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26-00034

April 21, 2026

Hon. David Jones, Chairman
c/o Ectory Lawless
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243

Electronically Filed in TPUC Docket
Room on April 21, 2026 at 1:00 p.m.

In Re: Petition of ISHA Foundation, Inc. for Declaratory Judgment

Dear Mr. Jones,

Please accept for filing the attached petition for a declaratory ruling. Enclosed is a filing fee.

Please call or email me if you have any questions.

Sincerely,



Henry Walker (B.P.R. 000272)
Bradley Arant Boult Cummings LLP
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Nashville, Tennessee 37203
(615) 252-2363
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**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE:)
)
PETITION OF ISHA FOUNDATION, INC.)
FOR DECLARATORY JUDGMENT) **DOCKET NO. 26- 00034**
)
)

PETITION OF ISHA FOUNDATION, INC. FOR DECLARATORY JUDGMENT

Pursuant to T.C.A. §65-2-104 and Rule 1220-01-02-.05, the ISHA Foundation, Inc. (“ISHA”) asks the Tennessee Public Utility Commission to issue a declaratory ruling that ISHA is not required to obtain a certificate of convenience and necessity (“CCN”) in order to provide water service at no charge to residential tenants living on the ISHA site and within the exclusive, water service area of the Warren County Utility District (“WCUD”). The Petitioner respectfully submits that the Commission has no authority over the provision of water service within WCUD’s service area unless the county executive has issued a ruling that the public need for water service requires another provider. No such ruling has been issued. Moreover, even if the county executive had issued such a ruling, ISHA will provide water to its tenants at no additional charge. Under the Commission’s rules and the agency’s longstanding practice regarding water utilities, the provision of water service by a landlord to a tenant is not classified as “public utility” unless the water is sold “for compensation,” ie., at a profit. For these reasons, ISHA asks the agency to grant the petition and declare that ISHA is not required to obtain a CCN.

STATEMENT OF FACTS

Located on a 17,000-acre site near McMinnville, Tennessee, ISHA is a nonprofit corporation that describes itself as a center for spiritual growth and the study of yoga and meditation. This is the

Petitioner's fourth request for a declaratory ruling from the Commission, and ISHA requests that the agency take judicial notice of the record in the three prior dockets which more fully describe ISHA's activities and services. See, In Re: Petition of ISHA Foundation, Inc. to Determine if a CCN is Needed, Docket No. 25-00018 (Initial Order issued May 30, 2025); In Re: Petition of Isha Foundation, Inc. to Determine if a CCN is Needed, Docket No. 24-00077, (Initial Order issued March 27, 2025); and In Re: Petition of Isha Foundation, Inc. to Determine if a CCN is Needed, Docket No. 22-00099 (Initial Order issued November 14, 2022).

As further described in the attached testimony and map (Exhibit A), ISHA intends to develop approximately 102 residential lots located on ISHA's property and lease each lot to an ISHA "member" who will either build a house on the property or lease a house built on the property by ISHA. Water and wastewater service will be provided each tenant at no additional charge. The water for this project will be drawn from wells located on the property, treated and provided to tenants through a distribution system owned and operated by ISHA subject to regulation by the Tennessee Department of Environment and Conservation ("TDEC"). No service will be provided to locations off site.

All of the proposed lots are located within the exclusive water service area of the Warren County Utility District. See Docket 25-00018, Exhibit D, letter from Anthony Pelham dated March 3, 2025. ISHA has made no request asking the relevant county executives to amend the district's exclusive service area or declare that the public need for potable water service requires an additional provider. WCUD has stated to counsel for ISHA that the district would oppose any such request.

ARGUMENT

A. The Commission has no jurisdiction over the provision of water service within the exclusive service area of the Warren County Utility District.

Tennessee law is clear. Where a utility district holds an exclusive franchise to operate a public water system, "no other person" shall provide water service ...in the area embraced by the district, unless and until it has been established" by the county executive that "the public convenience and

necessity requires other or additional services.” Town of Rogersville v. Mid Hawkins County Utility District, Tenn. Ct. App., 2003 Tenn. App., LEXIS 411 (June 2, 2003) at 3, quoting T.C.A. §7-82-301(a)(1). A copy of the case is attached. See Exhibit B. Unless and until such a finding is made, the Commission has no authority over the provision of water service within the utility district’s service area and no jurisdiction to issue a certificate of convenience and necessity to another provider. West Wilson Utility District v. Z.D. Atkins, 442 S.W.2d 612, 613-614 (Tenn., 1969), (holding that the Commission “exceeded its jurisdiction” in issuing “a certificate of convenience and necessity” to another provider “to operate a public water system” that is “within the designated geographic area” of a utility district.) See also, In Re: Petition of Superior Water Service, LLC et seq., Docket No, 17-00120 (Initial Order issued September 28, 2018), (holding that “based on well settled law in this area, the Commission lacks jurisdiction” to grant a certificate of convenience and necessity to the applicant within the service area of a utility district.)

In this case, there has been no finding by a county executive that the public need for water service in the geographic area served by the Warren County Utility District requires “other or additional services” by another water provider. Absent such a finding, the Commission has no jurisdiction over the provision of water service inside the exclusive service area of WCUD. The agency cannot require ISHA to obtain a certificate or issue a certificate to ISHA to provide water service. The agency simply has no statutory authority regarding ISHA’s provision of water service within WCUD’s service area. TDEC and the relevant county executives have that authority; the Commission does not.

B. The Commission does not regulate the provision of water service unless such service is provided “to or for the public for compensation.”

The agency’s rules regarding the provision of water service, Rules 1220-04-03 et seq., define a water “utility or public utility” as any corporation that “owns, operates, or manages any facility used for or in connection with the ... distributing or furnishing of water to or for the public for compensation within the state.” Rule 1220-04-03-.03(2). The “for compensation” language is also

included in the agency's definition of the provision of regulated wastewater service (Rule 1220-04-13-.02 (5)), but not in the definitions of a telephone utility, (1220-04-02-.03 (1)(t)), a gas utility, (1220-04-05-.03(1)(b)) or an electric utility, (1220-04-04-.03(1)(b)). One purpose---and perhaps the principal purpose---of the "for compensation" language in the water and wastewater rules is to exclude from the agency's regulation a landlord's provision of water and wastewater service to condominium owners and tenants in apartment buildings, public housing projects, shopping centers, trailer parks, marinas, campgrounds and similar facilities. As long as the landlord is not selling water to a tenant "for compensation," that is, at a profit over and above the landlord's wholesale cost of service and a reasonable administrative charge, the Commission does not classify the landlord as a "public utility." See Exhibit C, "Utility Submetering In Tennessee," prepared by the Staff of the Tennessee Regulatory Authority, January, 2000 (concluding, at 24-25, that the distribution and submetering of water service provided by a landlord to tenants is not a "public utility" service under Tennessee statutes and case law). Otherwise, every apartment or condominium building in Tennessee that purchases water or wastewater service for its occupants through a master meter would be under the agency's jurisdiction. To counsel's knowledge, all other state utility commissions similarly exclude such facilities from regulation.

As previously explained, the Commission has no authority over the provision of water service within WCUD's exclusive service area. Even if a county mayor had found that the public need required an additional provider of water service, ISHA's proposal to provide water solely to residential tenants without "compensation" would not be considered the provision of regulated "public utility" water service under the agency's rules and longstanding practice. The Commission would no more require ISHA to obtain a CCN, file tariffs, pay inspection fees and file quarterly and annual financial reports than it would impose such requirements on thousands of other landlords in the state.

CONCLUSION

For these reasons, ISHA respectfully asks that the Commission issue a declaratory ruling stating that ISHA is not required to obtain a certificate of convenience and necessity in order to provide water service to the 102 residential tenants as described herein.¹

Respectfully submitted,



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¹ ISHA made a similar request in Docket 25-00018, but counsel for the Petitioner failed to bring to the agency's attention either that the Commission has no jurisdiction over the provision of water service inside the exclusive service area of WCUD or that the agency's rules state that a regulated water utility is one that provides service to the public "for compensation." The Initial Order issued in that case did not address either issue. Moreover, the limited record in that docket may have led the Hearing Officer to mistakenly believe that WCUD, because of capacity concerns, did not object to the issuance of a CCN to ISHA. As noted above, WCUD has otherwise informed counsel for ISHA.

EXHIBIT A

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE:)
)
PETITION OF ISHA FOUNDATION, INC.)
FOR DECLARATORY JUDGMENT) **DOCKET NO. 26-_____**
)
)

PRE-FILED TESTIMONY OF DR. USHA DOSHI

- Q1. What is your name and business address?
- A. My name is Dr. Usha Doshi. My business address is 951 Isha LN, McMinnville, TN 37110.
- Q2. What is your relationship to Isha Foundation, Inc.
- A. I am the President of Isha Foundation, Inc. (“Isha”).
- Q3. What is the purpose of your testimony?
- A. The purpose of my testimony is to support ISHA’s petition to the Commission seeking a declaratory ruling that ISHA is not required to obtain a certificate of convenience and necessity to provide water service at no charge to residential tenants located on the ISHA site and within the exclusive water service area of the Warren County Utility District.
- Q4. Please state your educational and professional background.
- A I am a Bachelor of Medicine and Bachelor of Surgery, with a Diploma in Child Health and a Doctor of Medicine in Pediatrics, specializing in the care and treatment of infants, children, and adolescents.
- Q5. How long has Isha Foundation, Inc. been in existence?
- A. Isha has been in existence since November 23, 1998.
- Q6. What is the purpose of Isha Foundation, Inc.?
- A. Isha is an internationally recognized non-profit 501kc)(3) charitable organization registered in the State of Tennessee whose primary mission is to improve the

physical, mental and spiritual well-being of all individuals regardless of religion, race, creed, age or gender. Established over thirty-five years ago, today Isha is run by 11 million volunteers in more than 300 city centers across the world. At the core of the Isha's activities is a customized system of physical exercises and meditations called Isha Yoga which distills powerful yogic methods for young and old alike, creating peak physical, mental and spiritual well-being. Isha also implements several large-scale human service projects to support individual growth, revitalize the human spirit, rebuild communities, and restore the environment. Isha's numerous charitable activities and community outreach have gained international accolades and have been recognized by the United Nations and governments throughout the world.

Q7. Please describe the proposed project to be located at 951 Isha Lane.

A. The project features approximately 102 single family lots in a new zone called "Isha Yogi Golf," providing accommodation for members under 99-year lease agreements. Attached to my testimony is a map of the development showing each of the proposed lots. The project will be owned and operated by the Isha Foundation. The purpose of the Project is to accommodate anticipated growth and provide additional accommodations for the members of the Institute.

Q8. Is the information in the petition correct to the best of your knowledge?

A. Yes.

Q9. Will the water provided by ISHA to the tenants of ISHA Golf be provided as a public utility service ?

A. No. The water will be provided to tenants at no additional charge and not as a public utility service. If ISHA later considers providing public utility services, ISHA will notify the Commission.

Q10. Who will own, operate, and maintain the distribution of water to the tenants?

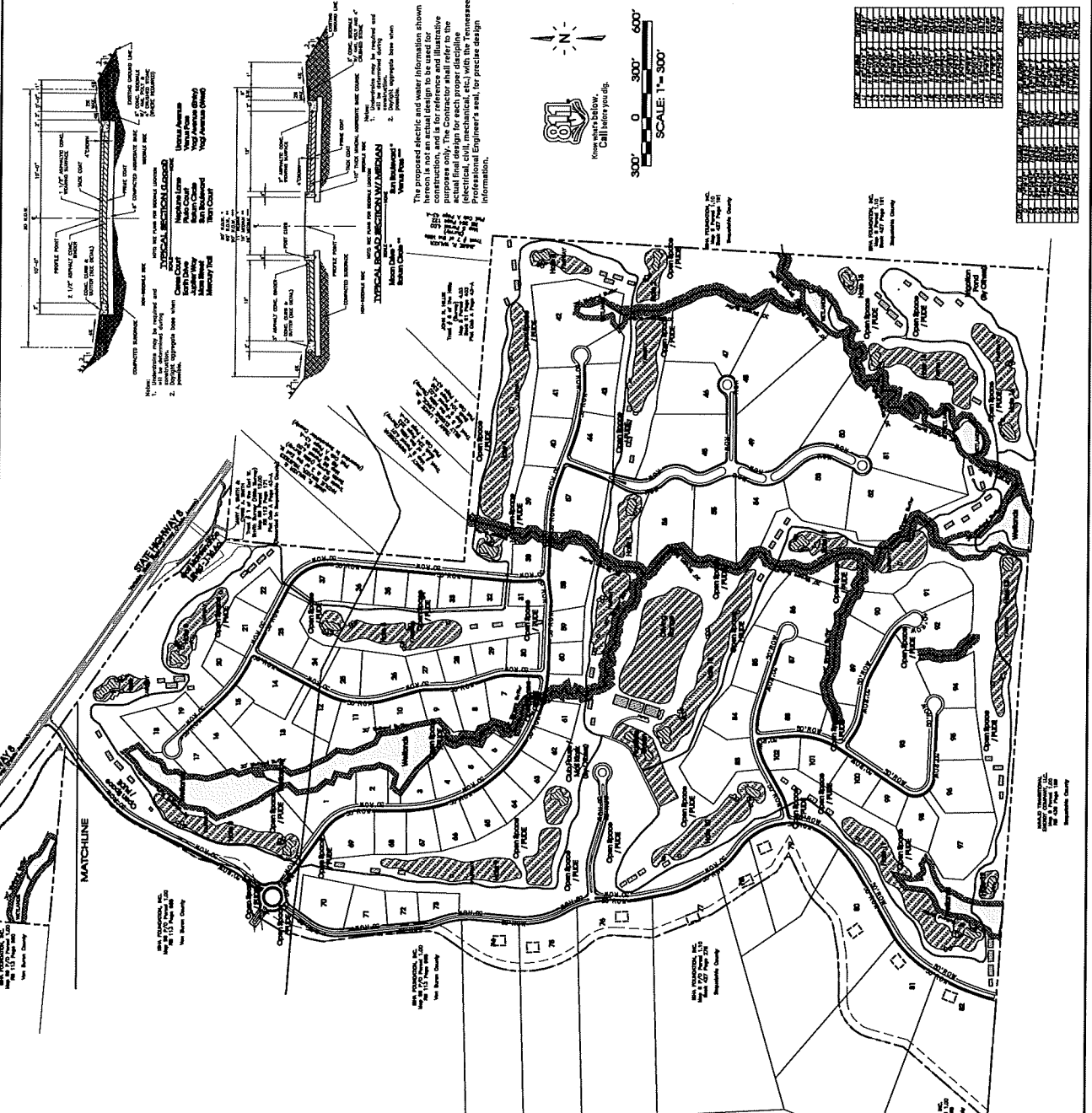
A. The system will be owned by ISHA. Water will be drawn from wells on the site, treated and distributed to tenants in the ISHA Golf development in accordance with the regulations of the Tennessee Department of Environment and Conservation.

Q11. Are you sponsoring any exhibits other than this testimony?

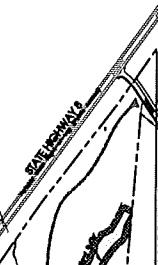
A. Yes. I am sponsoring the map of the proposed development that is attached to my testimony.

Q12. Does this complete your testimony?

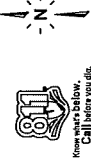
A. Yes, and I am ready to provide any additional information the Commission may need in making its decision.



Lot Number	Lot Area, S.F.	Frontage, L.F.	Lot Number	Lot Area, S.F.	Frontage, L.F.	Lot Number	Lot Area, S.F.	Frontage, L.F.	Lot Number	Lot Area, S.F.	Frontage, L.F.
1	22,895	116	87	19,543	24	93	27,115	105	101	22,895	116
2	22,895	116	88	19,543	24	94	27,115	105	102	22,895	116
3	22,895	116	89	19,543	24	95	27,115	105	103	22,895	116
4	22,895	116	90	19,543	24	96	27,115	105	104	22,895	116
5	22,895	116	91	19,543	24	97	27,115	105	105	22,895	116
6	22,895	116	92	19,543	24	98	27,115	105	106	22,895	116
7	22,895	116	93	19,543	24	99	27,115	105	107	22,895	116
8	22,895	116	94	19,543	24	100	27,115	105	108	22,895	116
9	22,895	116	95	19,543	24	101	27,115	105	109	22,895	116
10	22,895	116	96	19,543	24	102	27,115	105	110	22,895	116
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12	22,895	116	98	19,543	24	104	27,115	105	112	22,895	116
13	22,895	116	99	19,543	24	105	27,115	105	113	22,895	116
14	22,895	116	100	19,543	24	106	27,115	105	114	22,895	116
15	22,895	116	101	19,543	24	107	27,115	105	115	22,895	116
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59	22,895	116	145	19,543	24	151	27,115	105	159	22,895	116
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94	22,895	116	180	19,543	24	186	27,115	105	194	22,895	116
95	22,895	116	181	19,543	24	187	27,115	105	195	22,895	116
96	22,895	116	182	19,543	24	188	27,115	105	196	22,895	116
97	22,895	116	183	19,543	24	189	27,115	105	197	22,895	116
98	22,895	116	184	19,543	24	190	27,115	105	198	22,895	116
99	22,895	116	185	19,543	24	191	27,115	105	199	22,895	116
100	22,895	116	186	19,543	24	192	27,115	105	200	22,895	116



The proposed electric and water information shown is for informational purposes only. The Contractor shall refer to the actual final design for each proper discipline. Professional Engineer's seal, for practice design.



