

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts the repeal of §§291.121 - 291.127, Utility Submetering; and adopts new §291.121, General Definitions; §291.122, Owner Registration and Records; §291.123, Rental Agreement; §291.124, Changes and Calculations; §291.125, Billing; §291.126, Discontinuance of Service; and §291.127, Submeters. New §§291.121 - 291.127 are adopted *with changes* to the proposed text as published in the March 24, 2000 issue of the *Texas Register* (25 TexReg 2536). The repeals, §§291.121 - 291.127 are adopted *without change* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted new sections under Chapter 291, Subchapter H, relating to Utility Submetering and Allocation, govern the submetering or allocation of water or wastewater service provided by apartment houses, condominiums, manufactured home rental communities, and other multiple use facilities receiving master metered utility service from a retail public utility. These rules do not regulate those properties which include master metered water and wastewater service in tenants' rent or condominium members' assessments. The previous sections are repealed and new sections are adopted in order to improve the organization, clarity and consistency of this subchapter. The adopted rules are intended to identify information that must be made available to tenants affected by these rules, clarify a property owner's responsibilities with regard to record keeping and rental agreements, establish procedures for passing utility costs through to tenants, update and revise acceptable methods for allocating utility costs, ensure accurate and timely rendering of tenant bills, define circumstances under which utility service may be discontinued for nonpayment, and update the requirements related to the installation, use and testing of submeters. The adopted rules are also intended to implement statutory changes made by

Senate Bill (SB) 950, 76th Legislature 1999; specifically, to encourage submetering of individual rental or dwelling units, to replace definitions of “mobile home” and “mobile home park” with “manufactured home” and “manufactured home rental community”, respectively, to permit the collection of a service charge by owners or managers of manufactured home rental communities, and to add manufactured home rental communities to the list of properties that may bill tenants for nonsubmetered (allocated) service. The adopted rules provide that if the property owner wishes to bill tenants for water and wastewater service, he or she must do so on a submetered or approved allocation basis. For those property owners who do not wish to submeter or allocate, the owner can still include utility service in the monthly rental rate agreed upon in the lease agreement.

Staff conducted a series of stakeholder meetings regarding the rule changes with representatives from multi-family property owners, utility companies, billing service contractors, industry associations and consumer/tenant representatives. Stakeholder meeting participants provided guidance and suggestions on the revisions to the allocation methods and on issues related to submetering. This information was incorporated where appropriate into the adopted revisions.

SECTION BY SECTION DISCUSSION

Section 291.121 sets out the purpose of the subchapter, identifies the types of property covered by the rules, and defines terms used in the subchapter. Manufactured home rental communities are expressly included in the coverage of the subchapter in keeping with SB 950.

Section 291.122 requires owners that intend to bill tenants for submetered or allocated utility service to register with the executive director. Provisions are also made for records that must be kept by the owner and made available for inspection by tenants or the agency. New provisions require that the owner make available to tenants: a copy of these rules; a copy of Texas Water Code, Chapter 13, Subchapter M, regarding “Submetering and Nonsubmetering for Apartments and Manufactured Home Rental Communities and Other Multiple Use Facilities,” and information on the rates charged to the property by the retail public utility. The owner shall also make available information or tips on how tenants can reduce water usage, and information necessary for tenants to calculate and verify their water and wastewater bills.

Section 291.123 sets out the content requirements for rental agreements between the owner and tenant where the owner wishes to bill tenants for submetered or allocated water and wastewater service. Subsection (d) provides that an owner shall not change from submetered to allocated billing except after receiving written permission from the executive director after a demonstration of good cause.

Section 291.124 provides for the acceptable methods of calculating charges for submetered utility service and allocated utility service. Subsection (a) lists charges billed by a retail public utility that may not be included in bills to tenants. Subsection (b) provides for a direct pass through of retail public utility charges if based on the number of dwelling units served by the retail public utility through the master meter. Subsection (c) provides for a direct pass through of retail public utility base customer service charges prorated over the number of dwelling units served by the retail public utility through the master meter. Subsection (d) sets out the acceptable methods of calculating submetered utility service,

including, for manufactured home rental communities, a service charge, as authorized by SB 950. Subsection (e) sets out acceptable methods of calculating allocated utility service. Current rules and other alternative methods approved by the executive director that are being repealed allow allocation of utility service based on the size of a dwelling unit, the size and occupancy of a dwelling unit, the size and electric service consumed in the dwelling unit or the amount of submetered hot or cold water usage in the dwelling unit. Under the adopted new rule, utility service for apartment houses may be allocated according to the number of occupants in a dwelling unit, a ratio occupancy formula, a fixed ratio occupancy formula based on an average number of occupants per bedroom, a combination of the size and occupancy of a dwelling unit or the amount of submetered hot or cold water used in a dwelling unit. If some or all common areas are not metered or submetered separately from tenants' service, the owner must reduce the amount of the bill passed on to tenants by up to 25% depending on the specific characteristics of the property. Utility service for condominiums, may be allocated according to the methods for apartment house or methods outlined in the condominium contract, utility service for manufactured home rental communities or multiple use facilities may be allocated according to the methods for apartment houses or the size of the rental space. The adopted rule also provides a method of calculation of a partial month's bill for move-ins and move-outs. Subsection (f) provides for a transition period for those properties using one of the currently approved methods of allocation that will be prohibited under the adopted new rules.

Section 291.125 provides rules for billing, including rules on the form of the bill, items that must be included on the bill, time of billing, due date, a provision for over billing and under billing and for billing disputes.

Section 291.126 provides adopted rules related to the circumstances, terms and conditions under which an owner may discontinue a tenant's utility service for nonpayment.

Section 291.127 sets out special rules related to submetered service, including requirements for using the same unit of measurement throughout a property, installation of submeters by the owner, testing, accuracy and record keeping.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is not intended to protect the environment or reduce risks to human health from environmental exposure. The adopted rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rules provide a mechanism whereby owners of apartment houses, manufactured home rental communities and other multiple use facilities, or condominium associations may pass through the cost of water and wastewater to tenants. The adopted rules require allocation methods for apartment houses that correlate more closely with actual

usage than the current rules which allow for allocation based upon square footage of a unit among other methods. The prescribed allocation methods in the adopted rules may increase the cost of billing, however, owners may still include the cost of water and wastewater in rent or may recover the increased billing costs in rent. Therefore, the adopted rulemaking is not anticipated to adversely affect in a material way this sector of the economy. The adopted rules also encourage conservation of water by providing incentives to owners to submeter common areas and particularly to submeter irrigation systems. The adopted rulemaking does not meet the applicability requirements of a “major environmental rule” because it does not meet the definition as set forth in Texas Government Code, §2001.0225. The adopted rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. In addition, the adopted rules are consistent with provisions in SB 950 and are specifically required by Texas Water Code, §13.503 and §13.5031.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §207.043. The following is a summary of that assessment. The specific purpose of the rules is to implement SB 950, and Texas Water Code, §§13.501 - 13.505. The rules set standards for submetering and allocation of master metered water and wastewater service to tenants.

