

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. WR-100, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking to Implement North Carolina Session Law 2009-279 (Senate Bill 661)))	ORDER ADOPTING PERMANENT RULES
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BY THE COMMISSION: On July 10, 2009, North Carolina Session Law 2009-279 (Senate Bill 661) was signed into law. The legislation provided that it would become effective on October 1, 2009.

On September 29, 2009, the Commission issued an Order Initiating Rulemaking Proceeding in the matter. Said Order established new interim rules for use until adoption of final rules implementing the provisions of G.S. 62-110(g)(1a).

On October 15, 2009, the Public Staff filed the Public Staff's Comments. On October 16, 2009, the Apartment Association of North Carolina filed the Apartment Association of North Carolina's (AANC) Petition to Intervene. On December 12, 2011, the National Exemption Service (NES) sent an email regarding hot water multiplier calculations.

In its Comments, the Public Staff recommends that the last sentence in Commission Rule R18-6(a) be rewritten to clarify that the hot water capture, cold water allocation methodology was not prohibited. The Public Staff also notes that the statute does not include the words, "due to the plumbing configuration of the building." The Public Staff recommends that, in Rule R18-8, reference to Session Law 2009-279 be changed to G.S. 62-110(g)(1a). The Public Staff suggests that the use of the word "all" in the last line of the first paragraph in the rule should be "all of the" so that the phrase would read: "based upon the hot water usage of each tenant as a percentage of all of the tenants' hot water usage."

The Public Staff recommends that the Rule require "that information demonstrating that measurement of each tenant's total water usage would be impractical or not economical by rule and as part of the application" in order for the Commission to determine whether measurement of each tenant's total water usage is impractical or is not economical on a case-by-case basis.

The Public Staff notes that G.S. 62-110(g)(1a)(b) provides that a lessor shall not include in a tenant's bill the cost of water and sewer service used in common areas or water loss due to leaks in the lessor's water mains, but observed that the automatic

20% subtraction for common area usage and leakage from total water purchased proposed in Commission Rule R18-8 is not in the statute.

The AANC echoes the Public Staff's comment that the 20% figure used for subtraction of the common area usage and leakage is not part of G.S. 62-110(g)(1a). The AANC believes that the 20% figure is arbitrary and does not reflect the actual usage or leakage of its member communities. The AANC suggests that the Commission consider a more equitable system that relies primarily on actual, measured common area usage and leakage and requests that where such measured usage is unavailable, that the Commission craft a more graduated, tailored ratio that is property-specific to what systems, if any, are metered. The AANC recommends the following alternative methods to exclude common area usage:

1. Where all common areas are separately metered, subtract the actual common area usage from the total amount of water purchased.
2. Where common areas are not separately metered, subtract 15% from the total amount of water purchased where there is an installed landscape irrigation system.
3. Where there is an installed landscape irrigation system that is separately metered, subtract 5% from the total amount of water purchased where there are other common areas that are not separately metered, such as a pool or a laundry room.
4. Where there is no installed landscape irrigation system, subtract 5% from the total amount of water purchased where there are common areas that are not separately metered.

The AANC believes that such a system would be more equitable and would more closely reflect the apartment community owner's actual common area usage. The AANC indicated that it would work with its membership to obtain actual common area usage statistics from its membership in order to assist the Commission in establishing a more equitable system modeled after the one noted above.

The NES correspondence raised an issue regarding the Commission and conservation of resources in North Carolina. It asked, "What happens if a property feels that their common area is higher than 20% (their water usage for the Office/Clubhouse, pool(s), laundry room(s), hose bibs, etc. . .)?" Its experience in other jurisdictions indicates that the staff of a property tends to not be terribly concerned about their own water usage. The NES asked if it would be possible that the formula could be adjusted to compensate. It suggests (a) raising the common area removal to a reasonable level, or (b) would each point of common area need to be separately metered? It suggests that, based on the theme of the regulations, that (b) would be the preferred option.

G.S. 62-110(g) states, “In addition to the authority to issue a certificate of public convenience and necessity, and establish rates otherwise granted in this Chapter, for the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor to charge for the costs of providing water and sewer service to persons who occupy the same contiguous premises.” (Emphasis added.) Adopting procedures to implement the statute does not entail incorporating verbatim the statute – the statute speaks for itself and only repeating the statute in the Rules would serve no purpose.