Know what's below.
 Call before you dig.

ALL INFORMATION IS FOR INFORMATIONAL PURPOSES ONLY. THE CONTRACTOR SHALL REFER TO THE ACTUAL FINAL DESIGN FOR EACH PROPER DISCIPLINE. PROFESSIONAL ENGINEER'S SEAL, FOR PRACTICE DESIGN.

Usha Doshi

Dr. Usha Doshi

STATE OF Tennessee)

COUNTY OF Warren)

PERSONALLY APPEARED BEFORE ME, SARAH URBANCZIK, a Notary Public with authority to act in the State and County aforesaid, WARREN, TN, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the within instrument for the purposes therein contained.

WITNESS MY HAND, at office, this 20th day of APRIL, 2026.

Sarah Urbanczik

Notary Public

My Commission Expires: 12-18-2027

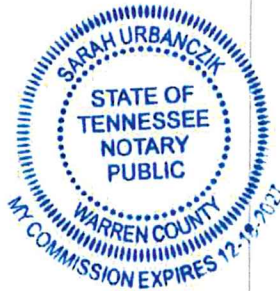


EXHIBIT B

2 of 2 DOCUMENTS

**TOWN OF ROGERSVILLE, ex rel ROGERSVILLE WATER COMMISSION v.
MID HAWKINS COUNTY UTILITY DISTRICT**

No. E2002-01727-COA-R3-CV

COURT OF APPEALS OF TENNESSEE, AT KNOXVILLE

2003 Tenn. App. LEXIS 411

April 1, 2003, Session

June 2, 2003, Filed

PRIOR HISTORY: [*1] Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Vacated and Remanded. Direct Appeal from the Circuit Court for Hawkins County. No. 10741. Hon. John K. Wilson, Circuit Judge.

DISPOSITION: Vacated and remanded.

LexisNexis (TM) HEADNOTES - Core Concepts:

COUNSEL: Douglas T. Jenkins, Rogersville, Tennessee, for Appellant.

William E. Phillips, Rogersville, Tennessee, for Appellees.

Donald L. Scholes, Nashville, Tennessee, Amicus Curiae, for Tennessee Association of Utility Districts.

JUDGES: HERSCHEL PICKENS FRANKS, J. delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

OPINIONBY: HERSCHEL PICKENS FRANKS

OPINION:

Petition to alter Respondent Utility's boundary was sustained by County Executive and Trial Court. On appeal, we vacate and remand with instructions.

The Town of Rogersville, *ex rel* Rogersville Water Commission ("Town"), petitioned the County Executive to "modify the utility district boundaries of the

mid-Hawkins County Utility District" ("MHUD") and "to assume operation and control within said area and to provide water utility services in said area". The area in MHUD's utility district, known as Stanley Valley, has approximately [*2] 160 families not having water presently supplied to their residences by MHUD, and this is the area sought to be carved out from the district by the town.

After hearing evidence, the County Executive held:

Without question, at least 160 families in Stanley Valley have exhausted almost every remedy in an effort to obtain service. The need is as evident as the desire, therefore, I must decide which utility district can and will provide this service.

The County Executive found that the town presented "uncontradicted evidence of the financial ability (through loans, bonds or available funds)" to immediately begin construction to provide the service, and he found that "a time schedule for the beginning and completion [of such service] was not provided by MHUD and only a tentative intent to serve the area and if funds were available".

The County Executive ordered:

that the area described in the Petitioner's Petition is awarded to Rogersville Water Commission, and that the Petition to Modify is sustained and that the utility district lines shall be redrawn as requested by Petition

The County Executive purported to act under the authority of *Tenn. Code Ann. § 7-82-202(b)* [*3] . MHUD has appealed, insisting that the County Executive acted contrary to law.

The County Executive's action is appealable to the Circuit Court, as the action of an administrative body is subject to the procedures contained in the Uniform Administrative Procedures Act. *Pace v. Garbage Disposal Dist. of Washington County*, 54 Tenn. App. 263, 390 S.W.2d 461 (Tenn. Ct. App. 1965). The UAPA specifies that the standard of review of such actions is "substantial and material evidence." *Tenn. Code Ann. § 4-5-322(h)*. n1

n1 *Tenn. Code Ann. § 4-5-322(h)* provides that agency decisions are reversed or modified upon review only if its findings, inferences, conclusions or decisions are:

"(1) in violation of constitutional or statutory provisions;

(2) in excess of the statutory authority of the agency;

(3) made upon unlawful procedure;

(4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5) unsupported by evidence which is both substantial and material in light of the entire record."

[*4]

The Town and the County Executive cite *Tenn. Code Ann. § 7-82-201* as authority for proceedings to modify a utility district, but this application is misplaced. The statute by its terms addresses only the creation of a utility district and the proceedings thereto. *Tenn. Code Ann. § 7-82-202(b)* does not authorize a county executive to modify or change the existing boundaries of an existing utility district. Indeed, the factors set forth in the statute are factors to be used in determining whether the public convenience and necessity requires the original creation of a utility district. *Consolidated Gray-Fordtown-Colonial Heights Util. Dist. Of Washington & Sullivan Counties, Tennessee. v. O'Neill*, 209 Tenn. 342, 354 S.W.2d 63 (Tenn. 1963). The County Executive erroneously used the factors set forth in *Tenn. Code Ann. § 7-82-202(b)* to determine that the district boundaries should be modified, and his order modifying the utility district's boundaries is vacated in that he acted "in excess of the statutory authority of the agency". *Tenn. Code Ann. § 4-5-322(h)(2)* [*5]. Only the General Assembly can change the boundaries of a utility district which has been created under the Utility District Law. *Tenn. Code Ann. § 7-82-101 et seq.*

Since the parties stipulated that the mentioned residents in the utility district have a need for a reliable potable water source, these residents have standing to maintain this action, and the statutory authority for seeking relief in an existing district is *Tenn. Code Ann. § 7-82-301(a)*, which requires the county executive to find that the public convenience or necessity requires additional or other services:

From and after the making and filing of such order of incorporation, the district so incorporated shall be a "municipality" or public corporation in perpetuity. . . . So long as the district continues to furnish any of the services which it is herein authorized to furnish, it shall be the sole public corporation empowered to furnish such services in the district, and no other person, firm or corporation shall furnish or attempt to furnish any of the services in the area embraced by the district, unless and until it has been established that *the public* [*6] *convenience and necessity requires other or additional services*; . . .

Tenn. Code Ann. § 7-82-301(a)(1). (Emphasis supplied).

Where a utility district holds an exclusive franchise to construct and operate a public water system pursuant to § 301(a), the procedure to modify the franchise is a petition to the county executive of the county which originally incorporated the utility district. *West Wilson Utility District of Wilson County v. Atkins*, 223 Tenn. 74, 442 S.W.2d 612 (Tenn. 1969); *City of Crossville v. Middle Tenn. Util. Dist.*, 208 Tenn. 268, 345 S.W.2d 865 (Tenn. 1962). Moreover, the sole remedy available to parties dissatisfied with a utility's service is to modify a utility district's exclusive franchise. *Id.*; *Chandler Inv. Co. v. Whitehaven Dist.*, 44 Tenn. App. 1, 311 S.W.2d 603 (Tenn. Ct. App. 1957). As the Supreme Court explained in *Consolidated Gray-Fordtown-Colonial Heights Util. Dist. V. O'Neill*:

They have the right to petition the County Court if the services are not being rendered and to show this to the county Court, then the County Court has the right to take such action [*7] as it deems necessary under the facts. Of course, the County Court in doing so will take into consideration all the facts and determine whether or not the district has been, or is, making a reasonable effort under the circumstances to furnish the citizens of the complaining districts with the utilities this utility district is allowed to furnish under the Acts, in question.

Tenn. Code Ann. § 7-82-301(a) provides that the county court must find that "public convenience and necessity requires other or additional services[.]" It does not say that the public convenience and necessity results in re-drawing the boundaries of the district. *See also, Tenn.*

Atty. Gen. Op., 2002 WL 31398958 (October 7, 2002). It is clear that no court can reduce or increase the territory of a utility district; where the Legislature has fixed the boundaries of a utility district. The County Executive and Circuit Court erred in ordering that the parties' respective boundaries be redrawn.

In *Pace v. Garbage Disposal District of Washington County*, 54 Tenn. App. 263, 390 S.W.2d 461 (Tenn. Ct. App. 1965), this Court said:

Although not spelled [*8] out in the Act, we think it is also to be borne in mind that the predominant consideration in cases of this kind is the need of the people to be served by the utility over the entire territory embraced by the District rather than the desires of the contending parties. n2

n2 The County Executive in arriving at his decisions, essentially did a comparative analysis between the parties as to who could best serve the area. This was not appropriate. *Chandler Inv. Co. v. Whitehaven Util. Dist.*, 44 Tenn. App. 1, 311 S.W.2d 603 (1957).

As we have noted, the need was stipulated, and upon remand to the County Executive, the County Executive is directed to determine whether the utility district refuses or is not able to provide the utility service in the area of Stanley Valley. Once either factual determination has been made, the County Executive is empowered under 7-82-301(a) to find that "public convenience and necessity requires other and additional services."

MHUD also argues that the County Executive [*9] impermissibly "trumped" federal law in his holding. 7 U.S.C. § 1926(b) provides that rural water associations receiving federal funds are protected from encroachment by surrounding municipalities:

The service by or made available through any such association shall not be curtailed or limited by the inclusion of the area within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of said loan; nor shall the happening of such event be the basis of requiring such association to secure any franchise, license or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

The purpose of the this statute is two-fold: to encourage rural water development by expanding the number of potential users, resulting in a lower cost per user; and to safeguard the viability and financial security of

associations and of FmHA [now USDA Rural Development] loans, and to protect both from the expansion of nearby towns and cities. *Scioto County Reg. Water Dist. v. Scioto Water, Inc.*, 103 F.3d 38 (6th Cir. 1994); [*10] *City of Madison, Miss. v. Bear Creek Water Ass'n, Inc.*, 816 F.2d 1057 (5th Cir. 1987), citing, S. Rep. No. 566, 87th Cong., 1st Sess., reprinted in 1961 U.S. Code Cong. & Admin. News 2243, 2309.

Doubts regarding whether a water association is entitled to protection from competition under this statute should be resolved in favor of the party receiving federal monies. *Wayne v. Village of Sebring*, 36 F.3d 517, 528 (6th Cir. 1994).

Section 1926(b) is invoked whenever three criteria are met: (1) the entity seeking protection is a rural water association within the meaning of the Act; (2) the rural water association has a FmHA (now RECDS) loan obligation; and (3) the rural water association provides or makes service available to the geographical area in question. *Lexington-South Elkhorn Water Dist. v. City of Wilmore, Ky.*, 93 F.3d 230, 234 (6th Cir. 1996). Elements (1) and (2) are not disputed in this appeal.

The Sixth Circuit Court of Appeals noted that a "key factor" in determining whether water service had been made available was the proximity of the water district's distribution lines to the areas in dispute, as well as [*11] whether service was actually and actively being provided by the water district. The Court reviewed the decisions of other circuits addressing the issue and adopted what has come to be known as the "pipes in the ground" or "physical ability test:"

. . . Whether an association has made service available is determined based on the existence of facilities on, or in the proximity of, the location to be served. If an association does not already have service in existence, water lines must either be within or adjacent to the property claimed to be protected by *Section 1926(b)* prior to the time an allegedly encroaching association begins providing service in order to be eligible for *Section 1926(b)* protection.

Lexington-South, 93 F.3d at 237. The cases demonstrate that integral to the concept of making service available is the *capability* of providing service, or, at a minimum, of providing the service *within a reasonable time*. *Bell Arthur*, 173 F.3d 517, 526. Timeliness and capability are also important components of the "pipes in the ground" standard. Of course the reasonableness of timeliness, adequacy of water service to be provided, capability, [*12] and whether a district requires a greater level of water service than the utility can meet, are all questions of fact within the exclusive province of the state and local regulatory agencies. *North Shelby Water Co., v.*

Shelbyville Municipal Water and Sewer Comm., 803 F. Supp. 15 (Ky. 1992). .

The federal statute protects the utility from encroachment so long as all the criteria are met. If a determination by the appropriate authority is made that the public convenience and necessity requires other or additional services, such a finding would of course negate the third criteria set forth in *Lexington-South Elkhorn Water Dist.*

For the foregoing reasons, the Judgment of the Circuit Court and the findings of the County Executive are vacated and the cause is remanded to the County Executive for further proceedings consistent with this Opinion.

The costs of the appeal are assessed to the Town of Rogersville, ex rel Rogersville Water Commission.

HERSCHEL PICKENS FRANKS, J.



UTILITY SUBMETERING IN TENNESSEE

PREPARED BY
THE STAFF OF THE

Tennessee Regulatory Authority

January 2000

TABLE OF CONTENTS

	PAGE
Introduction.....	3
Chapter 1 Water Submetering: What is it?.....	4
Introduction	4
Why Is Submetering Growing?.....	5
Submetering: How Is It Done?	7
Current Water Quality Regulations	9
Analysis of Complaints.....	9
How Other States are Dealing with Utility Submetering	12
Conclusion For Chapter 1.....	13
Chapter 2 Economic Analysis of Submetering.....	15
Introduction	15
Reasons For Regulation	15
The Submetering Issue.....	16
Lease and Contract Evidence	18
Costs and Benefits of Regulating Submetering.....	19
Conclusion For Chapter 2.....	20
Chapter 3 Jurisdictional Issues: A Legal Analysis	21
Discussion	21
Conclusion For Chapter 3.....	24
Chapter 4 Regulation of Submetering.....	26
Chapter 5 Conclusion	31

Appendices

SUBMETERING REPORT

INTRODUCTION

During the First Session of the 101st General Assembly, legislation was passed creating a special legislative study committee to explore issues relative to the practices of utility submetering.¹ Utility submetering is a growing practice among owners of apartments and mobile home parks not only in Tennessee but also across the nation. This Report, prepared by the Tennessee Regulatory Authority ("TRA"), is intended to assist the legislature in its deliberation of this issue. The TRA stands ready to provide any assistance to the General Assembly as it explores utility submetering in the state.

The practice of water submetering has attracted much attention in Tennessee, as well as in other states. Recently, much has been reported in *The Tennessean* regarding the submetering of water service provided to residents of apartments in Nashville. Additionally, a class action lawsuit was filed in Davidson County Chancery Court objecting to the practices of a submetering company. Consumer frustration and confusion over submetering has also been registered with the TRA. Over the past eight (8) months, the Tennessee Regulatory Authority ("TRA") has received eleven (11) consumer complaints regarding either billing or service aspects of this new industry.

The TRA's analysis reveals that the practice of submetering is likely to grow in Tennessee as it is growing in other states. In addition to the General Assembly exploring this issue, at least one local government has also shown interest in examining this new practice. On June 15, 1999, an ordinance (99-1766) was filed with the Davidson County Metro Council to address submetering. The Ordinance is attached as Appendix B. This ordinance passed on its first reading, but was later withdrawn by its sponsors on August 17, 1999.

This report is intended to provide background information and policy options to the legislature on submetering. The following chapters will explore: (1) what is submetering? (2) does the TRA have legal jurisdiction over this new industry? (3) should there be regulation of submetering? (4) how could the state regulate submetering? and what are the public policy options for this new industry?

¹ Public Chapter 532 of 1999. (Attached as Appendix A)

CHAPTER 1 WATER SUBMETERING: WHAT IS IT?

INTRODUCTION

Traditionally, residents of multiple family dwellings have paid for their water and sewer services through their rent payments. This was due primarily to the high cost of individually metering each apartment. In these situations, water service was supplied through a master meter arrangement. Under this arrangement, the suppliers of the utility service provide one meter and one bill to the apartment owner. It is then the responsibility of the apartment owner to supply the utility service to each apartment. Some water utilities sell water through master meters at a cheaper rate than the regular residential rate.² Thus, historically the amount paid by apartment residents for water and sewer service did not necessarily bear a direct relationship to actual usage. The water costs were included in rent.

Across the nation, apartment owners are taking a new approach with regard to supplying water and sewer services to their tenants. This approach attempts to separate the cost of utility services from the rent fees. Under this approach, apartment residents typically begin receiving a separate bill from either the apartment owner or the owner's agent for their utility services. In several of the situations we reviewed, the lease agreements are revised prior to the separate billing for the utility services.