Promulgation and enforcement of these rules will not burden private real property because apartment house owners, condominium managers or owners of other multiple use facilities may choose not to submeter or allocate water and wastewater service. The rules have been developed to encourage submetering, promote judicious use and conservation of water, and to provide safeguards to tenants as

provided by statute. The rules provide that if the property owner wishes to bill tenants for water and wastewater service, they must do so on a submetered or approved allocation basis. For those property owners that do not wish to submeter, or allocate, the owners can still include water and wastewater service in the monthly rental rate agreed upon in the lease agreement. Therefore, this adoption will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC, §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC, §505.11. Therefore, the adopted rules are not subject to the CMP.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin, on April 18, 2000, at 10:00 a.m. in Building F, Room 2210 of the commission's central office, located at 12100 North IH-35, Park 35 Circle, Austin, Texas 78753. The hearing was structured for the receipt of oral or written comments by interested persons. The comment period closed on April 24, 2000. The following commenters submitted oral and written comments in general support or with suggested changes: American Properties; American Water Works Association's Conservation and Reuse Division; City of Austin (City); CCNG Development Company, L.P.; Camden Property Trust (Camden); Caney Creek Utility Co.; Carlisle on the Creek; Community Association Institute (CAI); Consumers Union; Contrail Capital Management

Corp.; Control Flow Inc.; Energy Billing Systems, Inc.; Forest Creek Village; Gables Residential; Glenborough Realty; Lincoln Property Company; National Exemption Service, Inc.; National Submetering & Utility Allocation Association (NSUAA); National Water & Power, The Rutledge Apartments; Bob Ross Realty; RCI Utilities; SMI Realty Management Corp. (SMI); Harris-Galveston Coastal Subsidence District (the Subsidence District); Stone Forest Apartments; Texas Apartment Association (TAA); Texas Manufacturing Housing Association (TMHA); Texas Water Conservation Association; Viterra Energy Services (Viterra); The Wildflower; Willow Tree Apartments; Woodcreek of Northwest Crossing; two individual tenants; and an individual owner of a billing company.

ANALYSIS OF TESTIMONY

The Subsidence District, the American Water Works Association's Conservation and Reuse Division, and the Texas Conservation Association are in general support of this rule change. A representative of these organizations commented that she has not seen any studies that show that allocation programs encourage conservation of water. She commented that submetering is the long-term solution. An individual tenant agreed with many of the proposed changes, commenting that owners always have the option of including water and sewer utility costs in the rent. The City of Austin is in general support of the rule changes. The City commented that when an apartment decides to pass on a water bill to a tenant, it is essentially taking over the role of the utility and with that role comes the responsibility to charge tenants for their actual use which involves maintaining a billing and metering system. The City commented that the rule includes the option of including the water cost in the rent and if owners choose to pass the cost on to the tenants, this can be viewed as a business choice that includes the costs and problems associated with this choice. The City commented that we need to make the transition in

apartments to submetering of water. The City commented that although there are problems with billing and submetering technology, there are billing companies that can get bills out regularly and the submetering technology keeps improving.

The commission agrees that submetering is the long-term solution for promoting conservation.

The City of Austin supports a per person charge for water over square footage allocation. The City commented that there are no statistically valid studies that show that allocation conserves water.

National Water & Power and NSUAA, Bob Ross Realty, RCI Utilities, Gables Residential, Carlisle on the Creek, Forest Creek Village, The Rutledge Apartments, Stone Forest Apartments, The Wildflower, Willow Tree Apartments, Woodcreek of Northwest Crossing, Glenborough Realty, TAA, Camden, Viterra, SMI, and Energy Billing Systems, Inc. commented that studies show that allocation of water bills does conserve water. Bob Ross Realty also commented that when tenants pay water bills they are also more likely to report leaks and in turn the owner is more likely to promptly fix leaks.

The commission has considered the various studies regarding whether allocation promotes conservation but does not have a position as to the validity of any given study. The statute allows owners to allocate the cost of water and sewer service to tenants. It is the commission's goal to adopt rules that are fair and equitable to both owners and tenants.

The City of Austin commented that apartment complexes should retrofit the plumbing fixtures before charging water to tenants and the commission should consider putting this in the rules.

The commission agrees that retrofitting prior to allocation is preferable, however, the Texas Water Code does not allow the commission to require retrofitting prior to allocating utility costs. The statute allows the commission to specify allocation methodologies and service rules only.

RCI Utilities commented that the rules should allow an administrative charge up to \$3.00 per month to create an incentive for owners to submeter.

The Texas Water Code specifically prohibits owners from imposing on tenants any extra charges over and above the cost per gallon and any other applicable taxes and surcharges that the owner is charged by the retail public utility.

Gables Residential commented that the commission should strongly encourage or require utilities to begin to bill tenants directly, metering each individual apartment unit.

The commission does not have the statutory authority to require direct billing.

An individual tenant questioned who pays for a big leak in a common area when it is not repaired timely and suggests that the commission require that leaks be repaired within a maximum time frame of 72 hours. An individual tenant commented that owners notify tenants when there has been a major upsurge in water usage and questions who pays for new meters.

The commission has added a requirement to §291.123(a) that owners state in writing the period of time by which the owner will repair leaks in tenant's units and in common areas, if common areas are not separately metered or submetered. The commission does not believe it has the authority to require that owners notify tenants of significant changes in water use. The rules do not allow owners to charge tenants directly for the cost of submeters.

American Properties and Conrail Capital Management Corporation requested that the commission allow for bills to be "normalized" to a constant 30-day period to remove fluctuations due to uneven billing periods by both the utility companies and apartment houses. According to the commenters, this would relieve the apartment house owners from the task of pacifying the tenants who get upset over the fluctuating bills and make the reconciliation of security deposits easier. The method would involve calculation of the average daily bill for the actual billing period of the utility, and multiplying by 30 to get the 30-day equivalent utility bill.

The commission has revised the rules to allow apartment owners to have different billing cycles from the utility in the submetering context so that meters may be read regularly and tenants billed accordingly, however, in the allocation context the commission believes that it is least confusing to tenants to be billed on the same billing cycle as the retail public utility so that tenants can easily compare tenant bills to the utility bill.

With regard to §291.121(c), TAA commented that the rules should include a definition of "occupant."

The commission agrees with this comment and has included the definition.

With regard to §291.122(b), an individual tenant commented that bills should include information regarding how many occupants are in an apartment house so that a tenant can determine if the bill is being calculated correctly. Consumers Union suggested that a provision be added that requires that an owner provide “any other information necessary for a tenant to calculate and verify a water or wastewater bill.” TAA commented that requests for inspection of records should be in writing. TAA also commented that §291.122(b)(4) was overly broad.

