit. Utilities are not required to refund deposits on business or commercial accounts until the account is closed. Refunds may be made through a credit on the next billing cycle.

EXCEPTIONS:

(1) Fraud or Tampering

If the reason for requiring a deposit is unauthorized use of service or tampering with utility equipment, a utility does not have to refund the deposit until an account is closed.

(2) Bankruptcy

If the deposit was subject to the jurisdiction of the United States Bankruptcy Courts, the utility shall comply with the United States Bankruptcy Code in refunding or retaining the deposit.

- B. When an account is closed, a utility shall apply any deposit and accrued interest to the amount due the

utility. The utility shall promptly refund any balance due the depositor.

Rule 4.07. Deposits and Customer Name Changes

A utility may not require a residential customer to make or increase a deposit because of a name change, unless one or more of the conditions set out in Rule 4.02.A. applies.

Rule 4.08. Deposits and Changes in Service Locations

Except as provided in Rule 4.02.A., a utility shall not charge an additional deposit if a customer requests that his service end at one location and that the same kind and class of service from the same utility begin at another location and the change takes 90 days or less.