The practice of reselling water and sewer services at apartment buildings has arrived in Tennessee. The Water Supply Division of the Tennessee Department of Environment and Conservation (hereafter "Division of Water Supply") has a list of 129 properties that utilize submetering.³ These 129 apartments represent 59,137 family dwellings. But, this appears to be only the tip of the iceberg of candidates for the practice of submetering. Most certainly, newly constructed multiple family housing developments are likely to install submetering systems. For example, the most recent statistics obtained from the Tennessee Housing Development Agency⁴

² For example, according to Nashville Metro Water, its rate per cubic foot of water is \$2.68 for residential customers compared to \$2.18 for intermediate commercial and industrial customers. Many large apartment complexes could qualify for the latter classification.

³ Tennessee Department of Conservation and Environment Submetering list. (Attached as Appendix C)

⁴ Tennessee Housing and Development Agency Housing Stock Estimate for Tennessee Counties.

estimates a total of 2,192,305 multiple family and mobile home units exist in the state for the year ending 1998.

Many apartment communities and third party firms are actively involved in the installation of various electronic submetering systems. This report will describe the systems used for the submetering of water. Several companies have discovered this niche and are actively marketing submetering services. These companies are compensated through either higher usage charges or administrative fees. There is no publicly available information on the level of compensation these companies actually receive from submetering. But, one company we have discovered charges a monthly \$5.00 administrative fee per bill, plus a 10% mark-up on the usage charge. In this situation, the apartment resident is paying a higher rate for water than if received directly from the water distributor. The cost of installing devices to submeter water service is estimated to range from \$125 to \$250 per dwelling. Technically, these devices range in complexity from a simple mechanical water meter, much like what utilities use to meter residential service, to more elaborate devices that allow for remote electronic reading capability. Once the meters are installed, lease agreements are usually modified to include a provision for water service charges, however this is not always the case. Based on the complaints we have received on this subject, consumers are confused about their water charges. At the present time, no regulations exist to control the charge per cubic foot of water or what additional administrative charges submetering firms or landlords can assess.

WHY IS SUBMETERING GROWING?

Presumably, owners of multiple dwellings are constantly searching for ways to lower operating costs and improve their "bottom line." This has led building owners to explore ways to cut utility costs. Most apartments are already equipped with individualized meters for electric and gas service, so water is the logical next step. In some areas water costs are increasing, which provides an additional impetus for these owners to explore ways to lower operating costs. This is even more acute when the cost of sewer service is tied to the water usage, as it is in Chattanooga. Submetering, in this case, not only allows the apartment owner to divert the cost of water to the end-user (tenant), but the cost of sewer service as well.

This report has identified three (3) possible factors that may motivate owners of multiple family dwellings to install utility submetering systems. These factors are described below.

Maintenance Tool

Many apartment facilities are utilizing water submetering as a tool to promote conservation and eliminate the waste associated with leaking and dripping faucets and running toilets in individual apartments, which are not being reported for maintenance. There is more of an incentive to conserve water, or any natural resource, when cost is based on usage. If installed properly, submetering can help conserve water resources. According to American Water and Energy Savers, Inc. submetering can reduce water consumption by as much as 20%. One apartment manager has informed the TRA that since installing water submeters the number of reported plumbing problems from tenants, such as leaking faucets, has increased. According to the Tennessee Water Division, leaking or "running" toilets are the greatest source for wasted water.

Marketing Tool

Removal of utility cost from rent could allow the property owner to either lower or maintain their current rent schedule. Advertising the rent cost minus water expense could sway a potential renter when comparing rent cost for apartments that include water expenses in the rent. This would be an effective marketing tool, however, only if the potential tenant did not know or failed to calculate the added cost resulting for utility submetering. While we are unaware of an apartment owner reducing the rent after installing submetering, it is possible, though not documented, that removing water and sewer costs from rent could also limit future increases.

Economic Tool

Over the past twenty-five (25) years the number of apartment communities have grown considerably throughout the state. In the past, the cost of water has been relatively insignificant and was bundled as part of the apartment rent. Many different issues have driven up the cost to supply water for the distributor, which is eventually passed along to the end user. Recognizing the added expense, apartment owners have turned supplying water to tenants from a previously uncontrollable expense to a new source of revenue. Still, the up-front expense of installing the

submeters and the on-going administrative costs of reselling water, including meter reading and billing services, served as a deterrent for landowners. New companies have seized this opportunity. Water resale companies will provide all these services and even provide financing. Many of these companies are marketing their services to the properties not only as a method to produce substantial savings in operating expenses, but as a way to enhance the marketable value of their property as well.⁵ Monthly administration fees, minimum usage fees, late fees, interest, and reconnect charges make up part of the potential revenue.

Chapter 2 will further discuss the motivations for submetering at multiple dwellings.

SUBMETERING: HOW IS IT DONE?

There appear to be four (4) major methods of water and sewer submetering that fall into two broad types. The two major types are defined as:

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. In these cases, individual dwelling units are individually metered and tenants are billed based on their actual usage. This method is the fairest and most equitable way of billing customers; and

Allocated utility service – Water utility service that is master metered for the owner by a retail public utility and allocated to tenants by the owner using a formula. In these cases, individual dwelling units are allocated a share of the total bill. This method is the most subjective way of distributing water and wastewater cost to tenants.

The method chosen often depends upon the design of the water supply system for the particular residential community. In each of the methods described below, water and sewer service is being resold to end-users.

⁵ Ibid., page 1.

System Submetering (Submetering)

A meter is placed on the main water supply line serving the dwelling. This method measures all water consumed in the dwelling. This is the most accurate method of determining the actual usage for that dwelling. This method may not be feasible in some older apartment complexes due to how water is supplied.

Hot Water Submetering (Submetering and Allocation)

A meter is placed on either the inlet or outlet side of the hot water tank supplying each apartment. This approach only measures the hot water consumed in the apartment. The total water bill rendered to each apartment is extrapolated from the hot water usage. This is the most common method of submetering because of the ease of access to apartment dwellings hot water systems. The design of inbound water sources forces many complexes to use this approach. While this approach is less reliable for calculating the total water used by each apartment, it can still provide some incentive for the tenant to conserve water. For example, cold water loss from leaking faucets and toilets will not be registered using this submetering system.

Comparative Size Billing (Allocation)

This method determines the end-user's water bill by the characteristics of the dwelling. The amount of the water bill is dependent upon external factors such as the number of bedrooms, baths, or plumbing fixtures rather than usage. Compared to the previous submetering systems, this method appears to provide even less incentive for the end-user to conserve water. This method is commonly referred to as Resident Utility Billing System ("RUBS").

Communal Fee (Allocation)

The end-user is billed a percentage of the complex's water bill, based entirely upon the number of units with no consideration given to usage. For example, if there are 10 apartments and the water bill is \$100, each apartment would be billed \$10. The communal method is more commonly found in modular home communities. This method is the least usage sensitive and provides little or no incentive to conserve water than all the methods described above.

CURRENT WATER QUALITY REGULATIONS

The Division of Water Supply has water quality jurisdiction over all public water systems in the state. A water system is defined as any system that has at least 15 service connections or provides service for 60 days out of a year to an average of at least 25 individuals.⁶ The only exemptions to this definition are for those systems that (1) consist only of distribution and storage facilities, (2) obtain all their water from a public water system that does not own or operate the system, and (3) do not sell water.⁷ The Division of Water Supply has found that submetering companies fall under their jurisdiction for water quality only.

The Division of Water Supply is actively compiling a list of all known public water systems that serve apartment communities, mobile home parks and condominiums that are reselling water. Appendix C to this report is a copy of this list for submetering entities operating in Middle Tennessee. These water sources, according to the Division of Water Supply, are required to be in compliance with state and federal water quality guidelines, which include having a water system operator which regularly conducts bacterial sampling to ensure water quality standards. In addition, each system is required to have an emergency water provision plan. At the present time, if a call is received from a consumer regarding the quality of water and/or the safety of a particular community, an investigation is opened and an on-site visit to the property is initiated in order to ensure compliance. If the nature of the call is billing and/or cost related, it is referred to the TRA.

ANALYSIS OF COMPLAINTS

The TRA has received eleven (11) complaints regarding submetering. On a few of the cases, TRA staff has contacted the property owner in an effort to learn more about this practice. Below is a summary of the complaints.

- A resident of an apartment building in Nashville states that she is confused over billing. Her confusion concerns late charges and calculations regarding the amount of water metered compared to the amount charged. She believes she is being overcharged for water. She also states that it is difficult to get information about her water bill.

⁶ Rule 1200-5-1-.03

⁷ Ibid.

- A resident of a modular home park in Bean Station, Tennessee, complains about the steep increase in her water bill. From January to February her water bill increased from \$13.05 to \$33.05. She claims no significant change in consumption occurred during this time.
- A single resident at the same modular park in Bean Station. This person is concerned about the sharp increase in water costs.
- A resident in an apartment building in Nashville is concerned about the separate monthly charge for meter reading being applied to her bill and the large increase in her water bill after her complex changed billing companies. The increase in her water bill occurred despite her attempts to conserve water.
- A resident of an apartment complex on Bell Road in Nashville states that her bill is constantly increasing each month. She is also concerned that certain residents do not pay for water. She believes that she is subsidizing other residents' water.
- Another citizen states he has been unable to match meter readings with his water bills. He also says that he has had very little cooperation from his landlord in getting his concerns resolved. He believes he is being overcharged for water.
- Another resident states that her bill does not represent her usage and the bill she receives is similar to other tenants with two (2) persons residing in a unit.
- A resident of a mobile home park filed a complaint regarding a bill she received representing usage of 11,000 gallons of water for the month of April. She has indicated in her complaint that she was gone 13 days of the month and her home has no apparent leaks. She believes she is being overcharged.
- Another citizen's complaint involves the billing by his apartment complex for water/sewer services. He lives in the Trinity Lakes apartments in Cordova, Tennessee. His concern is the fact that the service is unmetered. In his case, service for a one-bedroom apartment is \$7.58 monthly. This includes a service fee for the billing, in addition to the water/sewer service. Due to the fact that he travels frequently, he questions whether this method of unmetered billing is an accurate reflection of his water/sewer usage. He also questions whether bills rendered from unmetered utility service are allowed, and if the addition of administrative fees for this kind of billing is a fair practice. He requested information on the name of the public agency designated to protect the rights of renters in these instances. He stated that management of the complex's response was "that the bill represented an arbitrary amount charged to each resident of the

complex.” He also states that he rarely stays at his apartment due to his work requiring continuous travel. He objects to the lack of fairness in the billing practice of his water service.

- A resident of an apartment building states in his complaint that his average monthly bill is \$55.00. The only other occupant at his apartment is his grandson. As a comparison, his son, who is also served by the same utility, has a larger family but has an average water bill of \$20.00. He cannot get an answer as to the unit rate charges for the water used. He just wants to know how he is being billed.
- A single resident of an apartment complex in Chattanooga states in his complaint that he has no water leaks and uses very little water. He was billed for 5110 gallons of water for January. He is quite upset about the confusion regarding the measurement standards (gallons versus cubic meters), erratic meter readings, and lack of cooperation from the agent for the apartment complex where he resides, in addressing his problem.
- Another citizen filed a complaint against Utility Billing Service Inc. He states he received a late notice and the additional fees that were charged to his bill eight (8) days after his check for payment had cleared the bank. He has no recourse other than to accept the terms or move out.

Other Complaints

Not all complaints regarding this industry have been filed with the TRA. Several news articles have been published on this subject outlining problems. Appendix D to this report is a copy of the related articles that have appeared in *The Tennessean*.

On February 18, 1999, a class action lawsuit was filed with the Chancery Court of Davidson County (# 99-496-I). In this complaint the plaintiffs allege a series of consumer abuses that have occurred at the 333 Apartments in Nashville since the submetering of water was implemented. Twenty-seven (27) residents, or former residents, describe the problems encountered with submetering at 333 Apartments in the complaint. This matter had not been set for hearing at the time of this Report.

HOW OTHER STATES ARE DEALING WITH UTILITY SUBMETERING

Tennessee is not the only state experiencing submetering problems. At the present time, several states have enacted laws regarding submetering or are in the process thereof. The arena

of regulatory efforts in these states most often appears to be state utility commissions. Some state regulation appears to be prompted by new statutes, while others appear to be initiated by state utility commissions

TENNESSEE

Tennessee local governments are also beginning to address this issue. Metropolitan Government of Nashville and Davidson County has considered an ordinance regarding water-submetering. Appendix E is a copy of the Metro Ordinance.

NORTH CAROLINA

The North Carolina Utilities Commission has adopted regulations regarding water and associated wastewater. Anyone furnishing water to fifteen (15) or more residential customers for compensation is subject to regulation and must obtain a certificate from the North Carolina Commission. The rates allowed are capped to cover the cost of the purchased water and sewer, plus an administrative fee not to exceed \$2.00.

SOUTH CAROLINA

The Public Utility Commission of South Carolina has had a generic hearing regarding submetering of water, wastewater and electricity as a result of utility complaints. The Commission staff recommended that a rulemaking process for submetering of water, wastewater and electricity be initiated.

VIRGINIA

The State of Virginia has enacted legislation regulating submetering of electric and gas services. This legislation empowers the Virginia Commission to regulate electric and gas service resellers. Water resellers are not mentioned in this statute.

TEXAS

The Public Utility Commission of Texas has enacted rules and regulations regarding submetering. This commission has gone so far as to specify language in lease agreements in

order to ensure full disclosure. For example, one aspect of these rules deals with the submetering clause in rental agreements. These rules also require specific terms on how bills will be determined. It is also specified that common areas and facilities, such as pools, will be the responsibility of the owner and not the tenant. Payment for these utility costs must be included in the tenant's rent. The Texas Rules also detail what information is to be posted on the bill. According to Texas Commission Staff, in the past five years the number of apartments utilizing submetering has increased from approximately 100 to over 1,300.

INDIANA

The Indiana Utility Regulatory Commission is presently drafting proposed submetering rules. These proposed rules prohibit the billing of communal usage to individual apartments. The method of calculating the bills is also specified in the rules.

OHIO

The State of Ohio allows rebilling through submetering as long as the reseller does not charge more than the rate of the primary serving utility for the same class of service that the end user has.

CONCLUSION FOR CHAPTER 1

The practice of utility submetering is likely to grow in Tennessee as it is growing in other states. Landlords are looking to submetering as a way to recoup utility costs from their tenants. Landlords, depending in most cases on the cost to install submeters, are using a variety of approaches to bill their tenant separately for water. Allocation methods of submetering examined for this report do not appear to fairly represent actual usage patterns of the tenants, but rather are based on such factors as the size of the apartment or the amount of hot water used. Nevertheless, when metered and administered properly, submetering can produce social benefits by directly linking the cost of utility to usage. This action can increase conservation of water resources by users.

The practice of unbundling of water costs from rent payments is causing dissatisfaction among renters across the United States. The TRA has received several complaints about this

practice. Some states, through the enactment of new laws, are attempting to regulate the practice of submetering. Tennessee is also exploring ways to handle this new practice.

CHAPTER 2

ECONOMIC ANALYSIS OF SUBMETERING

INTRODUCTION

The economics of submetering is examined here. Landlords appear to have little opportunity to raise rents to unreasonable levels through submetering, as the rent itself should reflect the value of any unique attributes of the property. Nevertheless, landlords may be able to play games with tenants to extract additional payments due to the imperfect availability of information. For example, if an apartment lease is vague regarding water charges, then tenants may receive water bills that they had no way to anticipate when they signed the lease. Consequently, tenants may make poor rental decisions, because they lack information about the true relative costs of different rental units. These information problems may be resolved by requiring leases to disclose all the relevant information to prospective tenants.

Economic benefits also may result from landlords charging tenants separately for certain kinds of expenses, including water and sewer services. These charges may discourage waste and encourage responsible use of water resources by passing the cost of that resource use through to end-users. If water costs fluctuate differently from the landlord's other costs, then billing for water may be a harmless method for landlords to reduce fluctuations in net revenues from their properties. The information disclosure requirements suggested above would not interfere with these beneficial uses of submetering.

In the remainder of this chapter, the general justifications for regulation are reviewed, and the relevant characteristics of submetering of water and sewer services by landlords are discussed. The costs and benefits of regulating submetering are assessed and the likely effects of regulation are examined. A short conclusion ends the chapter.

REASONS FOR REGULATION

Economic regulation of an industry or practice is most often motivated by either the lack of availability of information about prices or product characteristics, or by the presence of natural monopoly conditions in which a single firm is the most efficient provider of a good or

service.⁸ In both of these situations, competition among buyers and sellers fails to result in transactions at prices that reflect the seller's costs as well as the buyer's ability and willingness to pay for the good or service. This occurs because one party to the transaction has an advantage over the other and can use this advantage to extract excessive value from the disadvantaged party. Consequently, the price paid may be above or below the cost or value placed on it by one of the parties.

In cases such as these, economists infer a misallocation of society's scarce resources, since some resource is not devoted to its highest valued use. This causes a loss to society, over and above any income transfer between the buyer and seller, as resources are used inefficiently. The total supply of goods and services produced by the economy is reduced and the costs incurred are increased.