The commission agrees with the first comment that tenants need to be able to easily determine how many occupants there are in an apartment house and has added a provision that requires owners to maintain records regarding the total number of occupants. The commission agrees with the second comment and has added a provision that requires owners to make available any information necessary for a tenant to calculate and verify a water or wastewater bill. The commission agrees with the third comment and included a provision that requires that requests for information be made in writing. The commission agrees with the final comment and narrowed §291.122(b)(4) to require information that would be useful to the tenant.

With regard to §291.122(d), TAA commented that the commission should specify time frames for providing the information and for providing information that will be mailed to tenants.

The commission agrees with this comment and amended the rules accordingly.

With regard to §291.123(a), RCI Utilities commented that the average monthly bill for the previous 12 months as opposed to the previous calendar year should be included. Consumers Union supports the previous 12 month's information and also commented that tenants should be provided the high and low months. Consumers Union commented that "in writing" should be added to the end of the first sentence. Consumers Union and an individual tenant commented that the TNRCC should be involved with disputes related to the computation of tenant bills and the accuracy of submetering devices. Consumers Union commented that language should be added to put tenants on notice that they have a right to receive information from the owner to verify the utility bill. Consumers Union also suggested that additional information be provided under §293.123(a) including the terms of billing, the time between meter readings, due date, etc., information about water conservation measures in unit and common areas, and for manufactured home rental communities, the amount of the service charge that will be billed.

The commission agrees that the average bill for a more recent 12-month period would be more helpful to tenants, but the statute specifies that the average monthly bill for the previous calendar year be provided. The commission agrees that information on the high and low month's bill would be very beneficial for tenants and has added this requirement. The commission agrees that information about submetering or allocation should be provided to a prospective tenant in writing and has amended the rule to provide that the information required to be provided in this section be in writing. The commission does not agree that it should be involved with disputes related to the computation of tenant bills and the accuracy of submetering devices. The commission is not equipped to deal in a timely manner with the number of potential complaints. The rules have

been written and revised in response to comments to require owners to maintain and provide tenants with the necessary information to resolve these issues locally. Unlike other subchapters in Texas Water Code, Chapter 13, Subchapter M also provides tenants with specific civil remedies therefore the commission will not be involved with these types of disputes. The commission agrees that the rental agreement should inform tenants of their right to obtain information from owners regarding billing terms and how to verify their utility bill and has amended the proposed rule accordingly. The commission does not agree to require that the rental agreement contain information about water conservation measures in the unit and common areas. Although strongly encouraged, water conservation measures are not specifically required for owners in the Texas Water Code. The commission agrees with the final comment and has amended the rule to include a provision regarding the amount of the service charge that will be billed to tenants in manufactured home rental communities.

In regards to §291.123(b), Consumers Union commented that the current rules provide that an owner must provide a tenant at the time the lease is signed with a copy of this subchapter or a narrative summary approved by the executive director but the new rules only require that a copy be made available a tenant. Consumers Union suggested that the new rule contain the same requirement as the current rule.

The commission agrees with this comment and has amended the proposed rule to require owners to provide a copy of this subchapter or a copy of the executive director's summary of the rules to tenants at the time the rental agreement is discussed. The executive director will develop a

summary of the rules to eliminate the need for owners to draft summaries and for the executive director to review and approve them.

In regards to §291.123(d), National Water & Power and NSUAA, Bob Ross Realty, RCI Utilities, Gables Residential, Carlisle on the Creek, Forest Creek Village, The Rutledge Apartments, Stone Forest Apartments, The Wildflower, Willow Tree Apartments, Woodcreek of Northwest Crossing, Glenborough Realty, TAA, Camden, Vitera, SMI, and Energy Billing Systems, Inc. commented that owners should be allowed to switch back from submetered to allocated billing for reasons other than a change in property ownership such as frequent billing and submeter problems. Several of these entities commented that not allowing owners to switch back will serve to discourage owners from attempting to submeter in the first place. Consumers Union does not support the exception for new owners if the property contains functioning submeters.

The commission believes that submetered billing is preferable to allocated billing and therefore encourages submetering when submeters are available. However, the commission agrees that the inability to switch back to allocation when problems with submetering are encountered may keep owners from trying submetering and has amended this provision to allow owners to change from submetered to allocated billing upon approval by the executive director after a demonstration of good cause. Good cause may include equipment failures or meter reading or billing problems that could not feasibly be corrected. The commission agrees with the comment regarding new owners and has amended the rule to subject new owners to the same standards as any owner.

In regards to §291.124(a), an individual tenant was concerned that the language would allow for the owner to include billing company charges.

The commission agrees and clarified this language accordingly.

In regards to §291.124(b), National Power & Water and NSUAA commented that base charge and gallonage charge should be allowed to be rolled in together. Energy Billing Systems, Inc. commented that the dwelling unit base charge should also include minimum meter charges.

The commission disagrees with the first comment. If base charges and gallonage charges are rolled together, higher use tenants would pay for a larger share of base charges and base charges billed by the retail public utility are not dependent on usage but on the size of the master meter or number of units served through the master meter. The commission agrees that minimum meter charges, or customer service charges, are fixed costs along with dwelling unit base charges and has amended the rule language to include these types of charges. Definitions for dwelling unit base charges and customer service charges have been moved to the definitions section, §291.121.

In regards to §291.124(c), National Power & Water, NSUAA, and Viterra Energy Services commented that owners who submeter should be able to multiply the tenants actual consumption by the retail public utility rate and bill tenants based on that rate instead of waiting for the retail public utility's bill. They also commented that owners should be able to charge a set rate approved by the commission comparable to set rates that the commission approves for utilities. A final option that they suggested is

that the owner be allowed to bill tenants based upon a three months average rate. Energy Billing Systems, Inc. commented that minimum meter charges should be subtracted from the utility's total monthly charges along with the dwelling unit base charge.

The commission agrees with the first comment and has amended the rules to allow owners who submeter to charge tenants the retail public utility rate as an alternative. The commission does not agree with the second comment about the use of a rate set by the commission because it would require the commission to essentially follow a rate setting process which is not statutorily authorized and would no longer be a passing through of rates, but would result in the owners being treated like a utility. The commission also does not support the third comment about the use of a three month average rate because the advantage of submetering is that tenants are billed for their actual monthly usage at the same rate charged by the retail public utility. The commission agrees with the final comment and has amended the provisions to subtract the customer service charges from the water and wastewater consumption calculations accordingly.

With regard to §291.124(d)(1), TAA suggested that the section be rewritten to improve clarity. Energy Billing Systems, Inc. commented that minimum meter charges should be handled like dwelling unit base charges.

The commission agrees and has rewritten the section and included these types of customer service charges in subsection (d)(1)(A) with dwelling unit base charges.

With regard to §291.124(d)(1), CAI commented that condominiums presented unique circumstances that differed substantially from apartments and that the proposed rules would have the effect of rewriting private contracts between Unit Owners and Condominium Associations that have been in effect for years. CAI proposed that condominiums be exempted from the allocation calculation formulas in the proposed rules.

