

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter G. SUBMETERING.

§25.142. Submetering for Apartments, Condominiums, and Mobile Home Parks.

(a) **General rules.**

(1) **Purpose and scope.**

(A) The provisions of this section are intended to establish a comprehensive regulatory system to assure that the practices involving submetering and billing of dwelling units are just and reasonable to the tenant and the owner and to establish the rights and responsibilities of both the owner and tenant. The provisions of this section shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, creed, sex, or marital status.

(B) For purposes of enforcement, owners are subject to enforcement pursuant to the Public Utility Regulatory Act §§15.021, 15.022, and 15.028 - 15.033.

(2) **Application.** This section shall apply to existing apartment houses or mobile home parks utilizing electrical submetering as of the effective date of this section as well as those apartment houses and mobile home parks which engage in electric utility submetering as defined by this section at any subsequent date. No incorporated city or town, including a home-rule city or other political subdivision of the state, may issue a permit, certificate, or other authorization for the construction or occupancy of a new apartment house or conversion to a condominium unless the construction plan provides for individual metering by the electric utility company or submetering by the owner of each dwelling unit for the measurement of the quantity of electricity, if any, consumed by the occupants within that dwelling unit. Therefore, the provisions of this section shall also apply to apartment houses and condominiums in the event submetering is chosen.

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

(A) **Apartment house** — One or more buildings containing more than five dwelling units, each of which is rented primarily for nontransient use with rent paid at intervals of one week or longer. The term includes a rented or owner-occupied residential condominium.

(B) **Dwelling unit** — One or more rooms suitable for occupancy as a residence and that contain kitchen and bathroom facilities, or a mobile home in a mobile home park.

(C) **Master meter** — A meter used to measure, for billing purposes, all electric usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units.

(D) **Month or monthly** — The period between any two consecutive meter readings by the electric utility, either actual or estimated, at approximately 30-day intervals.

(E) **Owner** — Any owner, operator, or manager of any apartment house or mobile home park engaged in electric utility submetering.

(F) **Utility metering** — Individual apartment dwelling unit metering of electric utility service performed by an electric utility company.

(G) **Utility service** — Utility service shall include electric service only.

(H) **Utility submetering** — Individual dwelling unit metering of electric utility service performed by the owner.

(b) **Records and reports.**

(1) The owner shall maintain and make available for inspection by the tenant the following records:

(A) the billing from the electric utility to the apartment owner for the current month and the 12 preceding months;

(B) the calculation of the average cost per billing unit, i.e., kilowatt-hour for the current month and the 12 preceding months;

(C) all submeter readings and tenant billings for the current month and the 12 preceding months;

(D) all submeter test results for the current month and the 12 preceding months.

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- (2) Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant at the convenience of both the apartment owner and tenant.
 - (3) All records shall be made available to the commission upon request.
- (c) **Billing.** All rental agreements between the owner and the tenants shall clearly state that the dwelling unit is submetered, that the bills will be issued thereon, that electrical consumption charges for all common areas and common facilities will be the responsibility of the owner and not of the tenant, and that any disputes relating to the computation of the tenant's bill and the accuracy of the submetering device will be between the tenant and the owner. Each owner shall provide a tenant, at the time the lease is signed, a copy of this section or a narrative summary as approved by the commission to assure that the tenant is informed of his rights and the owner's responsibilities under this section.
- (1) **Rendering and form of bill.**
 - (A) Bills shall be rendered for the same billing period as that of the electric utility, generally monthly, unless service is rendered for less than that period. Bills shall be rendered as promptly as possible following the reading of the submeters. The submeters shall be read within three days of the scheduled reading date of the electric utility's master meter.
 - (B) The billing unit shall be that used by the electric utility in its billing to the owner.
 - (C) The owner shall be responsible for determining that the energy billed to any dwelling unit shall be only for that submetered and consumed within that unit.
 - (D) Submetered billings shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, submetered billing information must be separate and distinct from any other charges on the bill and conform to information required in subparagraph (H) of this paragraph. The submetered bill must clearly state "submetered electricity".
 - (E) The bill shall reflect only submetered usage. Utility consumption at all common facilities will be the responsibility of the owner and not of the tenant. Allocation of central systems for air conditioning, heating and hot water is not prohibited by this section as set forth in §25.141 of this title (relating to Central System or Nonsubmetered Master Metered Utilities).
 - (F) The owner shall not impose any extra charges on the tenant over and above those charges which are billed by the electric utility to the owner. The bill may not include a deposit, late penalty, reconnect charge, or any other charges unless otherwise provided for by these sections.
 - (i) A one-time penalty not to exceed 5.0% may be made on delinquent accounts. If the penalty is applied, the bill shall indicate the amount due if paid by the due date and the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease which states the exact dollar or percentage amount of the late penalty.
 - (ii) A reconnect fee may be applied if service to the tenant is disconnected for non-payment of submetered bills in accordance with subsection (d)(1) of this section. Such reconnect fee shall be calculated based on the average actual cost to the owner for the expenses associated with the reconnection, but under no circumstances shall exceed \$10. No reconnect charge may be applied unless agreed to by the tenant in a written lease which states the exact dollar amount of such reconnect charge.