Regulation may be justified in these cases in order to mitigate the efficiency loss and/or reverse an inequitable income transfer. This justification, however, requires that the benefits of regulation outweigh the costs. These costs include both the direct costs of enforcing the regulations as well as any other inefficiencies produced by the imposition of regulatory enforcement.

Similarly, a particular practice may be justified if it leads to efficiencies in resource use. This further suggests that regulation is not appropriate, unless there are other inefficiencies to offset the beneficial effects of the practice.

THE SUBMETERING ISSUE

Consider first the possibility of natural or other monopoly effects. Each landlord typically possesses a degree of "monopoly" in that the location and amenities of any individual rental property are unique. Competition among landlords and tenants results in rents that reflect the "locational premium," or value, assigned to that particular property by consumers.

If a landlord attempts to charge extra for water and sewer services, then tenants see this as a rent increase. Existing and prospective tenants will factor these charges into their evaluation

⁸ Regulation or other governmental action also may be justified to control external costs, such as environmental pollution. Submetering does not appear to involve negative externalities of this type. Regulation is not generally an efficient response to beneficial "public-good" type spillovers, such as gardens at multi-tenant buildings, although landlords' may seek to recover the costs of such benefits in rents or other charges. This is not problematic as long as the charges are disclosed in the lease.

of the property relative to the rent and other charges at alternative properties. If the landlord was initially charging rent that maximizes his profit, then the water and sewer charge will eventually reduce the profits from the property to the landlord's detriment, as tenants choose other properties where the rent/charges are lower.

For this reason, submetering as a means of simple monopoly pricing does not seem to make sense. On the other hand, submetering could be used to price discriminate among tenants based on their water use. To economists, this use of submetering is a tying arrangement.

The use of tying arrangements to price discriminate may have either positive or negative effects. If the discrimination allows some consumers to purchase a product that they would not buy under uniform pricing, or if the discriminatory prices reflect cost differences, then it may be beneficial. If the discrimination merely differentiates between customers based on their "willingness" (or ability) to pay, then it is harmful.⁹

Under submetering, any price discrimination is based on water usage. There is no obvious correlation between consumers' water usage and their willingness to pay rent, suggesting that the purely harmful form of price discrimination is not a likely motivation for the practice. There is, of course, an association between water usage and water costs, further suggesting that the beneficial or innocuous form of price differentiation may be motivating submetering. This possibility is considered further below.

Consider now the potential information problems associated with submetering. These problems arise when there is information known to the landlord, but not to the potential tenant, such that the landlord can take advantage of this information to the tenant's harm. For example, a landlord might try to hide the water-sewer fees from prospective tenants, such that the rent charged for the property would compare favorably with that of other similar properties (which may or may not have similar fees). Tenants could be misled into signing leases thinking that they would pay lower rent-plus-fees than they actually will be asked to pay after they move in.

⁹ The term "willingness" is used broadly as a proxy for the elasticity of demand and does not imply that consumers will be happy about their situation. For example, captive consumers may be charged higher prices. Such a strategy may succeed because some consumers are "trapped" in that paying the higher price is preferable to incurring the even higher costs involved in taking steps to avoid it. Consumers technically "agree" to this arrangement, but few would argue that that the consumers like or prefer that arrangement to any other.

This strategy may be successful as long as the additional fees are not so high as to prompt existing tenants to move out.¹⁰

Information problems are akin to fraud in that the landlord may withhold pertinent information from tenants in order to induce them to sign the lease. Tenants then make decisions based on incomplete information, decisions they may later regret. The result may be both a misallocation of resources and a transfer of income from tenants to landlords. Landlords profit by receiving payments in excess of the competitive rental rate for their property.

The solution to information problems of this type is to disclose all the pertinent information at the time of the lease signing. Tenants may then make informed decisions before they move in and before they incur moving costs or otherwise become committed to the property. This allows competition to regulate rents without additional governmental oversight.

Nevertheless, there may be efficiency reasons for allowing submetering. If water and sewer charges are included in the rental rate, or are apportioned among tenants on a basis that does not correspond well to the manner in which such costs are actually incurred, then tenants have no incentive to conserve water resources. The benefits of the tenant's water use may exceed the full costs of that use, resulting in a resource loss to society in general. Metering and charging tenants a reasonable rate for water-sewer use can mitigate this loss, so long as the charges for water-sewer use reflect the underlying costs.

Even in the efficiency case, however, the questions of whether the rate is reasonable, and whether its existence was appropriately disclosed, remain. We turn now to examine some of the actual leases and contracts underlying the submetering complaints received by the TRA.

LEASE AND CONTRACT EVIDENCE

The complaints and lease/contract agreements received by the TRA indicate three basic types of situations:

- 1) water and sewer use by individual tenants is not metered by the landlord/billing agent and apportionment of the property's water-sewer costs to tenants is perceived as unfair;

¹⁰ Economists say that tenant's moving costs establish an "appropriable rent" that landlords may profit from by attempting to impose fees or increase charges after tenants have moved in. Tenants must then either pay the higher fees or incur the costs of locating and moving to another property, including any costs associated with breaking their current lease (such as forfeiture of their deposit).

- 2) readings from meters on tenant's hot-water lines are used to apportion water and sewer charges to individual tenants by landlord/billing agent;
- 3) water use is individually metered and water/sewer use is charged at the residential rate of the local water utility to individual tenants by landlord/billing agent.

The first type of complaint may arise as the result of an information problem in which a rental charge is not revealed at the time of lease signing. Full-disclosure requirements in leases would address this problem.

The second type also may derive from an information problem, if the charges are not disclosed in advance. Basing water bills on hot-water meter readings may also provide efficiency benefits, however, as long as hot-water usage mirrors overall water-sewer use. Tenants may be motivated to conserve water to the benefit of society when the resulting water-sewer charges reflect underlying costs.

The efficiency benefits are likely to dominate any undesirable effects in the third case, so long as the water-sewer charges are disclosed at lease signing. In this case, tenants are charged the same rate for their actual water use as they would be charged if served by the local water utility. Thus, the rate is likely to reflect actual costs to some degree and charges reflect actual individually-metered water use by tenants.

This suggests two potential types of regulation for submetering situations. The first requires full disclosure of the method and rate for determining all utility charges at the time of lease signing. The second constrains the rates charged for water-sewer use to reflect the costs associated with provision of the water-sewer service.

COSTS AND BENEFITS OF REGULATING SUBMETERING

Regulation of the disclosure requirements suggested above yield obvious benefits at little cost of enforcement. Complaints about non-disclosure could be substantiated through a straightforward investigation. Fines or other penalties could then be swiftly assessed as needed.

Economic cost-based regulation of the rates charged for water-sewer use through submetering, however, is not so simple. Faced with the costs of demonstrating the justness and

reasonableness of their rates under traditional rate-of-return regulation, many landlords might choose to abandon the practice. Although this will solve the immediate policy problems, it also removes the efficiency benefits derived from the appropriate pricing of water-sewer use.

Another regulatory solution might tie the water-sewer rates either to a set percentage increase over the rate charged to the landlord by its water-sewer provider or to the residential water-sewer rates of the local water utility.¹¹ Such an approach could preserve some of the benefits of pricing tenants' water-sewer use, while placing minimal burdens on landlords and/or their billing agents.

The submetering billing and collection function, standing alone, appears to be a competitive business that is not a "natural" monopoly. We have no evidence to suggest that the administrative fee charged by these companies to landlords is excessive, but the price-caps or maximum mark-ups suggested above also would mitigate this practice, if it exists. At this time, this portion of the submetering business does not appear to require additional regulation.¹²

CONCLUSION FOR CHAPTER 2

The economic analysis of the submetering practice suggests that information problems may be the chief source of harm. If landlords separate utility charges from the rent payment, then tenants could be misled about the true costs of leasing a rental unit. Submetering also may generate benefits by encouraging appropriate water use by tenants when water-sewer rates reflect costs. Any regulation of submetering should focus on disclosure of the charges and rates at or before the time of lease signing. Additional economic regulation of the rates themselves may be cost effective, if that regulation eschews traditional cost-based, rate-of-return methods in favor of more generic price-caps or maximum mark-ups. These regulatory methods also limit the detrimental effects of any excessive administrative fees charged by submetering firms for billing and collection services.

¹¹ The landlord, as a "large" business user, may pay lower rates per unit than residential and "small" business users pay for water-sewer services.

¹² It is possible that the additional "layer" of administrative costs for submetering could outweigh the savings to society resulting from the correct pricing of the water-sewer service to end-users. We are not aware of any evidence that supports this possibility, but neither can we completely rule it out.

Chapter 3

JURISDICTIONAL ISSUES: A LEGAL ANALYSIS

Tenn. Code Ann. § 65-4-104 grants the Tennessee Regulatory Authority (“TRA”) general supervision and regulatory power, jurisdiction, and control over all public utilities. The purpose of this chapter is to examine whether the TRA, pursuant to this enabling legislation, has jurisdiction to regulate the submetering, submarketing or the resale of water and water services (collectively “submetering entities”).

DISCUSSION

The answer to this threshold question of whether the TRA has such authority is completely contingent on whether the submetering and/or resale of water is legally considered a public use. According to the Tennessee Supreme Court, if the activity is determined to be a public use, it would fall within the definition of a public utility.¹³ As defined by Tenn. Code Ann. § 65-4-101, a public utility is any entity

that owns, operates, manages or controls ... water ... services affected by and dedicated to the public use, under privileges, franchises, licenses or agreements granted by the state or any political subdivision thereof.¹⁴

When interpreting this statute, courts have asked four (4) main questions to determine whether an entity is a public utility and hence, subject to regulation. They are:

1. Has the business been devoted to a public use and its use thereby granted to the public?
2. Is the company operating under privileges and franchises from a governmental entity?
3. Does the entity have the right of eminent domain?
4. Who are the people served by the entity in question?

Our analysis begins with the nature of the public use: whether the provision of water service for tenants, by a submetering entity (either a landlord or independent firm) which directly

¹³ The terms “public use” and “public utility” are synonyms. *Memphis Natural Gas Co. v. McCanless*, 183 Tenn. 635, 643, 194 SW2d 476, 480 (Tenn. 1946).

¹⁴ Tenn. Code Ann. § 65-4-101

charges those tenants for such use, entails a public use within the meaning of Tenn. Code Ann. § 65-4-101.

1. Has the business been devoted to a public use and its use thereby granted to the public?

In the seminal case of Ryan v. Terminal Co.,¹⁵ Chief Justice Beard said “anything which will satisfy a reasonable public demand for public facilities for travel or transmission of intelligence or commodities, and of which the general public, under reasonable regulation, will have a definite and fixed use, independent of the will of the party in whom title is vested, would be a public use.” Under this broad definition, any entity involved in submetering might appear to be a public utility. However, subsequent cases have clarified and narrowed this definition.

In Nashville Water Co. v. Dunlap,¹⁶ the court stated that before private property can be held to be “affected with a public use” and therefore, subject to the jurisdiction of the Railroad and Public Utility Commission (now the TRA), it must be dedicated by some act of the owner. This dedication “may be evidenced by his declarations or acts, but in no more convincing and unequivocal manner can a dedication be made than by the acceptance of a charter which confers powers and prescribes duties which could not be conferred or prescribed except in the interest of the public.”¹⁷

In Dunlap, the Nashville Water Company had not sought to provide water service to the general public, but it had stated in its charter that it was empowered to do so. When determining whether a submetering entity is dedicated to the public use, one should first examine the actions of that entity in asserting that it has or could have the authority to serve the general public.

2. Is the company operating under privileges and franchises from a governmental entity?

After the Dunlap court looked at whether the company’s activities were affected with and dedicated to the public use, to determine whether the Nashville Water Company was a public utility subject to regulation and taxation, it next considered whether the company was operating under privileges and franchises from a governmental entity.¹⁸ Like a gas company or other

¹⁵ Ryan v. Terminal Co., 102 Tenn. 111, 118, 50 S.W. 744, 745, 45 L.R.A. 303 (Tenn. 1899).

¹⁶ Nashville Water Co. v. Dunlap, 176 Tenn. 79, 138 SW2d 424 (Tenn. 1940).

¹⁷ *Id.* at 426-427.

¹⁸ Nashville Water Co. v. Dunlap, 176 Tenn. 79, 138 SW2d 424 (Tenn. 1940).

utility that has received permission from a municipality to place its lines across a right of way, street, or other public property, so too a water company is deemed to be operating under a privilege or franchise.

In analyzing whether a submetering entity is operating as a public utility, it is necessary to learn the physical arrangement of its facility. If the facility lies entirely within the property of the landlord, the entity would not need any governmental franchise or other privileges, and would not be a public utility under this test.

3. Does the entity have the right of eminent domain?

Courts have found that if a company has used the power of eminent domain, or has the potential to use this power, the company is a public utility subject to regulation. A water company with power to condemn private property (eminent domain) is considered a quasi-public corporation and, as such, must exercise its privileges subject to the rights of the public and supply water to all inhabitants within its service area upon reasonable terms and without condition.¹⁹ The right to lay pipe in the public right of way is itself a franchise and the right of eminent domain cannot be conferred except for taking private property for public use, and for these two reasons, among others, water and waterworks companies have always been held to be public utilities.²⁰

4. Who are the people served by the entity in question?

Other jurisdictions look to the class of people served to determine whether a company is dedicated to the public use, and frequently they have then decided that submetering firms are not public utilities. A business is not affected with public interest merely because it is large or because the public is warranted in having a feeling of concern in respect of its maintenance.²¹ In Oklahoma, it was determined that “[a] landlord who maintains a utility facility for his tenants and makes a specific charge for such facility based on the value of use by the tenant, is not

¹⁹ *Crumley v. Watauga Water Co.*, 99 Tenn. 420, 41 S.W. 1058 (Tenn. 1897).

²⁰ *Nashville Water Co. v. Dunlap*, 176 Tenn. 79, 138 SW2d 424 (Tenn. 1940).

²¹ *Williams v. Standard Oil Co.*, 278 U.S. 235, 49 S. Ct. 115, 73 L. Ed. 287 (1929).

operating a public utility.”²² Further, a Pennsylvania court ruled that a system to provide electricity to tenants through a submetering system was not a service to or for the public:

[i]n the present case the only persons who would receive service are those who have entered into a landlord and tenant relationship with the appellant. Those to be served consist only of a special class of persons, those to be selected as tenants, and not a class opened to the indefinite public. Such persons clearly constitute a defined, privileged and limited group and the proposed service would be private in nature.²³

CONCLUSION FOR CHAPTER 3

Tennessee courts have yet to rule on whether submetering entities described in this report are public utilities; when they do, however, the courts will likely examine these entities and their operations in light of the aforementioned four questions. Their conclusion will be balanced against Tenn. Code Ann. § 65-4-106, a legislative directive to construe the public utilities act in favor of the power of the Authority,²⁴ which states:

This chapter shall not be construed as being in derogation of the common law, but shall be given liberal construction, and any doubt as to the existence or extent of a power conferred on the authority by this chapter or chapter 1, 3 and 5 of this title shall be resolved in favor of the existence of the power, to the end that the authority may effectively govern and control the public utilities placed under its jurisdiction by this chapter.

Notwithstanding a liberal construction of Tenn. Code Ann. § 65-4-101, a preliminary review leads to the conclusion that none of the submetering entities described in this report meet the definition of “public utility” under this statute or our relevant case law. “A business or property, in order to be affected with a public interest, must be such, or be so employed as to justify the conclusion, that it has been devoted to a public use and its use thereby, in effect, granted to the public.”²⁵ These submetering entities have been dedicated to a private, not public use. Nor are they operating under a privilege or franchise from a governmental entity. They do

²² Baker v. Public Service Company of Oklahoma, 606 P2d 567 (Okla. 1980).

²³ Drexelbrook Associates v. Penn. PUC, 418 Pa. 430, 212 A2d 237 (Penn. 1965).

²⁴ Breeden v. Southern Bell Tel & Tel. Co., 199 Tenn. 203, 285 S.W. 2d 346 (Tenn. 1955).

²⁵ Williams v. Standard Oil Co., 278 U.S. 235, 49 S. Ct. 115, 73 L. Ed. 287 (1929).

not have the power of eminent domain. Finally, submetering entities offer services to a limited, special class of people. This analysis can only conclude that currently the TRA is not authorized by law to regulate these submetering entities.

CHAPTER 4

REGULATION OF SUBMETERING

The conclusion of Chapter 3 does not dispose of the matter. If submetering entities are deemed not to be subject to the jurisdiction and direct control of the TRA, indirect control of their activities may still be warranted. The TRA concurs with the Oklahoma court that:

We would note that the practices of submetering may not be in the public interest, as the distributing agent (landlord) could be dishonest, use faulty metering, charge unfair rates, or provide inadequate service, and yet be beyond the jurisdiction of any regulatory agency. Such possibilities fully justify the corporation commission's action in strictly supervising the sale of electric power to prohibit submetering by prohibiting the sale of electricity for resale.²⁶

The practice of submetering is likely here to stay in Tennessee along with its potential for abuse.