The commission agrees that the proposed rules may adversely impact these contracts and has modified the rule to allow more flexibility to cover the variety of methodologies in these contracts. Based on these comments the commission also reviewed the rules as they relate to manufactured home rental communities and multiple use properties and the unique circumstances that they present as compared to apartments and amended the rules to provide more flexibility for these entities.

With regard to §291.124(d)(1)(C) which requires an owner who does not meter or submeter common areas to reduce the bill for water and wastewater service or “takeout” 25% before allocating the costs to tenants, the TAA, Camden, Vitera, an individual owner of a billing company, National Water & Power and NSUAA, Glenborough Realty, Lincoln Property Company, Stone Forest Apartments, Willow Tree Apartments, Forest Creek Village, the Rutledge Apartments, Carlisle on the Creek, Woodcreek of Northwest Crossing, The Wildflower, SMI, TMHA, and Energy Billing Systems, Inc. all commented that 25% takeout was too high and not adequately supported by data. Some of these commenters pointed to a limited study done for TAA by HDR Engineering which indicated common area takeout should be between 15% and 17% or to anecdotal data which indicated numbers less than 25% and

typically in the 15% to 17% range. TAA also suggested allowing owners to use less than 25% when the owner could substantiate lower usage. Consumers Union supported the 25% as an incentive to owners to meter or submeter common areas and pointed to a study prepared for the National Apartment Association and the National Multi Housing Council (NAA Study) which found that properties in Texas that had submetered common areas averaged 27% of water use for common areas. The City of Austin commented that many owners do not meter or submeter common area usage because they know usage is over 25%. They also pointed to the NAA Study and suggested that a 30% takeout be used to ensure that tenants did not pay for common area usage. An individual commented that unless the takeout is higher than 15% there would not be an adequate incentive for owners to promptly fix leaks in common areas.

Energy Billing Systems, Inc. suggested using the lowest three months bills each year as an average to calculate takeout less 5% for laundry facilities and 5% for club houses. Several of the commenters stated that credit should be given for partially metered or submetered common areas and for properties that do not have landscaping, a pool and laundry facilities.

The commission agrees with the comments that there is limited data for the takeout percentage, but believes the NAA Study indicating that common area usage in Texas was 27% when submetered gives significant support to use of the 25% takeout number and that using the 25% will be an incentive for owners to meter or submeter common areas which will promote conservation. Allowing owners to use less than 25% when the owner could substantiate lower usage would be very difficult to substantiate and to monitor. It is unlikely that an owner could

substantiate lower usage without metering or submetering common areas, in which case the amended rules would allow use of a lower percentage. Using the lowest three months bills each year as an average to calculate takeout would create confusion because it would have to be reevaluated each month and the 5% factors are unsubstantiated. The commission agrees that credit should be given for partially metered or submetered common areas or for properties with limited common areas and has amended the rules to recognize these situations.

With regard to §291.124(d)(1)(C), Camden Properties commented that increasing the takeout percentage for properties already allocating would be a financial loss because current rents would not cover the lost revenue.

The commission agrees that increasing the takeout percentage will have an impact on the owner's revenues. However, the rules allow an owner 365 days to convert to one of the approved methods which should be adequate time to modify the lease and increase the rent if necessary.

With regard to §291.124(d)(1)(C), an individual questioned whether the word "or" between water or sewer meant that the owner could choose to reduce the bill for one by 25% but not the other.

The commission agrees that the wording was not clear. Additional language to §291.124(d)(1) now includes both water and sewer.

With regard to §291.124(d)(2) which requires that an owner allocate based on either a ratio of the occupants in the rental unit to the total occupancy in the property or a ratio of the hot water use in the rental unit to the total hot water in the property, the TAA, Camden, Bob Ross Realty, Vitera, an individual owner of a billing company, National Water & Power and NSUAA, RCI Utilities, Glenborough Realty, Lincoln Property Company, Stone Forest Apartments, Willow Tree Apartments, Forest Creek Village, Rutledge Apartments, Carlisle on the Creek, Woodcreek of Northwest Crossing, The Wildflower, SMI, and Energy Billing Systems, Inc. commented that additional methods of allocation should be allowed. They raised various concerns about the occupancy method including the difficulty in keeping accurate occupant counts and administering this method, the disincentive for properties not currently allocating to start because of the complexity, the added cost of the occupancy method over a straight square foot method, tenant complaints about people living in or sharing units that were not on the lease, the significant impact on families with children, and that multiple tenants in a rental unit do not use the same amount of water as the same number of tenants living in separate rental units. They suggested various alternatives including some form of billing including the square footage of the rental unit either in whole or in part, a ratio occupancy formula so that multiple tenants in the same unit would be assigned a reduced cost to recognize that each additional tenant does not use as much water as that tenant would if living separately and allowing a property to calculate the occupancy level once a year and use that count for bills for the following year. Lincoln Property Company commented that they had success and customer acceptance of a 50% square footage and 50% occupancy formula. Energy Billing Systems, Inc. commented that some percentage should be added to the occupancy factor if there are washers in the unit. National Water & Power and NSUAA commented that if allocation calculation is based on the number of tenants, the calculation should be made once per

year instead of monthly. American Properties and Conrail Capital Management supported the occupancy method as did Consumers Union who also commented that a combination of occupancy and square footage was confusing to tenants. The City of Austin commented that their studies did indicate some correlation of water use and square footage, but that square footage alone did not correlate strongly enough to consumption to be a viable basis for allocating costs. The City of Austin further commented that the correlation between actual usage and occupancy was strongest and while not opposed to a combination, commented that it would be difficult to implement and confusing for tenants to understand. National Exemption Service, Inc. suggested that allocation based on cold water usage be allowed.

The commission believes that square footage alone is not a reliable indicator of water use, but agrees that more flexibility is needed and has amended the rules to allow a combination of up to 50% square footage and 50% occupancy, a ratio occupancy method where additional tenants are counted as a fraction of an occupant and has included allocation based on cold water usage. The commission also added clarifying language on how frequently the occupancy formula must be recalculated. The commission also agrees that an option to use a fixed billing formula is needed to simplify and add stability to billing for owners without access to more sophisticated billing systems and has included a fixed ratio formula based on an average number of occupants per bedroom.

With regard to §291.125(a), an individual tenant commented that tenants who are not residing in their rental unit for prolonged periods of time, i.e., greater than 30 days, should not be required to pay for water and sewer use for those periods.

The commission agrees that it may seem unfair, but believes that this issue should be left to the discretion of owners and tenants and not dictated by rule. However, the commission has modified the rule to allow an owner to exempt a tenant from paying for water and wastewater while not residing in the rental unit for a prolonged period.

With regard to §291.125(d), NSUAA and TAA commented that owners should be able to prorate bills for move-in and move-out.