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- (G) The tenant's submeter bills shall be calculated in the following manner: after the electric bill is received from the electric utility, the owner shall divide the net total charges for electrical consumption, plus applicable tax, by the total number of kilowatt-hours to obtain an average cost per kilowatt-hour. The average kilowatt-hour cost shall then be multiplied by each tenant's kilowatt-hour consumption to obtain the charge to the tenant. The computation of the average cost per kilowatt-hour shall not include any penalties charged by the electric utility to the owner for disconnect, reconnect, late payment, or other similar service charges.
- (H) The tenant's electric submeter bill shall show all of the following information:
- (i) the date and reading of the submeter at the beginning and at the end of the period for which the bill is rendered;
 - (ii) the number of billing units metered;
 - (iii) the computed rate per billing unit;
 - (iv) the total amount due for electricity used;
 - (v) a clear and unambiguous statement that the bill is not from the electric utility, which shall be named in the statement;
 - (vi) the name and address of the tenant to whom the bill is applicable;
 - (vii) the name of the firm rendering the submetering bill and the name or title, address, and telephone number of the person or persons to be contacted in case of a billing dispute;
 - (viii) the date by which the tenant must pay the bill; and
 - (ix) the name, address, and telephone number of the party to whom payment is to be made.
- (2) **Due date.** The due date of the bill shall not be less than seven days after issuance. A bill for submetered service is delinquent if not received by the party indicated on the bill by the due date. The postmark date, if any, on the envelope of the bill or on the bill itself shall constitute proof of the date of issuance. An issuance date on the bill shall constitute proof of the date of issuance if there is no postmark on the envelope or bill. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.
- (3) **Disputed bills.** In the event of a dispute between the tenant and the owner regarding any bill, the owner shall promptly make an investigation as shall be required by the particular case, and report the results to the tenant. The investigation and report shall be completed within 30 days from the date the tenant notified the owner of the dispute.
- (4) **Tenant access to records.** The tenants of any dwelling unit whose electrical consumption is submetered shall be allowed by the owner to review and copy the master billing for the current month's billing period and for the 12 preceding months, and all submeter readings of the entire apartment house or mobile home park for the current month and for the 12 preceding months.
- (5) **Estimated bills.** Estimated bills shall not be rendered unless the meter has been tampered with or is out of order, and shall be distinctly marked "estimated bill".
- (6) **Overbilling and underbilling.** If submetered billings are found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment shall be made for the entire period of the overcharges. If the tenant was undercharged, the owner may backbill the tenant for the amount which was underbilled. The backbilling is not to exceed six months unless the owner can produce records to identify and justify the additional amount of backbilling. If the underbilling is \$25 or more, the owner shall offer to the tenant a deferred payment plan option, for the same length of time as that of the underbilling. However, the owner may not disconnect service if the tenant fails to pay charges arising from an underbilling more than six months prior to the date the tenant was initially notified of the amount of the undercharges and the total additional amount due. Furthermore, adjustments for usage by a previous tenant may not be backbilled to the current tenant.