Traditional utility regulation has focused on three (3) broad aspects: quality of services, price of services and safety issues. The Tennessee Division of Water Supply is presently addressing the submetering safety issues. It is the responsibility of the TRA to address the former two (2) issues if statutorily grounded. To prevent the abuses mentioned above, Tennessee could take three (3) possible regulatory approaches, prohibition, economic cost based regulation and service regulation, all of which require legislative action.

Prohibition

The General Assembly has the option of prohibiting the practice of submetering by legislative enactment. One approach would be to prohibit submetering in all its forms. A less drastic approach would be to prohibit allocation methods of submetering and allow actual submetering to continue, on the finding that allocation methods of submetering are subjective and do not necessarily lead to conservation of utility resources. Allocation methods have been the source of the vast majority of the consumer complaints in Tennessee as well as the other states. This was the approach taken in Senate Bill 1434 (Haynes) and House Bill 713 (West) filed in 1999 and Senate Bill 2848 (McNally) filed in 2000. These bills are attached as Appendix E.

²⁶ Baker v. Public Service Company of Oklahoma, 606 P2d 567 (Okla. 1980).

Economic Regulation

The General Assembly could include submetering entities in the definition of public utilities. This approach would subject these entities to all the regulatory requirements placed on utilities regardless of the size and scope of their service offering. Economic regulation of utilities is usually based on the assumption a monopoly exists in the service area of that utility.

Under a monopoly regime, regulation is referred to as rate of return regulation and is exercised in the regulation of almost all water, gas, and electric utilities and most incumbent local exchange carriers under the jurisdiction of the TRA.²⁷ A utility is allowed to earn an adequate rate of return while the rates paid by consumers are maintained at a fair level. Making sure enough of the utility earnings are directed toward providing adequate service is an important part of rate of return regulation. Faced with the costs of demonstrating the justness and reasonableness of their rates under traditional rate-of-return regulation, many landlords might choose to abandon the practice. Although this will solve the immediate policy problems, it also removes the efficiency benefits derived from the appropriate pricing of water-sewer use.

Another method of economic regulation the TRA utilizes is price regulation. This method is typically exercised when competition is introduced in a sector. Price regulation focuses on the prices charged by utilities rather than the earnings of the company. Formulas, or limits, are set either by statute or rule that regulates the prices charged by utilities for its services. The shift from rate of return regulation to price regulation makes service regulation even more important in order to ensure that the firm's customers maintain a satisfactory level of service. This is especially true when competition is in its infancy in a sector or if competitors are not interested in serving any segment of the former monopoly's customers.

However, the approach of granting submetering entities status as utilities in this situation disregards the effect on franchise areas. Public utilities, as monopolies, are granted exclusive rights to serve specific areas. Designating submetering entities as public utilities would impact the franchise area of the utility from which the submetering

²⁷ BellSouth, United Telephone Southeast and Citizens have elected to be price regulated.

entity obtains its water by carving out small franchise areas within the larger area of the original water utility. In view of this potential problem, a less complicated approach might be to regulate submetering firms with a focus on the service they provide rather than their status as a utility. Some telecommunications providers are regulated in this manner.

Service Regulation

Service regulation is an attempt to control unacceptable behavior of companies by the adoption of rules with no attempt to control what a firm is earning. Preventing consumer abuse and protecting the public is the primary policy objective. Disclosure of relevant pricing information to the user is an important element of this form of regulation. Based on an analysis of other state jurisdictions where regulation of utility submetering services has been enacted, and an analysis of the customer complaints on file, service regulation in the model of current customer owned coin operated telephones (COCOTs) regulation would control unacceptable behavior by providers, protect consumer from abuse, and promote efficient and effective conservation of natural resources.

In situations where the industry needing regulation may not fit the classical definition of a public utility, it may not be appropriate to grant such entities the powers of a utility, as defined in Title 65 (e.g., right of eminent domain, etc.). Such was the situation when the Tennessee Public Service Commission (PSC) requested legislation in 1994 to regulate COCOTs. Regulation of COCOTs was determined to be needed, but the PSC did not want to grant COCOTs a certificate of convenience and necessity (CCN). A classification less than a CCN was needed for proper regulation. The legislation set up a fee structure, designed to cover the cost of regulation, and authorized the PSC the authority to promulgate rules (1220-4-2-.43-.54) to regulate COCOTs.²⁸

A regulatory approach for submetering that is modeled after the COCOT regulations and other state's approaches to the problem would:

1. Apply to apartment houses, condominiums, multiple use facilities, and manufactured home rental communities that bill for utility service on a submetered or allocated basis;

²⁸ TCA § 65-4-301.

2. Prohibit imposing any extra charges over and above the cost charged by the retail public utility;
3. For submetered customers, include provisions to fairly bill the cost to each individual unit based on their actual consumption from meter readings and require the owner to maintain records available for inspection by tenants and all meters would be subject to standards that are set by the regulatory agency;
4. For allocated customers, include provisions to fairly allocate the cost to each individual unit based on a prorated basis and require the owner to provide clear written descriptions of the calculation methods and average apartment use information to ensure fairness;
5. Require all owners to register with the regulatory agency, if they submeter or allocate water and wastewater separately from the rent and provide for enforcement of the rules and regulations with penalties for willful and knowing violations;
6. Require record retention, which includes the retail water rates, billing procedures and historical average tenant bills, utility service bills, allocation method, and make the information available for tenant and regulatory inspection;
7. Require rental agreements to include information that clearly states the method used to meter or allocate utility service, including the billing method, monthly average usage information, how disputes are handled, and meter accuracy requirements; and

8. Require all utility service providers to pay a fee to offset regulatory cost.

It should be pointed out that a service regulatory scheme as described above would create another jurisdictional concern similar to the one created by an economic regulatory approach since the TRA would be regulating entities that operate in the service areas of utilities that the TRA does not have authority to regulate. The majority of Tennesseans receive their water from municipal water systems or utility districts that are not regulated by the TRA. A solution to the jurisdictional problems may be had at the local level. Municipalities could enact ordinances to prevent possible abuses by submetering entities but, as this would be optional, local control would be a patchwork solution, at best.

In addition to regulation by the TRA, there are other areas of the law that could be revised to address the potential abuses of a submetering system. The landlord and tenant laws of the state could be amended to require full disclosure of all arrangements on the provisioning of utility services. Some aspects of this issue could be addressed under the consumer protection statutes of the state as well.

CHAPTER 5 CONCLUSION

The practice of reselling water and sewer services at apartment buildings has arrived in Tennessee. The Water Supply Division of the Tennessee Department of Environment and Conservation has a list of 129 properties, serving 59,137 family dwellings, that utilize submetering.

Utility submetering is likely to grow in Tennessee as it is growing in other states. Landlords are looking to submetering as a way to recoup utility costs from their tenants. The practice of unbundling of water costs from rent payments is causing dissatisfaction among renters across the United States. The TRA has received numerous complaints about this practice. Some states, through the enactment of new laws, are attempting to regulate the practice of submetering. Tennessee is also exploring ways to handle this new practice. From the Tennessee General Assembly to city governments, studies are being conducted to explore public policy options.

Landlords, depending in most cases on the cost to install submeters, are using a variety of approaches to bill their tenant separately for water. There are two broad types of water and sewer submetering. The two major types are defined as submetered utility service and allocated utility service, which includes hot water submetering, comparative size billing and communal fees. The method chosen often depends upon the design of the water supply system for the particular residential community. Allocation methods of submetering do not appear to fairly represent actual usage patterns of the tenants, but rather are based on such factors as the size of the apartment or the amount of hot water used. Submetering has the potential for abuse as the distributing agent (landlord) could be dishonest, use faulty metering, charge unfair rates, or provide inadequate service, and yet be beyond the jurisdiction of any regulatory agency.

Tennessee is not the only state experiencing submetering problems. At the present time, several states have enacted laws regarding submetering or are in the process thereof. The arena of regulatory efforts in these states most often appears to be state utility commissions.

Tennessee courts have yet to rule on whether submetering entities described in this report are public utilities, however, a preliminary review leads to the conclusion that none of the submetering entities described in this report meet the definition of "public utility" under

Tennessee statutes or our relevant case law. This analysis can only conclude that currently the TRA is not authorized by law to regulate these submetering entities.

To prevent the abuses mentioned above, Tennessee could take three (3) possible regulatory approaches, prohibition, economic cost based regulation, and service regulation, all of which require legislative action. The prohibition approach would narrowly address the allocation method of submetering. Under this approach, the allocation method of submetering could either be banned totally or on a going forward perspective. This would force landlords to either actually submeter water to their tenants or include such costs in rents.

As the General Assembly considers legislation to regulate the activities of utility submetering, a combination of the prohibition and the service regulatory model approaches described in chapter 4 may be an acceptable choice. The service regulation component of proposed legislation would appear to be the least intrusive for landlords yet appropriate to ensure consumers are provided with the proper information concerning submetered utility charges while also providing consumers an administrative avenue for dispute resolution by a regulatory agency.

APPENDIX A

CHAPTER NO. 532

HOUSE BILL NO. 938

By Representative Arriola

Substituted for: Senate Bill No. 1239

By Senators Haynes, Rochelle, Burchett

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 221, relative to on-site sewage treatment systems.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. There is hereby created a Special Joint Study Committee to study issues relative to on-site sewage treatment systems and water and sewer utility practices regarding apartment submetering.

SECTION 2. The Special Joint Study Committee shall consist of six (6) members, as follows: three (3) members of the Senate, appointed by the Speaker of the Senate; and three (3) members of the House of Representatives, appointed by the Speaker of the House.

SECTION 3. All legislative members of the special committee who are duly elected members of the General Assembly shall remain members of such committee until the committee reports its findings and recommendations to the General Assembly.

SECTION 4. The special committee shall be convened by the member with the most years of continuous service in the General Assembly; and at its first meeting shall elect a chair, vice-chair, and such other officers the committee deems necessary.

SECTION 5. The special committee shall timely report its findings and recommendations, including any proposed legislation or interim reports, to the Senate and House Environment Committees no later than February 1, 2000, at which time the committee shall cease to exist.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 27, 1999


JIMMY NAFEK, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this day of 1999

DON SUNDQVIST, GOVERNOR

Pursuant to Article III, Section 18, of the Constitution of the State of Tennessee, the Governor had House Bill No. 938 in his possession longer than ten (10) days, so therefore the bill becomes law without the Governor's signature.

APPENDIX B

ORDINANCE NO. 099-1766

An ordinance amending the Metropolitan Code of Laws to provide for and govern the provision and sale of water and sewerage services within multi-family complexes.

Whereas, The Metropolitan Government of Nashville and Davidson, through the Department of Water and Sewerage Services, currently provides water and sewerage services to many of the citizens of Davidson County; and

Whereas, the Metropolitan Government seeks to ensure fairness and consistency in the application of residential water and sewer rates charged to its citizens;

Now, therefore, be it enacted by the Council of The Metropolitan Government of Nashville and Davidson County:

Section 1. Title 15 of the Metropolitan Code of Laws is hereby amended by adding the following new Chapter:

Chapter 15.50

Submetering

15.50.010 Definitions

For purposes of this chapter, the following terms shall have the meanings shown:

- (a) "residential apartment property" means any apartment building, apartment complex, mobile home community, other residential dwelling or other group of associated dwellings consisting of two or more residential units.
- (b) "residential unit" means any separate dwelling area within a residential apartment property, mobile home within a mobile home community or separate dwelling within a group of associated dwellings intended to be occupied by a single individual or members of a single household group.
- (c) "sell" means to provide or furnish in exchange for payment separate from rent, or to issue a bill for water use or sewerage services requiring payment of charges of any kind to an entity other than the department, regardless of whether the sale is for profit or otherwise and regardless of whether the sale is conducted directly between landlord and tenant.
- (d) "city water" means water that has passed through any pipe connected with any water main or the waterworks plant of the metropolitan government.
- (e) "department" means the Metropolitan Department of Water and Sewerage Services.
- (f) "director" means the director of the Metropolitan Department of Water and Sewerage Services or designee.
- (g) "constructed" means that a valid use and occupancy or equivalent permit has been issued for the residential apartment property at issue.

15.50.020 Sales of water and sewerage services only by department

Notwithstanding any other provision of this title to the contrary, and except as provided in this Chapter, it shall be unlawful for any person or entity other than the department to sell to any other person or entity city water for use or consumption in a residential unit or sewerage service for

said residential unit.

15.50.030 Submetering – New construction

The owner of any residential apartment property constructed after the effective date of this ordinance shall install the water supply system for such residential apartment property such that it is capable of being equipped with a meter to separately measure the water consumed in each residential unit. Where the owner elects to submeter such residential apartment property pursuant to the terms of this Chapter, the owner shall equip each residential unit with a separate meter capable of remote reading and with appropriate valves, shut-offs and other necessary devices as required by the department.

15.50.040 Submetering – Existing construction

The owner or owners of any residential apartment property constructed prior to the effective date of this ordinance may bring such property within the coverage of this ordinance by: (1) submitting a written request to the department requesting the establishment of individual service accounts for residential units; and (2) equipping each residential unit with a meter capable of remote reading and with appropriate valves, shut-offs and other necessary devices as required by the department. Where the director determines that the installation of conventional meters is impracticable, the owner or owners of such residential property shall install such other flow measuring devices or adopt such other systems for measuring water usage within each residential unit as are approved by the director.

15.50.050 Residents to become customers of the department

Upon the installation of the meters or other flow measuring devices and associated equipment contemplated by this section and after the department approves such installations, the occupant and subsequent occupants of each residential unit shall open an individual account with the department of water and sewerage services and shall be governed by this title and subject to the department's rates, rules and regulations applicable to the department's other residential customers.

15.50.060 All water to be measured

The owner of any residential apartment property shall ensure that all water consumed on such property passes through a meter or group of meters capable of accurately measuring the flow of water to the entire property. The owner of such property shall be responsible for charges due for all water not billed to residential units on the property. Water used for purposes common to the entire residential apartment property shall be charged to the account of the owner of such property and not to the accounts of the occupants of individual residential units.

15.50.070 Equipment

The size, type and placement of all meters, other flow measuring devices, valves, and shut-offs contemplated by this section shall be as specified by the department. The director may order the repair or replacement at the owner's expense of any meter or other flow measuring device determined by the department to be defective, inaccurate, obsolete or not compatible with the department's meter-reading equipment.

15.50.080 Maintenance

The cost of installing and maintaining all meters, other flow measuring devices, valves, shut-offs and other devices contemplated by this section shall be borne by the owner of the residential apartment property, who shall be responsible for any inaccuracies in flow measurement on the property. The owner of such property shall disclose in writing to tenants the basis on which their water bill will be computed and shall afford the department reasonable opportunities to inspect meters and other flow measuring devices on the property upon request.

15.50.090 Certain charges prohibited

After the occupants of the residential units within a residential apartment property have become

customers of the department, the owner of that residential apartment property shall not thereafter charge or allow another entity to charge any occupant a customer deposit, fee for connection or disconnection of water or sewerage service, late payment fee, processing or administrative fee or similar charge relating to the provision of water or sewerage service or disconnect water or sewerage service to any occupied residential unit unless the department has consented or in order to make repairs to the water or sewerage systems.

15.50.100 Access

The owner of any residential apartment property within the coverage of this ordinance shall afford reasonable access to the department to all areas of such property for the purpose of making inspections or repairs or otherwise performing its responsibilities.

15.50.110 Customer Information

The owner of any residential apartment property within the coverage of this ordinance shall provide adequate information, as specified by the director, for the collection of proper fees and charges from the occupants of the residential units.

Authority of Department

The director shall have authority to issue and implement regulations consistent with this ordinance.

Section 2. This ordinance shall take effect immediately, the welfare of The Metropolitan Government of Nashville and Davidson County so requiring, provided that the department shall take all reasonable steps necessary to implement this ordinance within six months of adoption.

Sponsored By: Don Majors & Leo Waters

LEGISLATIVE HISTORY	
Introduced:	June 15, 1999
Passed First Reading:	June 15, 1999
Referred to:	
Passed Second Reading:	
Passed Third Reading:	
Approved:	
By:	

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Last updated: 06/09/99

ENFORCEMENT OF ITS PROVISIONS INCLUDING IMPOUNDMENT BY EMPLOYEES OF THE METROPOLITAN HEALTH DEPARTMENT AND THE METROPOLITAN POLICE DEPARTMENTS.