The commission agrees and has amended the rule to allow for prorated bills for move-in and move-out.

With regard to §291.125(f), an individual tenant commented that tenants need to have access to information about how much money is being generated from the entire property as compared with the retail public utility bills and the information necessary to determine if his bill is being properly computed.

The commission agrees and has amended §291.122, Owner Registration and Records, to require that additional information be available to the tenant.

With regard to §291.125(h), Consumers Union supported the increase in days to pay a bill and days before discontinuance of service for nonpayment. TAA commented that 16 days to pay the initial bill was too long and recommended 12 days which would make the rule consistent with the Public Utility

Commission rules for payment of submetered electric bills. Stone Forest Apartments, Willow Tree Apartments, Forest Creek Village, Rutledge Apartments, Carlisle on the Creek, Woodcreek of Northwest Crossing, The Wildflower, and SMI commented that 16 days was too long and that seven days was adequate and allowed bills to be due at the same time as rent. TMHA commented that TNRCC gave no reason for extending the payment dates in the proposed rules and 16 days to pay the initial bill was too long because it adds nine days.

The commission believes a longer period to pay bills is necessary due to the increase in the use of out-of-state billing companies and complaints about bills and payments being delayed in the mail. The 16 days to pay the bill will now be consistent with the rules for bill payment for public utilities.

With regard to §291.125(i), TAA commented that an owner should be allowed to render an estimated bill when a tenant moves out.

The commission agrees and has amended the rules to allow estimated bills on move-out.

With regard to §291.125(j), Vitera Energy commented that the proposed rule requiring non-designated payments be applied first to rent and then to utilities would create problems when tenants make payments to a third party billing company which is frequently the case and suggested language to clarify the rule when a third party billing company is involved.

The commission agrees and has clarified the rule using similar language to that suggested.

With regard to §291.125(k), Bob Ross Realty commented that allocation based on occupancy was more volatile and subject to errors and questioned if a minor error was made due to a miscount whether the owner would have to issue corrected bills to every tenant. TMHA commented that an owner should be allowed to recover all underbillings, not just for six months.

The commission agrees that the rule should address minor errors and has modified the rule accordingly, but does not believe an owner should be able to backbill for underbillings for more than six months. The owner should be monitoring the situation actively enough to catch errors before they continue for more than six months.

With regard to §291.125(l), Consumers Union suggested language that would require owners to inform a tenant that is dissatisfied with their investigation of a complaint about the TNRCC complaint process and give the address and phone number for where a complaint may be filed with TNRCC.

The commission disagrees. In §291.123(a), the rules state that disputes related to computation of bills are between the tenant and owner and the tenant should have already received a written copy of these rules when they signed the lease as required by §291.123(b). The commission does agree with the general concern raised here and more specifically in §291.123(a) by Consumers Union that information be provided in writing to reduce misunderstandings. This section already requires a tenant to make the dispute in writing. TAA also urged that in §291.122(b), owners be

allowed to require tenants to request records in writing. The commission believes that the results of any investigation can be more effectively communicated to tenants in writing and will result in fewer lingering disputes and has added language to require that an owner report the results of the investigation into the dispute in writing. A written response will also provide a record for future reference.

With regard to §291.126(a), Consumers Union supported the increase to ten days before discontinuance of service for nonpayment. TMHA commented that TNRCC gave no reason for extending the date before discontinuance to ten days and that some tenants will move rather than pay a delinquent bill. TAA commented that the rule should be clarified so that an owner cannot disconnect service in cases prohibited by the Property Code, §92.008. NSUAA commented that it is opposed to shutting off service for any reason and would prefer to deduct any unpaid utility bills from a tenant's security deposit.

The commission believes that extending the date for disconnection to ten days does not cause any undue hardship for owners and is more reasonable for tenants and is also consistent with the commission's rules for public utilities. Owners can charge deposits to cover losses when tenants move out before paying a final bill. The commission does not agree with the TAA's interpretation of Property Code, §92.008, and has not made the suggested changes. An owner can decide whether or not to disconnect under this section. In response to NSUAA's comment, the rule provides a mechanism for disconnection of service for nonpayment, but does not preclude owners

from including alternate provisions in the owner/tenant agreement to the extent such provisions are allowable under applicable law.

With regard to §291.127(a), TAA suggested that the rule requires that all submeters on a property use the same unit of measure and if they differ from the unit of measure of the master meter of the retail public utility that a conversion chart be made available to the tenant. NSUAA and Vitera Energy commented that the proposed rule would cause profound problems by possibly requiring some properties to replace all submeters to match the unit of measure of the master meter and could cause manufacturers to modify their processes to produce meters with different units of measure.

The commission agrees and has modified the rule to allow submeters to use other units of measure than the master meter as long as a conversion chart is provided to tenants as required in §291.122(b)(7). The rule was also modified to require that all submeters on a property use the same unit of measure.

With regard to §291.127(g), Energy Billing Systems, Inc. commented that requiring submeters to be tested or calibrated every 12 months was too burdensome due to the economic impacts.

The commission agrees and has modified the rule to be consistent with the meter requirements for utilities which allows a utility to bill the tenant for a test if the meter is within the required accuracy standards and it had been previously tested within the past 24 months.

With regard to §291.127(h), TAA commented that \$25 for a meter test was too low and the owner should be allowed to recover the actual cost.

The commission disagrees. If the cost of tests is too high, tenants will be hesitant to request a test. If costs exceed \$25, the owner can modify rents over time to recover the excess costs in the same way they must do if outside billing companies are used.

With regard to §291.127(i), Energy Billing Systems commented that owners should also be allowed to issue an adjusted bill to a tenant if a meter test determines that the meter had been under-registering and the tenant had been under billed.

The commission disagrees. This would create a disincentive for tenants to bring the situation to the attention of the owner. The owner will benefit going forward by billing at a higher level from the tenant.

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state;

Texas Water Code, §5.011, which provides that the commission is established for the purpose of ensuring the efficient and effective administration of the conservation of the state's natural resources;

Texas Water Code, §5.120, which requires the commission to administer the law so as to promote the judicious use and maximum conservation of water; Texas Water Code, §13.503, which requires the

commission to adopt rules regulating submetering of water or sewer service under certain situations;
and Texas Water Code, §13.5031, which requires the commission to adopt rules governing the
allocation of water and sewer service costs in certain situations.

SUBCHAPTER H : UTILITY SUBMETERING AND ALLOCATION

§§291.121 - 291.127

§291.121. General Rules.

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SUBCHAPTER H : UTILITY SUBMETERING AND ALLOCATION

§§291.121 - 291.127

STATUTORY AUTHORITY

The new sections are adopted under the Texas Water Code, §5.103, which provide the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; Texas Water Code, §5.011, which provides that the commission is established for the purpose of ensuring the efficient and effective administration of the conservation of the state's natural resources; Texas Water Code, §5.120, which requires the commission to administer the law so as to promote the judicious use and maximum conservation of water; Texas Water Code, §13.503, which requires the commission to adopt rules regulating submetering of water or sewer service under certain situations; and Texas Water Code, §13.5031, which requires the commission to adopt rules governing the allocation of water and sewer service costs in certain situations.