G.S. 62-110(g)(1a)(b) states, “The lessor shall not include in a tenant’s bill the cost of water and sewer service used in common areas or water loss due to leaks in the lessor’s water mains.” In the past, AANC has requested that the Commission practice “regulation lite” with respect to water resale regulations for its member communities. During the interval between adoption of G.S. 62-110(g)(1a) by the General Assembly and the adoption of the Interim Rules by the Commission, the Commission Staff had conversations with a number of stakeholders regarding potential rules and methodologies. Several stakeholders stated that, in other jurisdictions, common area usage was accounted for by subtraction of a set percentage (ranging from 15% to 25%) from the total usage. In an effort to comply with the statutory requirement that common area usage and leakage not be charged to the tenants and in an effort to provide “regulation lite”, the Commission chose an automatic 20% subtraction for common area usage and leakage in order to keep regulation simple.

The NES correspondence reminds the Commission of the primary purpose of the water resale legislation – conservation. G.S. 62-110(g) states, “In addition to the authority to issue a certificate of public convenience and necessity, and establish rates otherwise granted in this Chapter, for the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor to charge for the costs of providing water and sewer service to persons who occupy the same contiguous premises.” (Emphasis added.) To that end, tenants should be given an opportunity to lower their water bills by using less water (i.e., conserving) and lessors should be able to pass on to the tenants more of the total cost of purchased water if the lessor uses less water (i.e., conserving) in the common areas. In consideration of the comments filed, the Commission is of the opinion that the Interim Rules should be revised to establish a methodology whereby the provider will be allowed to choose between several options for its method of accounting for common area usage (with a default method, if none is chosen). Such revisions are reflected in Rule R18-8, which is included in Appendix A, attached hereto, at pages 4-6.

The Commission finds that the legislation may be implemented by the establishment of new Rule R18-8. After initiating a rulemaking proceeding, issuing Interim Rules (Rule R18-8), receiving comments from interested parties, and allowing the interested parties an ample time to experience the interim rules, the Commission finds that the attached rules should be adopted.

IT IS, THEREFORE, ORDERED as follows:

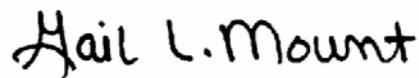
1. That the revision to Rule R18-6 and the establishment of Rule R18-8 (attached as Appendix A), are hereby promulgated and supersede the existing Interim Rules.

2. That the Chief Clerk shall serve a copy of this Order on all providers charging for water and/or sewer utility service pursuant to certificates of authority granted by the Commission pursuant to G.S. 62-110(g) and Chapter 18 of the Commission's Rules and Regulations, all providers with pending applications seeking such certificates of authority, and the Attorney General.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of January, 2012.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Gail L. Mount". The signature is written in a cursive, slightly stylized font.

Gail L. Mount, Deputy Clerk

rb011012.01

Chapter 18.

Provision of Water and Sewer Service by Landlords.

Rule R18-1. Application.

This Chapter governs charging for the costs of providing water or sewer utility service as authorized by G.S. 62-110(g).

Rule R18-2. Definitions.

(a) *Same contiguous premises.* An apartment complex or manufactured home park located on property that is not separated by property owned by others. Property will be considered contiguous even if intersected by a public thoroughfare if, absent the thoroughfare, the property would be contiguous.

(b) *Provider.* The landlord purchasing water or sewer utility service from a supplier and charging for the costs of providing the service or services to tenants. The provider shall be the owner of the premises served.

(c) *Supplier.* A public utility or an agency or organization exempted from regulation from which a provider purchases water or sewer service.

(d) *Tenant.* The lessee of property from the landlord, to whom the water or sewer service purchased by the provider from the supplier is provided.

(e) *Apartment complex.* Premises where one or more buildings under common ownership comprising fifteen (15) or more apartments are available for rental to tenants.

(f) *Manufactured home park.* Premises where a combination of fifteen (15) or more manufactured homes, as defined in G.S. 143-145(7), or spaces for manufactured homes, are rented to or are available for rental to tenants.

(g) *Supplier's base charge.* The fixed charge imposed by the supplier for providing water and sewer utility service to the provider. This charge may include charges related to the provision of utility service such as the cost of meter reading, billing, and collecting, but may not include charges not related to the provision of utility service, such as stormwater fees, trash collection, or property taxes.

Rule R18-3. Utility status; certificate; bonds.

Every provider is a public utility as defined by G.S. 62-3(23)a.2 and shall comply with all applicable provisions of the Public Utilities Act and all applicable rules and regulations of the Commission. No provider shall begin charging for the costs of

providing water or sewer service prior to applying for and receiving a certificate of authority from the Commission. No provider shall be required to post a bond pursuant to G.S. 62-110.3.