- **BILL NO. 099-1775**— (ENACTED 08/03/1999) AN ORDINANCE AMENDING SECTION 11.12.080 OF THE METROPOLITAN CODE BY AMENDING ORDINANCE NO. 099-1649, AS AMENDED, BY CHANGING THE DEFINITION OF NIGHTTIME.
- **BILL NO. 099-1774**— (ENACTED 08/03/1999) AN ORDINANCE APPROVING A GRANT FROM THE STATE OF TENNESSEE, DEPARTMENT OF AGRICULTURE TO THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY ACTING THROUGH THE METROPOLITAN CODES ADMINISTRATION, TO IMPLEMENT THE URBAN AND COMMUNITY FORESTRY GRANT ASSISTANCE PROGRAM.
- **BILL NO. 099-1773**— (ENACTED 08/03/1999) AN ORDINANCE APPROVING A GRANT CONTRACT FROM THE STATE OF TENNESSEE, DEPARTMENT OF FINANCE AND ADMINISTRATION TO THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, ACTING THROUGH THE STATE TRIAL COURTS FOR THE PROVISION OF A RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM FOR STATE OFFENDERS.
- **BILL NO. 099-1772**— (ENACTED 08/03/1999) AN ORDINANCE AUTHORIZING THE ACQUISITION OF PROPERTY BY NEGOTIATION OR CONDEMNATION FOR INTERSECTION IMPROVEMENT AT EDMONDSON PIKE AND CLOVERLAND DRIVE, PROJECT NO. 97-R-11A.
- **BILL NO. 099-1771**— (ENACTED 08/03/1999) AN ORDINANCE AUTHORIZING THE ACQUISITION OF PROPERTY BY NEGOTIATION OR CONDEMNATION FOR THE METRO CENTER LEVEE PROJECT, U. S. CORPS OF ENGINEERS PROJECT NO. 013216.
- **BILL NO. 099-1770**— (ENACTED 08/03/1999) AN ORDINANCE AUTHORIZING THE ACQUISITION OF PROPERTY BY NEGOTIATION OR CONDEMNATION FOR INTERCHANGE MODIFICATIONS AT I-24/65 AND SHELBY AVENUE, WOODLAND STREET AND INTERSTATE DRIVE, PROJECT 1901-3146-44.
- **BILL NO. 099-1769**— (ENACTED 08/03/1999) AN ORDINANCE AUTHORIZING THE ACQUISITION OF PROPERTY BY NEGOTIATION OR CONDEMNATION FOR THE PURPOSE OF ACQUIRING UTILITY EASEMENTS FOR USE IN PUBLIC PROJECTS OF THE METROPOLITAN GOVERNMENT AND SPECIFICALLY WITH RELATION TO PROJECT NO. 98-SG-139, PITTS AVENUE SEWER EXTENSION.
- **BILL NO. 099-1768**— (ENACTED 08/03/1999) AN ORDINANCE AUTHORIZING HORACE BASS TO PARTICIPATE WITH THE METROPOLITAN GOVERNMENT, DEPARTMENT OF WATER AND SEWERAGE SERVICES, FOR THE CONSTRUCTION OF PROJECT NO. 99-SG-23, WOODLAND STREET NEAR SOUTH 9TH STREET.
- **BILL NO. 099-1767**— (ENACTED 08/03/1999) AN ORDINANCE AUTHORIZING THE ACQUISITION OF PROPERTY BY NEGOTIATION OR CONDEMNATION FOR THE PURPOSE OF ACQUIRING UTILITY EASEMENTS FOR USE IN PUBLIC PROJECTS OF THE METROPOLITAN GOVERNMENT AND SPECIFICALLY WITH RELATION TO PROJECT NO. 93-SC-34J, ALDRICH LANE SEWER SYSTEM REHABILITATION.
- **BILL NO. 099-1766**— (WITHDRAWN 08/17/1999) AN ORDINANCE AMENDING THE METROPOLITAN CODE OF LAWS TO PROVIDE FOR AND GOVERN THE PROVISION AND SALE OF WATER AND SEWERAGE SERVICES WITHIN MULTI-FAMILY COMPLEXES.
- **BILL NO. 099-1765**— (ENACTED 08/03/1999) AN ORDINANCE APPROVING A LEASE AGREEMENT BETWEEN THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY AND THE STATE OF TENNESSEE FOR OPERATION OF A MEDICAL EXAMINER'S OFFICE.
- **BILL NO. 099-1764**— (ENACTED 08/03/1999) AN ORDINANCE AUTHORIZING THE

APPENDIX C

MA NAME	PL POP	CORR_NAM2	CORR_STRT	CORR_CITY	CORR_CORR_Z
12TH AVE SOUTH APTS	103 WATER SYSTEMS INC.		110 SPACE PARK DRIVE	NASHVILLE	TN 37211
333 APARTMENTS	170 CAROL SMITH		333 GALLATIN RD SOUT	MADISON	TN 37115
ALLEN DALE DRIVE MHP	90 ALLEN FREEMAN		161 HAMIL RD	FRIENDSVILLE	TN 37737
AMBERWOOD AT BELLEVUE	531 ALICE CARTER		1000 AMBERWOOD CIRCL	NASHVILLE	TN 37221
ARBOR CREEK APARTMENTS	850 WATER SYSTEMS INCORPORATED		110 SPACE PARK DRIVE	NASHVILLE	TN 37211
ARBORS AT BRENTWOOD	816 BIADA CALHOUN, MGR.		100 BRENTWOOD PL	BRENTWOOD	TN 37211
ARBORS OF HICKORY HOLLOW	793 KATHLEEN WALKER		455 ARBOR PLACE	NASHVILLE	TN 37217
ARBOURS OF HERMITAGE	833 RUTH WILSON		6001 OLD HICKORY BLV	HERMITAGE	TN 37076
ASHFORD APARTMENTS	465 CRAIG JOHNS		6201 POWERS FERRY RD	ATLANTA	GA 30339
BAY'S MOUNTAIN MOBILE HOME PAR	90 Ms. Jeannie P. Jones		1260 Glover Rd.	Rockford	TN 37853
BIRCHWOOD APARTMENTS	215 JOHN THRONEBERRY		1211 HAZELWOOD DR	MURFREESBOR	TN 37130
BRECKENRIDGE APTS.	448 BILLY BARRETT		2810 CLEARVIEW CT.	MURFREESBOR	TN 37129
BRENTWOOD DOWNS	675 BARBARA HAYENS		1 DERBY TRACE	NASHVILLE	TN 37211
BRIAR CLUB APTS	721 GREGORY STOBART, DIST MANAGE		6420 KNIGHT ARNOLD	MEMPHIS	TN 38115
BRIXWORTH APARTMENTS	510 CRYSTAL ZESTAL		101 BRIXWORTH LANE	NASHVILLE	TN 37219
BROOKRIDGE APTS	415 BILLY BARRETT		2810 CLEARVIEW CT.	MURFREESBOR	TN 37129
BUCKHEAD PLACE	240 THOMAS MCNEIL		6820 HWY 70 SOUTH	NASHVILLE	TN 37221
CAMBRIDGE OF HICKORY HOLLOW	850 FALISE PLATT, EQ RESIDENT PROP		2 N RIVERSIDE PLAZA,	CHICAGO	IL 60606
CAMERON OVERLOOK APARTMENTS	1067 MICHELE CATHEY		727 BELL RD.	ANTIOCH	TN 37013
CANTOR CHASE APARTMENTS	555 JANICE TURNER		1901 MURFREESBORO RD	ANTIOCH	TN 37217
CAPITAL TOWERS APARTMENTS	97 LOIS ELLIOT		501 GAY ST	NASHVILLE	TN 37219
CEDAR PARK MHP	495 LES ANDERSON		1706 NORTH TENNESSEE	MURFREESBOR	TN 37130
CEDAR RIDGE APARTMENTS	403 TARA YOUNG		100 MADISON DR	LAVERGNE	TN 37086
CHERRY CREEK APARTMENTS	1480 TERRY WALLACE		1100 CRYSTAL SPRINGS	HERMITAGE	TN 37076
CINNAMON TRAILS APTS.	551 GREGORY STOBART, DIST MANAGE		6420 KNIGHT ARNOLD	MEMPHIS	TN 38115
CLARKSVILLE HOUSING AUTHORITY	25 WANDA MILLS		721 RICHARDSON ST, P	CLARKSVILLE	TN 37040
CLINCH VIEW MHP	33 IRENE MABE		BOX 144A2	RUTLEDGE	TN 37861
CLOAR'S TRAILER PARK	38 MS. MARY CLOAR		238 GLASS ST.	Hornbeak	TN 38232
CLUB AT HICKORY HOLLOW	958 BILLY BARRETT		2810 CLEARVIEW CT.	MURFREESBOR	TN 37129
COLONY HOUSE APTS	522 ATTN: MANAGER		1510 HUNTINGTON DRIV	MURFREESBOR	TN 37130
COPPERFIELD TERRACE	160 BEATTY PATRICK		120-1334 MASSMAN DR.	NASHVILLE	TN 37217
COUNTRY ACRES FARM	100 KEN MACK		102 BEULAH DR	LOUISVILLE	TN 37777
COUNTRY LIVING ESTATES MHP	332 MARK VAUGHN		1330 WILLIAMSON RD.	GOODLETTSVIL	TN 37072
COUNTRY MEADOWS MHP	699 MARGARET HOOTEN		860 RICHARDS RD.	ANTIOCH	TN 37013
COVE MOUNTAIN MHP	98 ELLIS E. ADAMS		3678 KATY HOLLOW RD	SEVIERVILLE	TN 37862
CREEKSIDE MOBILE HOME SUBD	45 ROY WHITE		17360 STEEKEE RD	LOUDON	TN 37774
DOGWOOD CREEK APTS.	737 GREGORY STOBART, DIST MANAGE		6420 KNIGHT ARNOLD	MEMPHIS	TN 38115
DOMINION FRANKLIN APTS.	990 BILLY BARRETT		2810 CLEARVIEW CT.	MURFREESBOR	TN 37129

MA NAME	PL POF	CORR NAM2	CORR STRT	CORR CITY	CORR CORR 2
DONELSON HILLS APARTMENTS	71	GAYNELL FULFORD	4701 OLD HICKORY BLV	OLD HICKORY	TN 37138
ENCLAVE AT BRENTWOOD APARTME	897	WATER SYSTEMS INCORPORATED	110 SPACE PARK DRIVE	NASHVILLE	TN 37211
EVELYN DRIVE DUPLEXES	25	ED UNDERWOOD	6922 HWY 70-S	NASHVILLE	TN 37221
FAIR MEADOWS M.H.P.	205	PAUL SCHIERHOLZ	1837 SOUTH NEVADA, S	COLORADO SPR CO	80906
FRANKLIN ESTATES APARTMENTS	740	DONALD PACK	700 W. MEADE BLVD.	FRANKLIN	TN 37064
GABBARD'S TRAILER PARK	38	CLYDE GOODRICH	RT 4, BOX 1060	WAVERLY	TN 37185
GABLES AT HICKORY HOLLOW	1293	ANGIE GARNSON	101 ARBOR KNOLL BLVD	NASHVILLE	TN 37013
GABLES OF BRENTWOOD	732	GINGER LONG	570 CHURCH ST. E	BRENTWOOD	TN 37027
GLASTONBURY WOODS APTS	340	TOM KINNIE, WATER SYSTEM INC.	110 SPACE PARK DRIVE	NASHVILLE	TN 37211
GRINDSTONE ESTATES MHP	775	Mr. Andrew Chastain	42 Grindstone Estate	Ooltewah	TN 37363
GROVE AT RICHLAND	689	SHELLY ROGOSKI	444 ELMINGTON AVE	NASHVILLE	TN 37205
GROVE WHITWORTH APARTMENTS	710	ANGIE REDDING	420 ELMINGTON AVE	NASHVILLE	TN 37205
HAMILTON POINTE APARTMENTS	903	KATHY THOMASON	6574 E. BRAINERD RD	CHATTANOOGA	TN 37421
HARBOURTOWN APTS.	437	BILLY BARRETT	2810 CLEARVIEW CT.	MURFREESBOR	TN 37129
HARTFORD HOUSE APTS	260	JOHN WELSH	111 WHITSETT DR	BRENTWOOD	TN 37210
HELTON ESTATES	53	JAMES HELTON	467 JOEL RD	OLIVER SPRING	TN 37840
HERMITAGE GARDENS APTS	172	GAYNELL FULFORD	4701 OLD HICKORY BLV	OLD HICKORY	TN 37138
HICKORY HILLS APTS	104	RANDY MOSREV	276 STEWARTS FERRY P	DONELSON	TN 37214
HICKORY POINT APTS.	636	GREGORY STOBART, DIST MANAGE	6420 KNIGHT ARNOLD	MEMPHIS	TN 38115
HICKORY RUN APTS.	817	BILLY BARRETT	2810 CLEARVIEW CT.	MURFREESBOR	TN 37129
HIDDEN CREEK APARTMENTS	750	BROOK STAMEY	7710 E BRAINERD RD	CHATTANOOGA	TN 37421
HIDDEN HOLLOW WATER SYSTEM	76	JOHN ADAMS	172 HIDDEN HOLLOW DR	DOVER	TN 37058
HILLTOP APARTMENTS	283	KATHLEEN PRATT	33 SHEPARD STREET	NASHVILLE	TN 37210
HOLLY PARK APARTMENTS	377	JOHN THRONEBERRY	1211 HAZELWOOD DR	MURFREESBOR	TN 37130
HUNTERS TRACE APTS.	509	GREGORY STOBART, DIST MANAGE	6420 KNIGHT ARNOLD	MEMPHIS	TN 38115
INDIAN CREEK TRAILER PARK	87	EDDIE SHOFFNER	106 MASON LANE	HARROGATE	TN 37752
JAMESTOWN APARTMENTS	238	KIRBY DAVIS	333 UNION ST, SUITE	NASHVILLE	TN 37201
JEFFERSON AT COOL SPRINGS	1112	CASEY JEFFERYS	101 GELLESPIE DRIVE	FRANKLIN	TN 37067
JEFFERSON FARMS APTS	1365	MICHELLE MONTGOMERY	201 GILLESPIE DR.	FRANKLIN	TN 37067
JEFFERSON SQUARE CONDOMINIUM	189	ROBERT SANDERSON	5039 HILLSBORO PIKE	NASHVILLE	TN 37215
JEFFERSONIAN APARTMENTS	46	BRUCE BODER, MIDSTATE BROKERA	101 POINT EAST RD	NASHVILLE	TN 37216
KEYSTON FARMS APARTMENTS	212	GREG MARSHALL	5360 EDMONDSON PIKE	NASHVILLE	TN 37211
LE BEAU CHATEAU	258	DONNA COX	1315 E. CASTLE STREE	MURFREESBOR	TN 37130
LEGACY HILL APTS.	486	BILLY BARRETT	2810 CLEARVIEW CT.	MURFREESBOR	TN 37129
LENOXGATE APARTMENTS	623	JOHN POLITIS, OWNER	ONE LENOX PLACE	GOODLETTSVIL	TN 37072
LITTLESTONE OF VILLAGE GREEN	429	DONNA PAYNTER	1000 NASHVILLE PIKE	GALLATIN	TN 37066
MIDWAY TRAILER COURT	40	Ms. Frances Roberson	2413 St. John Ave.	Dyersburg	TN 38024
MILLWOOD MANOR APTS	533	WATER SYSTEMS INC	110 SPACE PARK DRIVE	NASHVILLE	TN 37211