§291.121. General Rules and Definitions.

(a) Purpose and scope. The provisions of this subchapter are intended to establish a comprehensive regulatory system to assure that the practices involving submetered and allocated billing of dwelling units and multiple use facilities for water and sewer utility service are just and reasonable and include appropriate safeguards for tenants.

(b) Application. The provisions of this subchapter shall apply to apartment houses, condominiums, multiple use facilities, and manufactured home rental communities billing for water and wastewater utility service on a submetered or allocated basis.

(c) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Allocated utility service - Water or wastewater utility service that is master metered to an owner by a retail public utility and allocated to tenants by the owner.

(2) Apartment house - A building or buildings containing five or more dwelling units which are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and if a dwelling unit is rented, having rental paid at intervals of one month or longer.

(3) Customer service charge. A customer service charge is a rate which is not dependent on the amount of water used through the master meter.

(4) Dwelling unit - One or more rooms in an apartment house or condominium, suitable for occupancy as a residence, and containing kitchen and bathroom facilities; a unit in a multiple use facility; or a manufactured home in a manufactured home rental community.

(5) Dwelling unit base charge - A dwelling unit base charge is a flat rate or fee charged by a retail public utility for each dwelling unit recorded by the retail public utility.

(6) Master meter - A meter used to measure, for billing purposes, all water usage of an apartment house, condominium, multiple use facility, or manufactured home rental community, including common areas, common facilities, and dwelling units.

(7) Manufactured home rental community - A property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rental is paid at intervals of one month or longer.

(8) Multiple use facility - A commercial or industrial park, office complex or marina with five or more units which are occupied primarily for nontransient use and are rented at intervals of one month or longer.

(9) Occupant - A tenant or other person authorized under a written agreement to occupy a dwelling.

(10) Owner - The legal titleholder of an apartment house, manufactured home rental community, or multiple use facility; a condominium association; or any individual, firm, or corporation that purports to be the landlord of tenants in an apartment house, manufactured home rental community, or multiple use facility.

(11) Submetered utility service - Water utility service that is master metered for the owner by the retail public utility and individually metered by the owner at each dwelling unit; or wastewater utility service based on submetered water utility service.

(12) Tenant - A person who owns or is entitled to occupy a dwelling unit or multiple use facility unit to the exclusion of others and, if rent is paid, who is obligated to pay for the occupancy under a written or oral rental agreement.

(13) Utility service - For purposes of this subchapter, utility service shall only include drinking water and wastewater.

§291.122. Owner Registration and Records.

(a) Registration. An owner who intends to bill tenants for submetered or allocated utility service or who changes the method used to bill tenants for utility service shall register with the executive director in a form prescribed by the executive director.

(b) Records. The owner shall make the following records available for inspection by the tenant or the executive director at the onsite manager's office during normal business hours in accordance with subsection (d) of this section. The owner may require that the request by the tenant be in writing:

(1) a current and complete copy of Texas Water Code, Chapter 13, Subchapter M;

- (2) a current and complete copy of this subchapter;
- (3) a current copy of the retail public utility's rate structure applicable to the owner's bill;
- (4) information or tips on how tenants can reduce water usage;
- (5) the bills from the retail public utility to the owner;
- (6) for allocated billing:
 - (A) the formula, occupancy factors, if any, and percentages used to calculate tenant bills;
 - (B) the total number of occupants or equivalent occupants if an equivalency factor is used under §291.124(e)(2); and
 - (C) the square footage of the tenant's dwelling unit or rental space and the total square footage of the apartment house, manufactured home rental community or multiple use facility used for billing if dwelling unit size or rental space is used.
- (7) for submetered billing:

(A) the calculation of the average cost per gallon, liter or cubic foot;

(B) if the unit of measure of the submeters differs from the unit of measure of the master meter, a chart for converting the tenant's submeter measurement to that used by the retail public utility;

(C) all submeter readings; and

(D) all submeter test results;

(8) the total amount billed to all tenants each month;

(9) total revenues collected from the tenants each month to pay for water and wastewater service; and

(10) any other information necessary for a tenant to calculate and verify a water and wastewater bill.

(c) Records retention. Each of the records required under subsection (b) of this section shall be maintained for the current year and the previous calendar year, except that all submeter test results shall be maintained until the submeter is permanently removed from service.

(d) Availability of records.

(1) If the records required under subsection (b) of this section are maintained at the onsite manager's office, the owner shall make the records available for inspection at the onsite manager's office within three days after receiving a written request.

(2) If the records required under subsection (b) of this section are not routinely maintained at the onsite manager's office, the owner shall provide copies of the records to the onsite manager within 15 days of receiving a written request from a tenant or the executive director.

(3) If there is no onsite manager, the owner shall make copies of the records available at the tenant's dwelling unit at a time agreed upon by the tenant within 30 days of the owner receiving a written request from the tenant.

(4) Copies of the records may be provided by mail if postmarked by midnight of the last day specified in paragraphs (1), (2) or (3) of this subsection.

§291.123. Rental Agreement.

(a) Rental agreement content. The rental agreement between the owner and tenant shall clearly state in writing:

(1) the tenant will be billed by the owner for submetered or allocated utility services, whichever is applicable;

(2) which utility services will be included in the bill issued by the owner;

(3) any disputes relating to the computation of the tenant's bill or the accuracy of any submetering device will be between the tenant and the owner;

(4) the average monthly bill for all dwelling units in the previous calendar year and the highest and lowest month's bills for that period;

(5) if not submetered, a clear description of the formula used to allocate utility services;

(6) information regarding billing such as meter reading dates, billing dates, and due dates;

(7) the period of time by which owner will repair leaks in the tenant's unit and in common areas, if common areas are not submetered;

(8) the tenant has the right to receive information from the owner to verify the utility bill; and

(9) for manufactured home rental communities, the service charge percentage that will be billed to tenants.

(b) Requirement to provide rules or summary. At the time a rental agreement is discussed, the owner shall provide a copy of this subchapter or a copy of the executive director's summary of the rules to the tenant to inform the tenant of his rights and the owner's responsibilities under this subchapter.

(c) Tenant agreement to billing method changes. An owner shall not change the method by which a tenant is billed unless the tenant has agreed to the change by signing a lease or other written agreement. The owner shall provide notice of the proposed change at least 35 days prior to implementing the new method.

(d) Change from submetered to allocated billing. An owner shall not change from submetered billing to allocated billing, except after receiving written approval from the executive director after a

demonstration of good cause and if the rental agreement requirements under subsections (a), (b), and (c) of this section have been met. Good cause may include:

(1) equipment failures; or

(2) meter reading or billing problems that could not feasibly be corrected.

