



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

Advice Letter for Residential Apartment Owners

The following information is an advisory opinion from the Public Staff – North Carolina Utilities Commission. The Public Staff is the state agency charged with representing consumers in matters involving regulated utility activity.

This advice has been prepared in November 2010 and is subject to future changes in utility law or the rules of the North Carolina Utilities Commission.

The purpose of this advice is simply to provide guidance for residential apartment owners on how to avoid violation of utility law in North Carolina. Utility regulation may allow master metering or resale of utility service to tenants in other states. However, in North Carolina residential apartment landlords are prohibited from using master meters or reselling utility service based on tenant usage, with limited exceptions.

The bottom line is that the easiest and legally safest practice for residential apartment owners and managers is to allow the utility companies to meter and bill tenants directly. This keeps the apartment owner completely out of the utility process and avoids risk of regulatory violations.

I. General Rule

- a. Utility service is a highly regulated activity, and normally requires a “certificate” and approval of rates from the North Carolina Utilities Commission. A certificate gives the holder the exclusive right to provide utility service within a certain geographical area.
- b. A landlord who charges tenants for utility service as a separate item is likely to be deemed a “public utility” under state law, regardless of what the lease says.
- c. **It is in the best interest of landlords to avoid becoming a regulated utility.** Compliance with public utility law is a burdensome and costly task that requires specialized accounting knowledge, legal proceedings, payment of a regulatory

fee, posting of a bond for water and sewer service, and detailed annual reporting to the Utilities Commission.

- d. This applies especially to electric and natural gas service. It applies also to water and sewer service, but there is a “reseller” provision discussed below that makes it more feasible for some landlords to provide and charge for water and sewer service.
- e. Other utility-type services such as telephone, Internet, and cable television are not the subject of this Memo.
- f. Sections II and III below describe the most common ways for a landlord to assure that tenants have utility service without subjecting the landlord to regulation as a “public utility.”

II. Apartment Owners or Managers May Provide Water and/or Sewer Utility Service to Tenants, Without Becoming a regulated “Utility,” If:

- a. Water and/or sewer service is provided by a regulated utility company, and
- b. The utility account is in the landlord’s name (i.e., the utility shows the landlord as the customer), and
- c. The landlord recovers its utility costs as an undifferentiated part of the rent from tenants, and
- d. The landlord does not charge tenants, in rent or otherwise, according to the amount of utility service they use, and
- e. The landlord may not charge any other separate fees related to utility service (late payment fee, disconnection or reconnection fee, security deposit, etc.).
- f. The landlord may adjust rent in future years if revenues are insufficient in light of costs, including utility costs. It is permissible to set future rents to cover anticipated future costs (including utility costs) based on past experience. However, rent increases may not be a “true-up” for past utility usage. For example, Landlord with 100 apartment units finds he underestimated utility usage (or else the utility rates went up) and as a result falls \$60,000 short of projected revenues after Year 1. He may increase rent by \$50/month/unit in Year 2, with the goal of fully covering utility costs provided to the tenants in Year 2. He may not increase Year 2 rents to recoup losses on utility usage from Year 1 (that would be a “true-up” based on past metered usage).
- g. NOTE that the rent approach described above does not apply to electricity and natural gas usage. G.S. 143-151.42 prohibits master meters for residential apartments in North Carolina, and requires a separate meter for each unit, with the meters in the name of the tenants. Apartment owners may apply for exemption if they have a central system that conserves energy by design. There is an exception for motels, rooming houses, dormitories, nursing homes, homes for the elderly.

III. Landlords May Leave Utility Service to the Tenants and Utility Companies:

- a. Where each dwelling unit is metered, the lease may provide for tenants to arrange directly with the regulated utility companies for utility service to the tenants.
- b. The landlord may not charge any fees related to utility service (late payment fee, disconnection or reconnection fee, security deposit, etc.).

IV. Special Rules for Water and/or Sewer Resellers:

- a. Certain residential landlords may charge tenants for water and/or sewer use under a streamlined regulatory process.
- b. The process is based on the landlord charging no more than its cost of service from a public utility or municipality, plus a modest administrative fee.
- c. The landlord must still receive Utilities Commission approval to act as a “public utility” when reselling water or sewer service, must file certain information with the Commission, and must comply with Commission rules.
- d. Details are set out in Utilities Commission Rule R18 (see <http://www.ncuc.net/ncrules/Chapter18.pdf>). Further information may be obtained from the Public Staff Water Division (<http://www.pubstaff.commerce.state.nc.us/pswater/pswater.htm> or 919-733-5610).

V. Legal Authority

- a. Statutes of North Carolina
 - i. G.S. 62-3(23) broadly defines “public utility” as any person or entity that furnishes water, sewer service, electricity, piped gas, etc. to the public for compensation, with limited exceptions noted in G.S. 62-3(23)d.
 - ii. G.S. 62-110 requires public utilities to obtain a “certificate” from the Utilities Commission prior to constructing, operating, or acquiring ownership or control of a utility system or plant. In effect, it is illegal to distribute electricity, gas, water or sewer service to tenants for compensation without prior approval from the Commission.
 1. G.S. 62-110(g) allows a stream-lined process for resale of water and sewer utility service. See Part IV above.
 - iii. G.S. 62-133 sets forth the process by which the Utilities Commission sets rates for public utilities. G.S. 62-139 provides for refunds and possible penalties when a “public utility” charges unauthorized rates.

- iv. G.S. 62-310 and following statutes provide for additional penalties, and criminal sanctions in some circumstances, for violations of state utility law.
 - v. G.S. 143-151.42 prohibits master meters for electric and natural gas service to residential apartments in most cases and requires meters for each unit, with the service in the names of the tenants.
 - vi. This is a simplified summary of a few of the regulatory laws. There are numerous exceptions and nuances.
- b. Rules of the North Carolina Utilities Commission -- the Commission has detailed rules that govern the regulatory process within the statutory framework.
 - c. Tariffs or Contracts with Utility Companies -- utility customers, including landlords, are also bound by the terms of service from the public utility companies serving them.

VI. Resources for Additional Information

- a. The Apartment Association of North Carolina has excellent resources for landlords, including a Legal Handbook with model lease provisions that discuss utility terms. See <http://www.aanconline.org/>
- b. NC Utilities Commission website is at <http://www.ncuc.net/index.htm>
 - i. Link to state laws on utilities at http://www.ncleg.net/enactedlegislation/statutes/html/bychapter/chapter_62.html
 - ii. Link to rule of Utilities Commission at <http://www.ncuc.net/ncrules/rulstoc.htm>
- c. Public Staff Consumer Services is at <http://www.pubstaff.commerce.state.nc.us/pscons/pscser.htm> or 866-380-9816
- d. Public Staff Legal Division is at <http://www.pubstaff.commerce.state.nc.us/pslegal/pslegal.htm> or 919-733-6110