Every application for authority to charge for the costs of providing water or sewer service shall be in such form and detail as the Commission may prescribe and shall include (a) a description of the applicant and the property to be served, (b) a description of the proposed billing method and billing statements, (c) a schedule of the rates charged to the applicant by the supplier, (d) the schedule of rates the applicant proposes to charge the applicant's customers, (e) the administrative fee proposed to be charged by the applicant, (f) the name of and contact information for the applicant and its agents, (g) the name of and contact information for the supplying water or sewer system, and (h) any additional information that the Commission may require. The Commission shall approve or disapprove an application within 30 days of the filing of a completed application with the Commission. If the Commission has not issued an Order disapproving a completed application within 30 days, the application shall be deemed approved.

Rule R18-4. Compliance with rules.

Every provider shall comply with any applicable rules of local governmental agencies regarding the provision of water or sewer service.

Rule R18-5. Records, reports and fees.

(a) All records shall be kept at the office or offices of the provider in North Carolina, or shall be made available at its office in North Carolina upon request, and shall be available during regular business hours for examination by the Commission or Public Staff or their duly authorized representatives. Within three business days after a written request to the provider, a customer may examine the records pertaining to the customer's account during regular business hours and may obtain a copy of those records at a reasonable cost, which shall not exceed twenty-five cents (25¢) per page.

(b) Providers shall not be required to file an annual report to the Commission as required by Chapter 1, Rule R1-32 of the Rules and Regulations of the North Carolina Utilities Commission. Providers shall pay a regulatory fee and file a regulatory fee report as required by Chapter 15, Rule R15-1. Special reports shall also be made concerning any particular matter upon request by the Commission.

Rule R18-6. Rates.

(a) The rates shall equal the cost of purchased water or sewer service (The usage rate charged by the provider shall equal the usage rate charged by the supplier.). A Commission-approved administrative fee not to exceed \$3.75 may be added to the cost of purchased water and sewer service to compensate the provider for meter reading, billing, and collection. A provider whose schedule of rates and fees does not

include a separate base charge to the tenant may request approval of an administrative fee greater than \$3.75 to recover the base charge from its supplier. With the exception of base charges approved before August 1, 2004, all charges other than the administrative fee shall be based on tenants' metered consumption of water. All sewer service shall be measured based on the amount of water metered. Metered consumption of water shall be determined by metered measurement of all water consumed by the tenant, and not by any partial measurement of water consumption (i.e., ratio utility billing system (RUBS) and hot water capture, cold water allocation (HWCCWA) are not allowed), except as permitted in G.S. 62-110(g)(1a) and Commission Rule R18-8).

(b) A provider of water or sewer service may track increases in the unit consumption rate charged by the supplier of such service, and may (subject to limitations imposed by Commission Rules) change its administrative fee, by filing with the Commission a notification of revised schedule of rates and fees. Every notification of revised schedule of rates and fees shall be in such form and detail as the Commission may prescribe and shall include (1) the current schedule of the unit consumption rates charged by the provider, (2) the schedule of unit consumption rates charged by the supplier to the provider that the provider proposes to pass through to the provider's customers, (3) the schedule of the unit consumption rates proposed to be charged by the provider, (4) the current administrative fee charged by the provider, and, if applicable, (5) the administrative fee proposed to be charged by the provider. Any such notification of revised schedule of rates and fees shall be presumed valid and shall be allowed to become effective simultaneously with the increase in the unit consumption rate of the supplier upon 14 days notice to the Commission, unless otherwise suspended or disapproved by Commission Order issued within 14 days after filing.

(c) Every request for approval of an administrative fee in excess of \$3.75 shall include (1) the provider's cost of meter reading, billing, and collection, (2) the current or proposed base charge from the supplier, (3) the number of tenants to whom water or sewer service is provided, and (4) the proposed administrative fee. Any such request shall be suspended for a period of 30 days after filing.

(d) No provider shall charge or collect any greater or lesser compensation for the costs of providing water or sewer service than the rates approved by the Commission.

Rule R18-7. Disconnection; billing procedure; meter reading.

(a) No charge for connection or disconnection, charge for late payment, or similar charge in addition to the rate specified in Rule R18-6 shall be allowed.

(b) No provider may disconnect water or sewer service for nonpayment.

(c) Bills shall be rendered at least monthly.

(d) The date after which a bill for water or sewer utility service is due, or the past due after date, shall be disclosed on the bill and shall not be less than twenty-five (25) days after the billing date.