(e) Waiver of tenant rights prohibited. A rental agreement provision that purports to waive a tenant's rights or an owner's responsibilities under this subchapter is void.

§291.124. Charges and Calculations.

(a) Prohibited charges. Charges billed to tenants for submetered or allocated utility service shall only include bills for water or wastewater from the retail public utility and shall not include any fees billed to the owner by the retail public utility for any deposit, disconnect, reconnect, late payment, or other similar fees.

(b) Dwelling unit base charge. If the retail public utility's rate structure includes a dwelling unit base charge, the owner shall bill each dwelling unit for the base charge applicable to that unit. The owner shall not bill tenants for any dwelling unit base charges applicable to unoccupied dwelling units.

(c) Customer service charge. If the retail public utility's rate structure includes a customer service charge, the owner shall bill each dwelling unit the amount of the customer service charge divided by the total number of dwelling units, including vacant units, that can receive service through the master meter serving the tenants.

(d) Calculations for submetered utility service. The tenant's submetered charges shall include the dwelling unit base charge and customer service charge, if applicable, and the gallonage charge and shall be calculated each month as follows:

(1) water utility service: the retail public utility's total monthly charges for water service (less dwelling unit base charges or customer service charges if applicable), divided by the total monthly water consumption measured by the retail public utility to obtain an average water cost per gallon, liter or cubic foot, multiplied by the tenant's monthly consumption or the volumetric rate charged by the retail public utility to the owner multiplied by the tenant's monthly water consumption;

(2) wastewater utility service: the retail public utility's total monthly charges for wastewater service (less dwelling unit base charges or the customer service charge if applicable), divided by the total monthly water consumption measured by the retail public utility, multiplied by the tenant's monthly consumption or the volumetric wastewater rate charged by the retail public utility to the owner multiplied by the tenant's monthly water consumption;

(3) service charge for manufactured home rental community: a manufactured home rental community may charge a service charge in an amount not to exceed 9% of the tenant's charge for submetered water service;

(4) Final bill on move-out for submetered service. If a tenant moves out during a billing period, the owner may calculate a final bill for the tenant before the owner receives the bill for that period from the retail public utility. If the owner is billing using the average water or wastewater cost per gallon, liter or cubic foot as described in paragraph (1) of this subsection, the owner may calculate the tenant's bill by calculating the tenant's average volumetric rate for the last three months and multiplying that average volumetric rate by the tenant's consumption for the billing period.

(e) Calculations for allocated utility service.

(1) Before an owner may allocate the retail public utility's master meter bill for water and sewer service to the tenants, the owner shall first deduct:

(A) dwelling unit base charges or customer service charge, if applicable; and

(B) common area usage such as installed landscape irrigation systems, pools and laundry rooms, if any, as follows:

(i) if all common areas are separately metered or submetered, deduct the actual common area usage;

(ii) if common areas that are served through the master meter that provides water to the dwelling units are not separately metered or submetered and there is an installed landscape irrigation system, deduct at least 25% of the retail public utility's master meter bill;

(iii) if all water used for an installed landscape irrigation system is metered or submetered and there are other common areas such as pools or laundry rooms that are not metered or submetered, deduct at least 5% of the retail public utility's master meter bill; or

(iv) if common areas that are served through the master meter that provides water to the dwelling units are not separately metered or submetered and there is no installed landscape irrigation system, deduct at least 5% of the retail public utility's master meter bill.

(2) To calculate a tenant's bill:

(A) for an apartment house, the owner shall multiply the amount established in subsection (e)(1) of this section by:

(i) the number of occupants in the tenant's dwelling unit divided by the total number of occupants in all dwelling units at the beginning of the month for which bills are being rendered; or

(ii) the number of occupants in the tenant's dwelling unit using a ratio occupancy formula divided by the total number of occupants in all dwelling units at the beginning of the retail public utility's billing period using the same ratio occupancy formula to determine the total. The ratio occupancy formula will reflect what the owner believes more accurately represents the water use in units which are occupied by multiple tenants. The ratio occupancy formula which is used must assign a fractional portion per tenant of no less than that on the following scale:

(I) dwelling unit with one occupants = 1

(II) dwelling unit with two occupants = 1.6

(III) dwelling unit with three occupants = 2.2

(IV) dwelling unit with more than three occupants = 2.2 +
0.4 per each additional occupant over three; or

(iii) the average number of occupants per bedroom, which shall be determined by the following occupancy formula. The formula shall calculate the average number of

occupants in all dwelling units based on the number of bedrooms in the dwelling unit according to the scale below, notwithstanding the actual number of occupants in each of the dwelling unit's bedrooms or all dwelling units:

(I) dwelling unit with an efficiency = 1

(II) dwelling unit with one bedroom = 1.6

(III) dwelling unit with two bedrooms = 2.8

(IV) dwelling unit with three bedrooms = 4 + 1.2 for each additional bedroom; or

(iv) a factor using a combination of square footage and occupancy in which no more than 50% is based on square footage. The square footage portion shall be based on the total square footage living area of the dwelling unit as a percentage of the total square footage living area of all dwelling units of the apartment house; or

(v) the individually submetered hot or cold water usage of the tenant's dwelling unit divided by all submetered hot or cold water usage in all dwelling units.

(B) a condominium manager shall multiply the amount established in subsection (e)(1) of this section by any of the factors under subparagraph (A) of this paragraph or may follow the methods outlined in the condominium contract;

(C) for a manufactured home rental community, the owner shall multiply the amount established in subsection (e)(1) of this section by:

(i) any of the factors developed under subparagraph (A) of this paragraph; or

(ii) the area of the individual rental space divided by the total area of all rental spaces.

(D) for a multiple use facility, the owner shall multiply the amount established in subsection (e)(1) of this section by:

(i) any of the factors developed under subparagraph (A) of this paragraph; or

(ii) the square footage of the rental space divided by the total square footage of all rental spaces.

(3) Partial month's bill for move-in or move-out. If a tenant moves in or out during a billing period, the owner may calculate a bill for the tenant. If the tenant moves in during a billing period, the owner shall prorate the bill by calculating a bill as if the tenant were there for the whole month and then charging the tenant for only the number of days the tenant lived in the unit divided by the number of days in the month multiplied by the calculated bill. If a tenant moves out during a billing period before the owner receives the bill for that period from the retail public utility, the owner may calculate a final bill. The owner may calculate the tenant's bill by calculating the tenant's average bill for the last three months and multiplying that average bill by the number of days the tenant was in the unit divided by the number of days in that month.

(f) Conversion to approved allocation method. Within 365 days after the effective date of this subchapter, an owner using an allocation formula other than those approved in subsection (e) of this section shall provide notice as required under §291.123(c) of this title (relating to Rental Agreement) and either:

- (1) adopt one of the methods in subsection (e) of this section; or
- (2) install submeters and begin billing on a submetered basis; or
- (3) discontinue billing for utility services.

§291.125. Billing.