MA NAME	PL FOR	CORR NAM2	CORR STRT	CORR CITY	CORR Z
MOCKINGBIRD HILL ESTATES	40	EVERETT PETERS	108 LANCASTER ST	HARROGATE	TN 37752
MONTHAVEN PARK APTS	1263	LISA DODD	126 MONTHAVEN BLVD.	HENDERSONVIL	TN 37075
OAK PARK II APTS	75	JOHN THRONEBERRY	1211 HAZELWOOD ST	MURFREESBOR	TN 37130
OAKCREST CONDOMINIUMS	25	JUDY ROSE, MORRIS PROP MGMT	413 WESHWOOD DRIVE	NASHVILLE	TN 37211
OLD HICKORY ESTATES MHP	713	DOUG ALYEA	500 CHEYENNE BLVD	MADISON	TN 37115
PAGODA CONDOMINIUMS	260	TOM KINNIE	110 SPACE PARK DR	NASHVILLE	TN 37211
PARK AT HERMITAGE	1038	TERACI RINER	5900 OLD HICKORY BLV	HERMITAGE	TN 37076
PARK IV APTS	86	JOHN THRONEBERRY	1211 HAZELWOOD DR	MURFREESBOR	TN 37130
PINNACLE HEIGHTS	562	SHAY SPARKS	2900 BABY RUTH LANE	ANTIOCH	TN 37013
POINT BREEZE APARTMENTS	453	CAROL DUKE	488 LEMONT DRIVE	NASHVILLE	TN 37216
POST GREEN HILLS - STOKES APTS	109	TIM HIGGINS	2025 WOODMONT BLVD	NASHVILLE	TN 37215
POST GREEN HILLS - WOODMONT	288	TIM HIGGINS	2025 WOODMONT BLVD	NASHVILLE	TN 37215
POST HILLSBORO VILLAGE APTS.	100	WATER SYSTEMS INC.	110 SPACE PARK DRIVE	NASHVILLE	TN 37211
POST HOUSE JACKSON	383	DENISE HUTCHENS	26 REVERE CIRCLE	JACKSON	TN 38305
POST HOUSE NORTH	306	DENISE HUTCHENS	26 REVERE CIRCLE	JACKSON	TN 38305
PREAKNESS APARTMENTS	613	JEFF USELTON	530 BELL ROAD	ANTIOCH	TN 37013
PRESERVE AT BRENTWOOD	850	RAY THERESA	370 OAKLEY DR.	NASHVILLE	TN 37042
PUMP SPRINGS MHP	100	RICHARD JONES	PO BOX 10	HARROGATE	TN 37752
RAINTREE VILLAGE APARTMENTS	127	JEROLD BURKETT	SUITE 610 211 UNION	NASHVILLE	TN 37201
RINES' MOBILE HOME PARK	54	Mr. Earnest Rines, Owner	1575 ELLER RD BOX 17	Morristown	TN 37814
RIVER RETREAT I APARTMENTS	340	LORI SKINNER	600 CHEYENNE BLVD	MADISON	TN 37115
RIVER RETREAT II APARTMENTS	340	JACK GOINS	800 CHEYENNE BLVD	MADISON	TN 37115
RIVIERA UTILITIES OF TENNESSEE	137	JAMES KIRK OPERATOR	PO BOX 569	Middleton	TN 38052
SHADOW BLUFF APARTMENTS	320	WATER SYSTEMS INCORPORATED	110 SPACE PARK DRIVE	NASHVILLE	TN 37211
SHADY HILLS MOBILE HOME PARK	472	LES ANDERSON	1508 DICKERSON RD, #	NASHVILLE	TN 37207
SILVER PINES MHP	35	PAUL LEVASSEUR	477 WAYNESBORO HWY	WAYNESBORO	TN 38485
SOUTHGATE TERRACE APTS	25	RANDY WALLACE	178 SOUTH ROBERSON R	IRON CITY	TN 37463
SPINNAKER COVE APARTMENTS	656	KAREN DESMARAIS	100 ARBOR LAKE BLVD.	HERMITAGE	TN 37076
SPRING VILLAGE MHP	86	AHMAD BAHARESTAN	714 HWY 113	WHITE PINE	TN 37890
STACEY ANN'S MHP	123	Mr. Lloyd Price Bennett	100 Hickory Lane	McMinnville	TN 37110
STEEPLE CHASE APARTMENTS	270	LEIGH ANN WILLIAMS	1421 CLOVERDALE CIRC	HIXSON	TN 37343
SUNRISE APARTMENTS	472	MARISA PARKER	189 WALLACE RD.	NASHVILLE	TN 37219
THE COLONNADE	680	LYNN TANJA	4100 CENTRAL PIKE	HERMITAGE	TN 37076
THE CUMBERLAND APARTMENTS	682	SHEA RAGSDALE	555 CHURCH ST.	NASHVILLE	TN 37219
THE LAKES APTS.	604	BILLY BARRETT	2810 CLEARVIEW CT.	MURFREESBOR	TN 37129
THE TRAILS APTS.	2666	GREGORY STOBART, DIST MANAGE	6420 KNIGHT ARNOLD	MEMPHIS	TN 38115
TIVOLI PLACE APTS	25	LEIGH DALTON	325 WARRIOR DRIVE	MURFREESBOR	TN 37128
TRAILMONT MOBILE HOME PARK	309	DAVIS MILLER	111 HILL CREST RD.	GOODLETTSVIL	TN 37072

MA NAME	PL PO#	CORR NAME	CORR STRT	CORR CITY	CORR CORR
VILLAGE PLACE APARTMENTS	155	CAROL SMITH	110 OAK VALLEY DRIVE	NASHVILLE	TN 37207
WATERFORD CROSSINGS APARTME	708	KIM BENTLEY	5825 CROSSINGS BLVD	ANTIOCH	TN 37013
WATERFORD LANDING	434	WILMA HAWKINS	5901 OLD HICKORY BLV	HERMITAGE	TN 37076
WATERFORD PLACE	495	TAMMY MCCLESKY	2840 S. CHURCH ST.	MURFREESBOR	TN 37130
WELCH BEND APTS	1128	TOM KINNIE, WATER SYSTEM INC.	110 SPACE PARK DR	NASHVILLE	TN 37211
WEST END APARTMENTS	25	DOUG DABBS	110 31ST AVE NORTH	NASHVILLE	TN 37203
WHERRY HOUSING WATER SYSTEM	296	WHERRY HOUSING	102 BEAUREGARD BLVD	SMYRNA	TN 37167
WHISPERING PINES TRAILER COURT	125	TERRY DARNALL	2823 HWY 70 W.	JACKSON	TN 38301
WILDWOOD ESTATES	64	JEROME ELSTON	PO BOX 1255	DICKSON	TN 37056
WILLIAMSBURG APTS.	831	BILLY BARRETT	2810 CLEARVIEW CT.	MURFREESBOR	TN 37129
WILLIAMSBURG VILLAGE APTS.	377	DENISE HUTCHENS	26 REVERE CIRCLE	JACKSON	TN 38305
WILSHIRE HILLS	648	BARRY FIELD	PO BOX 2000	FAIRFIELD GLAD	TN 38558
WYNDCHASE AT ASPEN GROVE	1603	LINDA PAGE	3100 ASPEN GROVE DRI	FRANKLIN	TN 37067
WYNDCHASE AT BELLEVUE	826	LETICIA WALLACE, MGR	7221 HWY 70 S.	NASHVILLE	TN 37221
YOST TRAILER PARK	25	JOHN YOST	PO BOX 1011	SPRING CITY	TN 37381-1

MAIN NAME	POPULATION	COUNTY	CORR STREET	CORR CITY	CORR ZIP
12TH AVE SOUTH APTS	103	DAVIDSON	110 SPACE PARK DRIVE	NASHVILLE	37211
333 APARTMENTS	170	DAVIDSON	333 GALLATIN RD SOUT	MADISON	37115
ALLEN DALE DRIVE MHP	90	BLOUNT	161 HAMIL RD	FRIENDSVILLE	37737
AMBERWOOD AT BELLEVUE	531	DAVIDSON	1000 AMBERWOOD CIRCL	NASHVILLE	37221
ARBOR CREEK APARTMENTS	850	DAVIDSON	110 SPACE PARK DRIVE	NASHVILLE	37211
ARBORS AT BRENTWOOD	816	DAVIDSON	100 BRENTWOOD PL	BRENTWOOD	37211
ARBORS OF HICKORY HOLLOW	793	DAVIDSON	455 ARBOR PLACE	NASHVILLE	37217
ARBOURS OF HERMITAGE	833	DAVIDSON	6001 OLD HICKORY BLV	HERMITAGE	37076
ASHFORD APARTMENTS	465	HAMILTON	6201 POWERS FERRY RD	ATLANTA	30339
BAYS MOUNTAIN MOBILE HOME PARK	90	BLOUNT	1260 Glover Rd.	Rockford	37853
BIRCHWOOD APARTMENTS	215	RUTHERFORD	1211 HAZELWOOD DR	MURFREESBORO	37130
BRECKENRIDGE APTS.	448	DAVIDSON	2810 CLEARVIEW CT.	MURFREESBORO	37129
BRENTWOOD DOWNS	675	DAVIDSON	1 DERBY TRACE	NASHVILLE	37211
BRIAR CLUB APTS.	721	SHELBY	6420 KNIGHT ARNOLD	MEMPHIS	38115
BRIXWORTH APARTMENTS	510	DAVIDSON	101 BRIXWORTH LANE	NASHVILLE	37219
BROOKRIDGE APTS	415	DAVIDSON	2810 CLEARVIEW CT.	MURFREESBORO	37129
BUCKHEAD PLACE	240	DAVIDSON	6820 HWY 70 SOUTH	NASHVILLE	37221
CAMBRIDGE OF HICKORY HOLLOW	850	DAVIDSON	2 N RIVERSIDE PLAZA	CHICAGO	60606
CAMERON OVERLOOK APARTMENTS	1067	DAVIDSON	727 BELL RD.	ANTIOCH	37013
CANTOR CHASE APARTMENTS	555	DAVIDSON	1901 MURFREESBORO RD	ANTIOCH	37217
CAPITAL TOWERS APARTMENTS	97	DAVIDSON	501 GAY ST	NASHVILLE	37219
CEDAR PARK MHP	495	RUTHERFORD	1706 NORTH TENNESSEE	MURFREESBORO	37130
CEDAR RIDGE APARTMENTS	403	RUTHERFORD	100 MADISON DR	LAVERGNE	37086
CHERRY CREEK APARTMENTS	1480	DAVIDSON	1100 CRYSTAL SPRINGS	HERMITAGE	37076
CINNAMON TRAILS APTS.	551	SHELBY	6420 KNIGHT ARNOLD	MEMPHIS	38115
CLARKSVILLE HOUSING AUTHORITY	25	MONTGOMERY	721 RICHARDSON ST, P	CLARKSVILLE	37040
CLINCH VIEW MHP	33	GRAINGER	BOX 144A2	RUTLEDGE	37861
CLOAR'S TRAILER PARK	38	OBION	238 GLASS ST.	Hornbeak	38232
CLUB AT HICKORY HOLLOW	958	DAVIDSON	2810 CLEARVIEW CT.	MURFREESBORO	37129
COLONY HOUSE APTS	522	RUTHERFORD	1510 HUNTINGTON DRIV	MURFREESBORO	37130
COPPERFIELD TERRACE	160	DAVIDSON	120-1334 MASSMAN DR.	NASHVILLE	37217
COUNTRY ACRES FARM	100	BLOUNT	102 BEULAH DR	LOUISVILLE	37777
COUNTRY LIVING ESTATES MHP	332	SUMNER	1330 WILLIAMSON RD.	GOODLETTSVILLE	37072
COUNTRY MEADOWS MHP	699	DAVIDSON	860 RICHARDS RD.	ANTIOCH	37013
COVE MOUNTAIN MHP	98	SEVIER	3678 KATY HOLLOW RD	SEVIERVILLE	37862
CREEKSIDE MOBILE HOME SUBD	45	LOUDON	17360 STEEKEE RD	LOUDON	37774

DOGWOOD CREEK APTS.	737 SHELBY	6420 KNIGHT ARNOLD	MEMPHIS	38115
DOMINION FRANKLIN APTS.	990 WILLIAMSON	2810 CLEARVIEW CT.	MURFREESBORO	37129
DONELSON HILLS APARTMENTS	71 DAVIDSON	4701 OLD HICKORY BLV	OLD HICKORY	37138
ENCLAVE AT BRENTWOOD	897 DAVIDSON	110 SPACE PARK DRIVE	NASHVILLE	37211
EVELYN DRIVE DUPLEXES	25 DAVIDSON	6922 HWY 70-S	NASHVILLE	37221
FAIR MEADOWS M.H.P.	205 HAMILTON	1837 SOUTH NEVADA, S	COLORADO SPRINGS	80906
FRANKLIN ESTATES APARTMENTS	740 WILLIAMSON	700 W. MEADE BLVD.	FRANKLIN	37064
GABBARD'S TRAILER PARK	38 HUMPHREYS	RT 4, BOX 1060	WAVERLY	37185
GABLES AT HICKORY HOLLOW	1293 DAVIDSON	101 ARBOR KNOLL BLVD	NASHVILLE	37013
GABLES OF BRENTWOOD	732 WILLIAMSON	570 CHURCH ST. E	BRENTWOOD	37027
GLASTONBURY WOODS APTS	340 DAVIDSON	110 SPACE PARK DRIVE	NASHVILLE	37211
GRINDSTONE ESTATES MHP	775 HAMILTON	42 Grindstone Estate	Coilewah	37363
GROVE AT RICHLAND	689 DAVIDSON	444 ELMINGTON AVE	NASHVILLE	37205
GROVE WHITWORTH APARTMENTS	710 DAVIDSON	420 ELMINGTON AVE	NASHVILLE	37205
HAMILTON POINTE APARTMENTS	903 HAMILTON	6574 E. BRAINERD RD	CHATTANOOGA	37421
HARBOURTOWN APTS.	437 DAVIDSON	2810 CLEARVIEW CT.	MURFREESBORO	37129
HARTFORD HOUSE APTS	260 DAVIDSON	111 WHITSETT DR	BRENTWOOD	37210
HELTON ESTATES	53 ROANE	467 JOEL RD	OLIVER SPRINGS	37840
HERMITAGE GARDENS APTS	172 DAVIDSON	4701 OLD HICKORY BLV	OLD HICKORY	37138
HICKORY HILLS APTS	104 DAVIDSON	276 STEWARTS FERRY P	DONELSON	37214
HICKORY POINT APTS.	636 SHELBY	6420 KNIGHT ARNOLD	MEMPHIS	38115
HICKORY RUN APTS.	817 SUMNER	2810 CLEARVIEW CT.	MURFREESBORO	37129
HIDDEN CREEK APARTMENTS	750 HAMILTON	7710 E BRAINERD RD	CHATTANOOGA	37421
HIDDEN HOLLOW WATER SYSTEM	76 STEWART	172 HIDDEN HOLLOW DR	DOVER	37058
HILLTOP APARTMENTS	283 DAVIDSON	33 SHEPARD STREET	NASHVILLE	37210
HOLLY PARK APARTMENTS	377 RUTHERFORD	1211 HAZELWOOD DR	MURFREESBORO	37130
HUNTERS TRACE APTS.	509 SHELBY	6420 KNIGHT ARNOLD	MEMPHIS	38115
INDIAN CREEK TRAILER PARK	87 CLAIBORNE	106 MASON LANE	HARROGATE	37752
JAMESTOWN APARTMENTS	238 DAVIDSON	333 UNION ST, SUITE	NASHVILLE	37201
JEFFERSON AT COOL SPRINGS	1112 WILLIAMSON	101 GELLESPIE DRIVE	FRANKLIN	37067
JEFFERSON FARMS APTS	1365 WILLIAMSON	201 GILLESPIE DR.	FRANKLIN	37067
JEFFERSON SQUARE CONDOMINIUMS	189 DAVIDSON	5039 HILLSBORO PIKE	NASHVILLE	37215
JEFFERSONIAN APARTMENTS	46 DAVIDSON	101 POINT EAST RD	NASHVILLE	37216
KEYSTON FARMS APARTMENTS	212 DAVIDSON	5360 EDMONDSON PIKE	NASHVILLE	37211
LE BEAU CHATEAU	258 RUTHERFORD	1315 E. CASTLE STREE	MURFREESBORO	37130
LEGACY HILL APTS.	486 DAVIDSON	2810 CLEARVIEW CT.	MURFREESBORO	37129
LENOXGATE APARTMENTS	623 DAVIDSON	ONE LENOX PLACE	GOODLETTSVILLE	37072

LITTLESTONE OF VILLAGE GREEN	429	SUMNER	1000 NASHVILLE PIKE	GALLATIN	37066
MIDWAY TRAILER COURT	40	DYER	2413 St. John Ave.	Dyersburg	38024
MILLWOOD MANOR APTS	533	DAVIDSON	110 SPACE PARK DRIVE	NASHVILLE	37211
MOCKINGBIRD HILL ESTATES	40	CLAIBORNE	108 LANCASTER ST	HARROGATE	37752
MONTHAVEN PARK APTS	1263	SUMNER	126 MONTHAVEN BLVD.	HENDERSONVILLE	37075
OAK PARK II APTS	75	RUTHERFORD	1211 HAZELWOOD ST	MURFREESBORO	37130
OAKCREST CONDOMINIUMS	25	DAVIDSON	413 WESHWOOD DRIVE	NASHVILLE	37211
OLD HICKORY ESTATES MHP	713	DAVIDSON	500 CHEYENNE BLVD	MADISON	37115
PAGODA CONDOMINIUMS	260	DAVIDSON	110 SPACE PARK DR	NASHVILLE	37211
PARK AT HERMITAGE	1038	DAVIDSON	5900 OLD HICKORY BLV	HERMITAGE	37076
PARK IV APTS	86	RUTHERFORD	1211 HAZELWOOD DR	MURFREESBORO	37130
PINNACLE HEIGHTS	562	DAVIDSON	2900 BABY RUTH LANE	ANTIOCH	37013
POINT BREEZE APARTMENTS	453	DAVIDSON	488 LEMONT DRIVE	NASHVILLE	37216
POST GREEN HILLS - STOKES APTS	109	DAVIDSON	2025 WOODMONT BLVD	NASHVILLE	37215
POST GREEN HILLS - WOODMONT	288	DAVIDSON	2025 WOODMONT BLVD	NASHVILLE	37215
POST HILLSBORO VILLAGE APTS.	100	DAVIDSON	110 SPACE PARK DRIVE	NASHVILLE	37211
POST HOUSE JACKSON	383	MADISON	26 REVERE CIRCLE	JACKSON	38305
POST HOUSE NORTH	306	MADISON	26 REVERE CIRCLE	JACKSON	38305
PREAKNESS APARTMENTS	613	DAVIDSON	630 BELL ROAD	ANTIOCH	37013
PRESERVE AT BRENTWOOD	850	DAVIDSON	370 OAKLEY DR.	NASHVILLE	37042
PUMP SPRINGS MHP	100	CLAIBORNE	PO BOX 10	HARROGATE	37752
RAINTREE VILLAGE APARTMENTS	127	DAVIDSON	SUITE 610 211 UNION	NASHVILLE	37201
RINES' MOBILE HOME PARK	54	HAMLEN	1575 ELLER RD BOX 17	Morristown	37814
RIVER RETREAT I APARTMENTS	340	DAVIDSON	600 CHEYENNE BLVD	MADISON	37115
RIVER RETREAT II APARTMENTS	340	DAVIDSON	800 CHEYENNE BLVD	MADISON	37115
RIVIERA UTILITIES OF TENNESSEE	137	HARDEMAN	PO BOX 569	Middleton	38052
SHADOW BLUFF APARTMENTS	320	DAVIDSON	110 SPACE PARK DRIVE	NASHVILLE	37211
SHADY HILLS MOBILE HOME PARK	472	DAVIDSON	1508 DICKERSON RD. #	NASHVILLE	37207
SILVER PINES MHP	35	WAYNE	477 WAYNESBORO HWY	WAYNESBORO	38485
SOUTHGATE TERRACE APTS	25	WAYNE	178 SOUTH ROBERSON R	IRON CITY	37463
SPINNAKER COVE APARTMENTS	656	DAVIDSON	100 ARBOR LAKE BLVD.	HERMITAGE	37076
SPRING VILLAGE MHP	86	JEFFERSON	714 HWY 113	WHITE PINE	37890
STACEY ANN'S MHP	123	COFFEE	100 Hickory Lane	McMinnville	37110
STEEPLE CHASE APARTMENTS	270	HAMILTON	1421 CLOVERDALE CIRC	HIKSON	37343
SUNRISE APARTMENTS	472	DAVIDSON	189 WALLACE RD.	NASHVILLE	37219
THE COLONNADE	680	DAVIDSON	4100 CENTRAL PIKE	HERMITAGE	37076
THE CUMBERLAND APARTMENTS	682	DAVIDSON	555 CHURCH ST.	NASHVILLE	37219