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- (7) **Level and average payment plan.** Owners with seasonal usage or seasonal demands are encouraged to offer a level payment plan or average payment plan to elderly or chronically ill tenants who may be on fixed incomes and to other tenants having similarly unique financial needs.
- (A) The payment plan may be one of the following methods:
- (i) A level payment plan allowing eligible tenants to pay on a monthly basis a fixed billing rate of one-twelfth of that tenant's estimated annual consumption at the appropriate rates, with provisions for quarterly adjustments as may be determined based on actual usage.
 - (ii) An average payment plan allowing tenants to pay on a monthly basis one-twelfth of the sum of that tenant's current month's consumption plus the previous 11 month's consumption (or an estimate thereof, for a new customer) at the appropriate customer class rates, plus a portion of any unbilled balance. Provisions for annual adjustments as may be determined based on actual usage shall be provided. If at the end of a year the owner determines that he has collected an amount different than he has been charged by the electric utility, the owner must refund any overcollection and may surcharge any undercollection over the next year.
- (B) Under either of the plans outlined in subparagraph (A) of this paragraph the owner is prohibited from charging the tenant any interest that may accrue. Any seasonal overcharges or undercharges will be carried by the owner of the complex.
- (C) If a tenant does not fulfill the terms and obligations of a level payment agreement or an average payment plan, the owner shall have the right to disconnect service to that tenant pursuant to the disconnection requirements of subsection (d) of this section.
- (D) The owner may collect a deposit from all tenants entering into level payment plans or average payment plans; the deposit will not exceed an amount equivalent to one-sixth of the estimated annual billing. Notwithstanding any other provision in these sections, the owner may retain said deposit for the duration of the level or average payment plan; however, the owner shall pay interest on the deposit as is provided in §25.24 of this title (relating to Credit Requirements and Deposits).
- (d) **Discontinuance of service.**
- (1) **Disconnection for delinquent bills.**
- (A) Electric utility service may only be disconnected for nonpayment of electric utility bills. A tenant's electric utility service may be disconnected if a bill has not been paid within 12 days from the date of issuance and proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least five days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where a tenant can go during normal working hours to make arrangements for payment of the bill and for reconnection of service.
- (B) Under these provisions, a tenant's electric service may be discontinued only for nonpayment of electric service.
- (2) **Disconnection on holidays or weekends.** Unless a dangerous condition exists, or unless the tenant requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when personnel of the apartment house or mobile home park are not available for the purpose of making collections and reconnecting service.
- (3) **Disconnection under special circumstances.** An apartment house or mobile home park owner, operator or manager shall meet the same requirements as an electric utility in the following circumstances:

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- (A) **Disconnection of ill and disabled.** No electric utility may disconnect service at a permanent, individually metered dwelling unit of a delinquent customer when that customer establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill;
- (i) Each time a customer seeks to avoid disconnection of service under this subsection, the customer must accomplish all of the following by the stated date of disconnection:
- (I) have the person's attending physician (for purposes of this subsection, the term "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the electric utility by the stated date of disconnection;
- (II) have the person's attending physician submit a written statement to the electric utility; and
- (III) enter into a deferred payment plan.
- (ii) The prohibition against service termination provided by this subsection shall last 63 days from the issuance of the electric utility bill or a shorter period agreed upon by the electric utility and the customer or physician.
- (B) **Disconnection of energy assistance clients.** No electric utility may terminate service to a delinquent residential customer for a billing period in which the electric utility receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service; and
- (C) **Disconnection during extreme weather.** An electric utility cannot disconnect a customer anywhere in its service territory on a day when:
- (i) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours, according to the nearest National Weather Service (NWS) reports; or
- (ii) the NWS issues a heat advisory for any county in the electric utility's service territory, or when such advisory has been issued on any one of the preceding two calendar days.
- (e) **Submeters.**
- (1) **Submeter requirements.**
- (A) **Use of submeter.** All electrical energy sold by an owner shall be charged for by meter measurements.
- (B) **Installation by owner.** Unless otherwise authorized by the commission, each owner shall be responsible for providing, installing, and maintaining all submeters necessary for the measurement of electrical energy to its tenants.
- (2) **Submeter records.** Each owner shall keep the following records:
- (A) **Submeter equipment record.** Each owner shall keep a record of all of its submeters, showing the tenant's address and date of the last test.
- (B) **Records of submeter tests.** All submeter tests shall be properly referenced to the submeter record provided in this section. The record of each test made shall show the identifying number of the submeter, the standard meter and other measuring devices used, the date and kind of test made, by whom made, the error (or percentage of accuracy), and sufficient data to permit verification of all calculations.
- (3) **Submeter unit indication.** Each meter shall indicate clearly the kilowatt-hours consumed by the tenant.