(a) Monthly billing of total charges. The owner shall bill the tenant each month for the total charges calculated under §291.124 of this title (relating to Charges and Calculations). If it is permitted in the rental agreement, an occupant or occupants who are not residing in the rental unit for a period longer than 30 days may be excluded from the occupancy calculation and from paying a water and sewer bill for that period.

(b) Rendering bill.

(1) Allocated bills shall be rendered as promptly as possible after the owner receives the retail public utility bill.

(2) Submeter bills shall be rendered as promptly as possible after the owner receives the retail public utility bill or according to the time schedule in the rental agreement if the owner is billing using the retail public utility's rate.

(c) Submeter reading schedule. Submeters shall be read within three days of the scheduled reading date of the retail public utility's master meter or according to the schedule in the rental agreement if the owner is billing using the retail public utility's rate.

(d) Billing period.

(1) Allocated bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period.

(2) Submeter bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period. If the owner uses the retail public utility's actual rate, the billing period may be an alternate billing period specified in the rental agreement.

(e) Multi-item bill. If issued on a multi-item bill, charges for submetered or allocated utility service shall be separate and distinct from any other charges on the bill.

(f) Information on bill. The bill shall clearly state the utility service is submetered or allocated as applicable and shall include all of the following:

(1) total amount due for submetered or allocated water;

(2) total amount due for submetered or allocated wastewater;

(3) total amount due for dwelling unit base charge(s) or customer service charges or both, if applicable;

(4) total amount due for water or wastewater usage, if applicable;

(5) the name of the retail public utility and a statement that the bill is not from the retail public utility;

(6) name and address of the tenant to whom the bill is applicable;

(7) name of the firm rendering the bill and the name or title, address, and telephone number of the firm or person to be contacted in case of a billing dispute; and

(8) name, address, and telephone number of the party to whom payment is to be made.

(g) Information on submetered service. In addition to the information required in subsection (f) of this section, a bill for submetered service shall include all of the following:

(1) the date and reading of the submeter at the beginning and at the end of the period for which the bill is rendered;

(2) the number of gallons, liters, or cubic feet metered;

(3) the cost per gallon, liter, or cubic foot for each service provided; and

(4) total amount due for a service charge charged by an owner of a manufactured home rental community, if applicable.

(h) Due date. The due date on the bill shall not be less than 16 days after it is mailed or hand delivered to the tenant, unless the due date falls on a federal holiday or weekend in which case the following work day shall be the due date. The owner shall record the date the bill is mailed or hand delivered. A payment is delinquent if not received by the due date.

(i) Estimated bill. An estimated bill may be rendered if a master meter or submeter has been tampered with, cannot be read, or is out of order; and in such case the bill shall be distinctly marked as an estimate and the subsequent bill shall reflect an adjustment for actual charges.

(j) Payment by tenant. Unless utility bills are paid to a third party billing company on behalf of the owner, or unless clearly designated by the tenant, payment shall be applied first to rent and then to utilities.

(k) Overbilling and underbilling. If a bill is issued and subsequently found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment shall be calculated for all of that tenant's bills that included overcharges. If the over billing or under billing affects all tenants, an adjustment shall be calculated for all of the tenants' bills. If the tenant was undercharged, and the cause was not due to submeter error, the owner may calculate an adjustment for bills issued in the previous six months. If the total undercharge is \$25.00 or more, the owner shall

offer the tenant a deferred payment plan option, for the same length of time as that of the underbilling.

Adjustments for usage by a previous tenant shall not be backbilled to a current tenant.

(l) Disputed bills. In the event of a dispute between a tenant and an owner regarding any bill, the owner shall investigate the matter and report the results of the investigation to the tenant in writing. The investigation and report shall be completed within 30 days from the date the tenant gives written notification of the dispute to the owner.

§291.126. Discontinuance of Service.

(a) Disconnection for nonpayment. A tenant's water utility service may be disconnected if payment was not received by the due date, and the owner issues a disconnection notice after the due date at least ten days prior to a stated date of disconnection.

(b) Disconnection notice. The notice issued by an owner under this section shall include the following:

(1) the words "disconnection notice" prominently displayed;

(2) the amount and date payment must be received by the owner to avoid disconnection;

(3) the date service will be disconnected if payment is not received; and

(4) a local address where the tenant can go during normal business hours to make arrangements for payment of the bill and for reconnecting service.

(c) Disconnection on holidays and weekends. Unless a dangerous condition exists which is related to the type of service provided, or unless the tenant requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when the owner or his representative is not available to collect payments and reconnect service.

§291.127. Submeters.

(a) Same type submeters required. All submeters throughout a property shall use the same unit of measurement, such as gallon, liter, or cubic foot.

(b) Installation by owner. The owner shall be responsible for providing, installing, and maintaining all submeters necessary for the measurement of water to tenants and to common areas, if applicable.

(c) Submeter tests prior to installation. No submeter shall be placed in service unless its accuracy has been established. If any submeter is removed from service, it shall be properly tested and calibrated before being placed in service again.

(d) Accuracy requirements for submeters. Submeters shall be calibrated as close as possible to the condition of zero error and within the accuracy standards established by the American Water Works Association (AWWA) for water meters.

(e) Location of submeters. Submeters shall be installed in accordance with applicable plumbing codes and AWWA standards for water meters, and shall be readily accessible to the tenant and to the owner for reading, testing, and inspection where such activities will cause minimum interference and inconvenience to the tenant.

(f) Submeter records. The owner shall maintain a record on each submeter which includes:

- (1) an identifying number;
- (2) the installation date (and removal date if applicable);
- (3) date(s) the submeter was calibrated or tested;
- (4) copies of all tests; and
- (5) the current location of the submeter.

(g) Submeter test on request of tenant. Upon receiving a written request from the tenant, the owner shall either:

(1) provide evidence, at no charge to the tenant, that the submeter was calibrated or tested within the preceding 24 months and determined to be within the accuracy standards established by the AWWA for water meters; or

(2) have the submeter removed and tested and promptly advise the tenant of the test results.

(h) Billing for submeter test.

(1) The owner shall not bill the tenant for testing costs if the submeter fails to meet AWWA accuracy standards.

(2) The owner shall not bill the tenant for testing costs if there is no evidence the submeter was calibrated or tested within the preceding 24 months.

(3) The owner may bill the tenant for actual testing costs (not to exceed \$25) if the submeter meets AWWA accuracy standards and evidence as described in subsection (g)(1) of this section was provided to the tenant.

(i) Bill adjustment due to submeter error. If a submeter does not meet AWWA accuracy standards and the tenant was overbilled, an adjusted bill shall be rendered in accordance with §291.125(k) of this title (relating to Billing). The owner shall not charge the tenant for any underbilling that occurred because the submeter was in error.

(j) Submeter testing facilities and equipment. An owner shall comply with the meter testing requirements applicable to utilities under §291.89(e) of this title (relating to Meters).