(e) A provider shall not bill for or attempt to collect for excess usage resulting from a plumbing malfunction or other condition which is not known to the tenant or which has been reported to the provider.

(f) Every provider shall provide to each customer at the time the lease agreement is signed, and shall maintain in its business office, in public view, near the place where payments are received, the following:

(1) A copy of the rates, rules and regulations of the provider applicable to the premises served from that office.

(2) A copy of these rules and regulations.

(3) A statement advising tenants that they should first contact the provider's office with any questions they may have regarding bills or complaints about service, and that in cases of dispute, they may contact the Commission either by calling the Public Staff - North Carolina Utilities Commission, Consumer Services Division, at (919) 733-9277 or by appearing in person or writing the Public Staff - North Carolina Utilities Commission, Consumer Services Division, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326.

(g) Each provider shall adopt some means of informing its tenants as to the method of reading meters. Information on bills shall be governed by Chapter 7, Rule R7-23 and Chapter 10, Rule R10-19. Additionally, the bill shall contain a toll-free phone number for contacting the provider or the agent regarding service or billing matters. Adjustment of bills for meter error shall be governed by Chapter 7, Rule R7-25. Testing of water meters shall be governed by Chapter 7, Rules R7-28 through R7-33.

Rule R18-8. Hot water capture, cold water allocation.

Pursuant to G.S. 62-110(g)(1a), if the contiguous premises were built prior to 1989, and the provider determines that, due to the plumbing configuration of the building, measurement of the tenant's total water usage is impractical or is not economical, the provider may estimate each tenant's total water usage based upon the hot water usage of each tenant as a percentage of all of the tenants' hot water usage.

The provider must file the appropriate application (Application for Certificate of Authority to Charge for Water and/or Sewer Service Utilizing the Hot Water Capture, Cold Water Allocation Method and for Approval of Rates for Apartment Complexes and Manufactured Home Parks) and receive Commission authorization prior to commencing utilization of the hot water capture, cold water allocation method of estimating water usage.

The provider shall not include in a tenant's bill the cost of water and sewer service used in common areas or water loss due to leaks in the provider's water mains. A provider shall not bill or attempt to collect for excess water usage resulting from a plumbing malfunction or other condition that is not known to the tenant or that has been reported to the provider. The provider may choose to satisfy the common area water usage exclusion utilizing one of the following methods (the default method is method a.):

a. The provider shall reduce the total water amount of water purchased by 20%.

b. Where all common areas are separately metered, the provider shall subtract the actual common area usage from the total amount of water purchased. The provider shall provide the Commission and the Public Staff with a quarterly report (filed 45 days after the end of each quarter) documenting the common area metered usage, the total amount of water purchased, and the computation of the tenants' bills.

c. Where no common areas are separately metered, the provider shall subtract 15% from the total amount of water purchased where there is an installed landscape irrigation system and subtract 5% from the total amount of water purchased for each swimming pool or laundry room. The provider shall provide the Commission and the Public Staff with a quarterly report (filed 45 days after the end of each quarter) documenting the common area allocated usage, the total amount of water purchased, and the computation of the tenants' bills.

d. Where some common areas are separately metered and some are not metered, the provider shall subtract the actual common area usage from the total amount of water purchased and shall subtract 15% from the total amount of water purchased where there is an unmetered installed landscape irrigation system and subtract 5% from the total amount of water purchased for each unmetered swimming pool or laundry room. The provider shall provide the Commission and the Public Staff with a quarterly report (filed 45 days after the end of each quarter) documenting the common area metered usage, common area allocated usage, the total amount of water purchased, and the computation of the tenants' bills.

The provider shall furnish a water/sewer utility bill to the tenants which clearly states that the hot water capture, cold water allocation method of estimating the bill has been utilized and contains the following information for each monthly billing period:

1. Total amount of water purchased by the provider.
2. Total amount of water purchased less the metered and/or allocated common area usage (utilizing one of the methods above (a-d)).

3. Total amount of hot water measured for all tenants.
4. Amount of hot water measured for the individual tenant.
5. Amount of water the individual tenant is being billed.
6. Amount owed for the current billing period.
7. Beginning and ending dates for the billing period.
8. Past due date.
9. A local or toll-free telephone number and address that the tenant can use to obtain more information about the bill.

The provider shall not utilize a ratio utility billing system or other allocation billing system that does not rely on individually submetered hot water usage to determine the allocation of water and sewer usage.