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- (4) **Submeter tests on request of tenant.** Each owner shall, upon the request of a tenant, and if the tenant so desires, in the tenant's or the tenant's authorized representative's presence, make a test of the accuracy of the tenant's submeter. The test shall be made during reasonable business hours at a time convenient to the tenant desiring to observe the test. If the submeter tests within the accuracy standards for self-contained watt-hour meters as established by the latest edition of American National Standards Institute, Incorporated, (ANSI), Standard C12 (American National Code for Electricity Metering), a charge of up to \$15 may be charged the tenant for making the test. However, if the submeter has not been tested within a period of one year, or if the submeter's accuracy is not within the appropriate accuracy standards, no charge shall be made to the tenant for making the test. Following completion of any requested test, the owner shall promptly advise the tenant of the results of the test.
- (5) **Bill adjustment due to submeter error.** If any submeter is found not to be within the accuracy standards in subsection (e)(4) of this section proper correction shall be made of previous readings. An adjusted bill shall be rendered in accordance with subsection (c)(6) of this section. If a submeter is found not to register for any period, unless bypassed or tampered with, the owner may make a charge for units used, but not metered, for a period not to exceed one month based on amounts used under similar conditions during periods preceding or subsequent thereto, or during the corresponding period in previous years.
- (6) **Bill adjustment due to conversion.** If, during the 90-day period preceding the installation of meters or submeters, an owner increases rental rates, and such increase is attributable to increased costs of electric service, then such owner shall immediately reduce the rental rate by the amount of such increase and shall refund all of the increase that has previously been collected within the 90-day period.
- (7) **Location of submeters.** Submeters, service switches, or cut-off valves in conjunction with the submeters shall be installed in accordance with the latest edition of ANSI, Standard C12, and will be readily accessible for reading, testing, and inspection, with minimum interference and inconvenience to the tenant.
- (8) **Submeter testing facilities and equipment.**
 - (A) **Qualified expert.** Each owner engaged in electric submetering shall engage an independent qualified expert to provide such instruments and other equipment and facilities as may be necessary to make the submeter tests required by this section. Such equipment and facilities shall generally conform to ANSI, Standard C12, unless otherwise prescribed by the commission, and shall be available at all reasonable times for the inspection by its authorized representatives.
 - (B) **Portable standards.** Each owner engaged in electrical submetering shall, unless specifically excused by the commission, provide or utilize a testing firm which provides portable test instruments as necessary for testing billing submeters.
 - (C) **Reference standards.** Each owner shall provide or have access to suitable indicating instruments as reference standards for insuring the accuracy of shop and portable instruments used for testing billing submeters.
 - (D) **Testing of reference standards.** All reference standards shall be submitted once each year or on a scheduled basis approved by the commission to a standardizing laboratory of recognized standing, for the purpose of testing and adjustment.
 - (E) **Calibration of test equipment.** All shop and portable instruments used for testing billing submeters shall be calibrated by comparing them with a reference standard at least every 120 days during the time such test instruments are being regularly used. Test equipment shall at all times be accompanied by a certified calibration card signed by the proper authority, giving the date when it was last certified and adjusted. Records of certifications and calibrations shall be kept on file in the office of the owner.

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- (9) **Accuracy requirements for submeters.**
 - (A) **Limits.** No submeter that exceeds the test calibration limits for self-contained watt-hour meters as set by the ANSI, Standard C12, shall be placed in service or left in service. All electrical current transformers, potential transformers, or other such devices used in conjunction with an electric submeter shall be considered part of the submeter and must also meet test calibration and phase angle limits set by ANSI C12 and C57.13 for revenue billing. A nameplate shall be attached to each transformer and shall include or refer to calibration and phase angle data and other information required by ANSI C12 and ANSI C57.13 for revenue billing. Whenever on installation, periodic, or other tests, an electric submeter or transformer is found to exceed these limits, it shall be adjusted, repaired, or replaced.
 - (B) **Adjustments.** Submeters shall be adjusted as closely as possible to the condition of zero error. The tolerances are specified only to allow for necessary variations.
- (10) **Submeter tests prior to installation.** No submeter shall be placed in service unless its accuracy has been established. If any submeter is removed from actual service and replaced by another submeter for any purpose whatsoever, it shall be properly tested and adjusted before being placed in service again.
- (11) **Testing of electric submeters in service.** Standard electromechanical single stator watt-hour meters with permanent braking magnets shall be tested in accordance with ANSI C12 standards for periodic, variable interval, or statistical sampling testing programs. All other types of submeters shall be tested at least annually unless specified otherwise by the commission.
- (12) **Restriction.** Unless otherwise provided by the commission, no dwelling unit in an apartment house or mobile home park may be submetered unless all dwelling units are submetered.
- (13) **Same type meters required.** All submeters which are served by the same master meter shall be of the same type, such as induction or electronic.