

PROJECT NO. 47302

AMENDMENTS TO 16 TAC § 24.121	§	PUBLIC UTILITY COMMISSION
AND ADDITION OF NEW § 24.126 TO	§	
IMPLEMENT LEGISLATION	§	OF TEXAS
REGARDING SUBMETERING AND	§	
ALLOCATED WATER AND SEWER	§	
UTILITY SERVICES - COMPLAINTS	§	
PROCESS AND RESTITUTION	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §24.121 AND NEW §24.126
AS APPROVED AT THE OCTOBER 26, 2017 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §24.121 and new §24.126 to implement legislation regarding submetering and allocated water and sewer utility services as well as establishing a complaints process and restitution. The proposed amendments and addition of a new section implement Senate Bill 873 (SB 873), 85th Texas Legislature, Regular Session. Project Number 47302 is assigned to this proceeding.

SB 873 amended Texas Water Code §13.501 (TWC) to add new definitions for the terms “condominium manager” and “utility costs,” and amended the existing definition of “owner.” In addition, SB 873 added new TWC §13.505(a) to define the term “overcharge.” The commission proposes the addition of new §24.121(c)(3) to define the term “condominium manager” and to renumber the definitions thereafter for consistency purposes. The commission also proposes the addition of new §24.121(c)(11) and (17) to define the terms “overcharge” and “utility costs,” respectively. To add clarity to the rules, the commission also adds new §24.121(c)(16) to define the term “undercharge.” In addition to these changes, the commission proposes reordering the definitions so that they are in alphabetical order.

SB 873 also amended TWC §13.503 to add new subsection (f), which specifies that the amendments do not limit the owner, operator or manager from billing or collecting for any amount unrelated to water or sewer submetering utility costs. Similarly, SB 873 amended TWC §13.5031 to add new subsection (b), which specifies that the amendments to TWC §13.5031 do not limit the owner, operator or manager from billing or collecting for any amount unrelated to water or sewer nonsubmetering utility costs. The commission proposes amending §24.121(b) to make this specification.

SB 873 made changes to TWC §13.505(b) to specify that the commission has exclusive jurisdiction under TWC Chapter 13 regarding submetering and allocated utility service. The commission proposes adding new §24.126(a) to make this specification.

In addition, SB 873 amended TWC §13.505(c) to establish a complaints and hearings process whereby a complainant can appear remotely for a hearing, and specified that the commission shall require the owner or manager to repay the complaining tenant the amount overcharged if the amount is determined to be valid. The commission proposes adding new §24.126(b) to implement this subsection.

Lastly, SB 873 amended TWC §13.505(d) to stipulate that any changes to TWC §13.505 do not limit or impair the commission's enforcement authority under TWC Subchapter K and specifies that the commission may assess an administrative penalty for a violation under this chapter. The commission proposes adding new §24.126(c) to implement this section.

Ms. Tammy Benter, Director, Water Utility Regulation Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Tammy Benter has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be to implement SB 873 and to ensure consistency and restitution in addressing complaints relating to the authority and liability of owners and managers of apartment homes, manufactured home rental communities, condominiums and multiple use facilities in charging tenants for submetered and allocated master metered water and sewer services. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

Tammy Benter has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under §2001.022 of the Administrative Procedure Act (APA), Tex. Gov't Code Ann. §2001.022 (West 2016).

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, Tex. Gov't Code Ann. §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on November 28, 2017.

The request for public hearing must be received by November 17, 2017.

Comments on the proposed amendments may be filed with the Commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed by §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 47302.

The amendments are proposed under TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: TWC §13.041(b)

§24.121. General Rules and Definitions.

- (a) (No change)
- (b) **Application.** The provisions of this subchapter 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. The provisions of this subchapter do not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to water and sewer utility service costs.
- (c) **Definitions.** The following words and terms, when used in this subchapter, have the ~~defined following~~ meanings, unless the context clearly indicates otherwise.
- (1)-(2) (No change.)
- (3) **Condominium manager**--A Condominium unit owners' association organized under Texas Property Code §82.101, or an incorporated or unincorporated entity comprising the council of owners under Chapter 81, Property Code. **Condominium Manager** and **Manager of a Condominium** have the same meaning.
- (4)(3) **Customer service charge**--A customer service charge is a rate that is not dependent on the amount of water used through the master meter.
- (5)(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.

~~(6)(5)~~ **Dwelling unit base charge**--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) (No change.)

~~(8)~~ **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.

~~(9)(8)~~ **Multiple use facility**--A commercial or industrial park, office complex, or marina with five or more units that are occupied primarily for nontransient use and are rented at intervals of one month or longer.

~~(10)(9)~~ **Occupant**--A tenant or other person authorized under a written agreement to occupy a dwelling.

~~(11)~~ **Overcharge**--The amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit after a violation occurred relating to the assessment of a portion of utility costs in excess of the amount the tenant would have been charged under this subchapter. **Overcharge** and **Overbilling** have the same meaning.

~~(12)(10)~~ **Owner**--The legal titleholder of an apartment house, a manufactured home rental community, or a multiple use facility; ~~and a condominium association; or~~ any individual, firm, or corporation expressly identified in the lease agreement

~~as that purports to be~~ the landlord of tenants in ~~thean~~ apartment house, manufactured home rental community, or multiple use facility. The term does not include the manager of an apartment home unless the manager is expressly identified as the landlord in the lease agreement.

(13)(44) **Point-of-use submeter**--A device located in a plumbing system to measure the amount of water used at a specific point of use, fixture, or appliance, including a sink, toilet, bathtub, or clothes washer.

(14)(42) **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; wastewater utility service based on submetered water utility service; water utility service measured by point-of-use submeters when all of the water used in a dwelling unit is measured and totaled; or wastewater utility service based on total water use as measured by point-of-use submeters.

(15)(43) **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.

(16) **Undercharge**--The amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit less than the amount the tenant would have been charged under this subchapter. **Undercharge** and **Underbilling** have the same meaning.

(17) **Utility costs**--Any amount charged to the owner by a retail public utility for water or wastewater service. **Utility Costs** and **Utility Service Costs** have the same meaning.

(18)(14) **Utility service**--For purposes of this subchapter, utility service includes only drinking water and wastewater.

§24.126. Complaint Jurisdiction.

- (a) **Jurisdiction.** The commission has exclusive jurisdiction for violations under this subchapter.
- (b) **Complaints.** If an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a commission rule regarding utility costs, the person claiming the violation may file a complaint with the commission and may appear remotely for a hearing.

This agency certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 30th DAY OF OCTOBER 2017 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**