THE LAKES APTS.	604	DAVIDSON	2810 CLEARVIEW CT.	MURFREESBORO	37129
THE TRAILS APTS.	2666	SHELBY	6420 KNIGHT ARNOLD	MEMPHIS	38115
TIVOLI PLACE APTS	25	RUTHERFORD	325 WARRIOR DRIVE	MURFREESBORO	37128
TRAILMONT MOBILE HOME PARK	309	DAVIDSON	111 HILL CREST RD.	GOODLETTSVILLE	37072
WATERFORD APARTMENTS	155	DAVIDSON	110 OAK VALLEY DRIVE	NASHVILLE	37207
APARTMENTS	708	DAVIDSON	5825 CROSSINGS BLVD	ANTIOCH	37013
WATERFORD LANDING	434	DAVIDSON	5901 OLD HICKORY BLV	HERMITAGE	37076
WATERFORD PLACE	495	RUTHERFORD	2840 S. CHURCH ST.	MURFREESBORO	37130
WELCH BEND APTS	1128	DAVIDSON	110 SPACE PARK DR	NASHVILLE	37211
WEST END APARTMENTS	25	DAVIDSON	110 31ST AVE NORTH	NASHVILLE	37203
WHERRY HOUSING WATER SYSTEM	296	RUTHERFORD	102 BEAUREGARD BLVD	SMYRNA	37167
WHISPERING PINES TRAILER COURT	125	MADISON	2823 HWY 70 W.	JACKSON	38301
WILDWOOD ESTATES	64	HUMPHREYS	PO BOX 1255	DICKSON	37056
WILLIAMSBURG APTS.	831	SUMNER	2810 CLEARVIEW CT.	MURFREESBORO	37129
WILLIAMSBURG VILLAGE APTS.	377	MADISON	26 REVERE CIRCLE	JACKSON	38305
WILSHIRE HILLS	648	CUMBERLAND	PO BOX 2000	FAIRFIELD GLADE	38558
WYNDCHASE AT ASPEN GROVE	1603	WILLIAMSON	3100 ASPEN GROVE DRI	FRANKLIN	37067
WYNDCHASE AT BELLEVUE	826	DAVIDSON	7221 HWY 70 S.	NASHVILLE	37221
YOST TRAILER PARK	25	RHEA	PO BOX 1011	SPRING CITY	37381-1011

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APPENDIX D

Published by
The Tennessean
Thursday, 9/17/98

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ENVIRONMENT

Water wars hit Tennessee communities

By Anne Paine / Tennessean Staff Writer

Water wars, long a staple of the West, are simmering in Tennessee.

Related stories New state efforts for regional water planning are pushing counties to grips with the paradox of little amid plenty.

While the state abounds with lakes and rivers, many communities are finding it more difficult to meet increasing demands for water because of a growing population, local water scarcity and the need to protect the state's streams and natural areas.

Already utilities in Midstate and Eaststate counties that aren't along the state's major water arteries -- the Cumberland and Tennessee rivers -- are bickering with each other and the state as they float requests to dam small streams or take more water from them.

Also troubling state officials is a proposal to divert water from the Tennessee River near Chattanooga to serve the rapidly growing Atlanta area. Georgia itself is locked in a struggle with Florida and Alabama over streams those states share. Similar skirmishes have erupted between other states.

As the number of people multiply in the South, competition has increased for water for homes, industry, recreation, fish and wildlife and the environment. For instance, the combined population of Tennessee, Kentucky, Alabama and Georgia grew an estimated 19.7% from 1980 to 1997, according to the U.S. Census Bureau.

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Within Tennessee, towns such as Tullahoma and Columbia could face higher water bills, rationing or limited growth if other communities take increasing amounts of water from the lakes and streams from which they, too, draw their supplies.

Elsewhere, the U.S. Army Corps of Engineers says it intends to start charging for the water storage service it provides with its 10 dams on the Cumberland River system in Tennessee.

Water innocence is dead.

Aside from the pain of finding new water sources, uncomfortable pocketbook issues are anticipated.

"Cable TV goes up and people grumble, but water goes up and people go through the roof," said Dan Ferry, project manager for water supply for the Tennessee Valley Authority. TVA has 17 dams in the state on the Tennessee River system.

"Water is supposed to be free."

Trouble spots

While West Tennessee relies largely on underground water that collects in the sand underlying the area, rocky Middle and East Tennessee depend mainly on rivers and streams.

Many have been dammed or have had water taken -- at one time with little thought to the trout, mussels and wildlife the streams might support. Tennessee today has 88 federally endangered plants and animals, more than every state except Hawaii, California, Florida and Alabama. Most are aquatic creatures.

Environmental regulations and awareness are requiring more care.

"We have to look at other options if we want to protect natural streams," said Dodd Galbreath, environmental policy analyst for the state.

The state has stepped in to try to persuade local officials and utilities to work together to go after

Other parts of Williamson County, which have experienced shortfalls with dry weather, are not part of the regional planning.

Dickson County. The county, which had a 13.1% population increase from 1990 to 1996, has several utilities casting around for more water.

The state has given Turnbull Water Utility District permission -- on an interim basis -- to take 1.5 million gallons a day more out of Turnbull Creek so that county residents won't run short next year. The utility will be able to draw 4.5 million gallons a day from the creek.

That's 600,000 gallons more than the creek might have in it during dry times.

"There's not a lot of water in Turnbull," said Elmo Lunn, president of the Dickson County Water Authority. "It's a creek. It's not a river. It's done well to meet today's needs, but it's just not there for future needs."

In the 1980s, the city of Dickson proposed pulling 2 million gallons a day from the Piney River, a high-quality bass stream rich with aquatic life. Nature lovers and river neighbors opposed it, but the city won.

Now the city has applied to the state to double that amount to 4 million. While winter flows can be high -- 87 million gallons a day, for instance -- in a dry period that could leave a much smaller stream of about 2.9 million gallons a day.

The city and major utilities in the county maintain that they are considering building a 25-mile-long pipeline to the Cumberland River, so they won't keep sucking more from these small, sensitive streams.

They have talked about a pipeline for at least seven years. It hasn't happened yet.

Cumberland County. A 21.1% population growth rate 1990-1996 has utilities here on the Cumberland Plateau launched into a search for

more water.

"We're getting engineering reports indicating our existing water supply will be exhausted in 10-15 years," County Executive Brock Hill said.

"Traditionally, you went out and found a stream and dammed it up. Everybody goes out and builds a lake. That gets you by for a few years. I don't think you can keep on doing that."

One utility's attempt beginning in 1993 to get permits to dam Clear Creek unleashed a unified attack from conservationists and environmentalists.

Clear Creek is the main tributary to the Obed River, a segment of which is the Obed Wild and Scenic River, the only river in the Southeast administered by the national park system.

"Water is the park," said Don Barger, Southeastern director for the National Parks and Conservation Association. "Water carved the canyon. Water is the attraction.

"So, if you've taken the river, you've taken the park. You'd have the Wild and Scenic Ditch. Dams take water incrementally. There are already dozens of impoundments upstream from the Obed. By challenging the Clear Creek dam, we stopped the process."

The utility says the dam wouldn't hurt the river. Still, the proposal appears to have ground to a halt.

Today, permits are more likely to be denied to protect natural streams around the state, but the state is offering to help utilities and counties work together toward a solution.

The state announced a "regional planning partnership" this summer with Cumberland County, in a project state Environment Commissioner Milton Hamilton says he hopes will be a model for counties trying to balance economic growth and protection of natural resources.

Cumberland County's water utilities signed on together asking for help. Hamilton has set aside \$75,000 and the federal government the same for the project.

Options include building a pipeline to a major federal lake, water conservation, growth management, creating a joint lake, and "water harvesting" from ravines and small streams during the rainy season when torrents of water tear through the plateau.

The water would be stored for times when local rivers are too low for people and the environment both.

"To avert a water crisis on the plateau, we felt we needed to examine new solutions," Brock Hill said.

With the state expecting a 24% increase in population between 1997 and 2025, others need to do the same, state officials say.

Barger applauds the state for wading into the fray in Cumberland County.

"It kept everybody from going to court and fighting."

His concern, however, is that planning be truly regional -- not within a single county -- and that other areas proceed, too.

So far, the state doesn't have the muscle to force communities to plan, but it could get it.

"I don't know whether we'll need any legal leverage," said Justin Wilson, policy adviser to Gov. Don Sundquist.

"We'd like to avoid that sort of solution. We would rather have a locally driven, voluntary - effort. If it develops that legislation is appropriate, there's something we can do."

Southern rumblings

Published by -
The Tennessean
Tuesday, 12/08/98

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HOUSING & UTILITIES

Apartments need license to sell water to tenants

By Anne Paine / Tennessean Staff Writer

Apartment and condominium complexes in Tennessee that are charging residents for water use may be doing so illegally, according to the state.

The state has a list of 46 complexes that are licensed to comply with U.S. Environmental Protection Agency rules and are the only ones allowed to charge, officials say. State officials aren't sure how many complexes might be charging for water without the proper license.

Arbours of Hermitage is one that has begun charging before obtaining a license.

"That's illegal, according to the EPA," said Lola Potter, Tennessee Department of Environment and Conservation spokeswoman.

An official with Arbours of Hermitage referred calls to Tom Lynch, vice chairman of Water Systems Inc., which installs meters and sets up billing systems.

"We started installing this system several months ago," Lynch said.

A license was applied for about two weeks ago, he said.

The 350-unit complex made the decision to start charging its tenants about two months ago, he said, noting that putting in individual meters is a large capital investment.

The federal safe drinking water law, passed in 1974, requires a complex with more than 15 connections or serving more than 25 people to register as a public water system -- even if the water comes, for instance, from Metro Water Services.

A trend for complexes to charge a flat rate or metered rate for individual water use has been growing as water and sewer rates have risen. The appeal is that complexes can take advantage of commercial water rates -- which can benefit the tenants -- and they don't have to pay for water misuse.

"Once an apartment complex makes a decision to sell the water to individual tenants, they become a regulated public water system," said David Draughon, director of the state's division of water supply.

by whom?

The duty of a complex is to acquire a license and do regular testing for chlorine and microbiological constituents of the water within the complex's pipes, he said.

The more extensive chemical testing that Metro, for example, carries out before water arrives at a complex is not required.

Lynch said he sees the testing in the complex as unnecessary, but it must be done because of the law.

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UTILITIES

Apartment water fees under watch

By Anne Paine / Tennessean Staff Writer

Dozens of apartment and condo complexes in the Midstate that had been charging for water without licenses are under state scrutiny after residents complained.

There are likely more.

The state, which has given complexes 30 days to comply with EPA regulations imposed on water distributors, relies on the owners or renters to report the shortcoming.

The law requires a complex with more than 25 people or 15 connections to register with the state and regularly test for chlorine and microbiological presence in the water pipes.

About 50 Midstate complexes that have taken the required steps to prove they are delivering water safely have been added to the list of licensed community water systems, officials say. In mid-December, only 46 complexes statewide had permits.

Those added include 333 Apartments in Nashville, Cedar Ridge apartments in La Vergne and Franklin Estates apartments in Franklin.

Renters and others in unlicensed complexes, including trailer parks, that are charging for water began flooding the state with calls after a Dec. 8

news report, causing officials to assign extra workers to answer the state's local Environmental Assistance Center telephones.

"We got hundreds of calls in our field office," said Robert Foster, deputy director of the state's Division of Water Supply.

Some complexes have resisted the regulation, part of the 1974 Safe Drinking Water Act, officials say. The complex owners argue, in part, that some states don't have the requirement.

"Tennessee is following the letter of the law, which is what we want," said David Parker, U.S. Environmental Protection Agency regional drinking water treatment expert in Atlanta.

"The bottom line is to make sure the public health is protected."

The practice of charging either a flat fee or an amount based on individual meters has grown as building owners generally look for ways to cover costs and carry out business profitably. Individual meters have the added benefit of encouraging water conservation, making them the wave of the future as water becomes a more costly and limited commodity.

If a complex is charging, the parent water company -- in Nashville it's Metro Water Services -- is no longer responsible for the water quality, Parker said.

"If a line breaks in the complex and there's sewage getting into the lines, there's no testing going on to catch it," Parker said.

Alabama and South Carolina, along with Tennessee, are among Southern states that are following the law so far, Parker said. The others are supposed to follow suit.

"Some of the apartment management firms are saying it's not fair," Parker said. "These are companies that do business in Tennessee and elsewhere."

Managers at Cedar Ridge in Rutherford County and Franklin Estates apartments in Williamson County say the transition into a licensed state has been smooth. Both had already been charging with the use of separate meters.

"We haven't had a problem with it," said Lois Pack, co-manager of Franklin Estates. "We immediately started doing what we needed to do to comply."

"We had no disruptions in service," said Tara Young, manager of Cedar Ridge.

"Our residents won't see any change at all."

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UTILITIES

Water billing by apartments irritates tenants

By Anne Paine / Tennessean Staff Writer

Some apartment dwellers may be paying a lot more for water than Metro Water Services charges homeowners.

The growing practice of "submetering," having a private company install and bill for separate meters in a complex, has sparked at least one lawsuit.

Midstate tenants also have lodged complaints with lawmakers and the Tennessee Regulatory Authority. The trend has emerged as apartment, condominium and trailer park complexes search for ways to cut business costs.

Private billing companies, middlemen in the formula, tout individual meters as an excellent tool to encourage people to conserve water. No one argues with this.

One state legislator, however, is angry at some of the charges he's seen and the lack of regulation over the billing in the Midstate.

"It's city water. In Nashville, it's Metro water. They're making a profit on city water," fumed Rep. Ben West. "I don't think you're supposed to do that."

The Village Place Apartments, 110 Oak Valley Drive, charged one apartment with three men \$104.30 for water/sewer service during

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November, according to a document filed in Davidson County Chancery Court.

A processing fee of \$3 was tacked on, along with a \$3.48 charge listed as a state fee.

According to a Metro Water Services representative, Metro would have charged \$52.75 for the same amount of water, using residential rates.

The on-site apartment manager, Carol Smith, said she could not comment because of a pending lawsuit involving the 333 Apartments, which she also manages. Smith referred questions to attorney Daniel Eisenstein. An assistant said he was out of town.

Thirty-five people in the 333 Apartments, 333 Gallatin Road, have filed a lawsuit against the 333 Associates, a limited liability corporation that owns the complex, and its billing agency.

Jim White, an attorney for Water Systems Inc., whose related company, Utility Billing Services Inc., does the billing and collections for 333 and Village Place apartments, said he could not talk about details because of the lawsuit.

Randy Ross, Water Systems president, said he, too, couldn't talk about specifics.

He did say the state fee on one of his company's bills refers to a city and state tax passed on by Metro Water Services. Also, the complexes have costs of water testing, which is required to comply with state licensing.

"It's unusual, if not rare, that an apartment bills back what they have had to pay for water and sewer," Ross said. "It seems to be a perception that the property owner is gouging."

"In most cases, the properties don't recapture their costs, just as I'm sure Metro probably doesn't."

A complex generally has its own master meter.

The local utility bills the complex, often at a

commercial rate, on the amount of water used overall each month.

The apartment bases the tenant's bills on the reading from a smaller, individual meter measuring all water used in a single apartment, or on a meter connected only to the hot water line of that apartment. The hot water amount is considered the indicator of how much cold water was used; thus, the bill is an estimate.

In some complexes, charges are meted out based on square footage of a residence. Also, the water that fills a pool or nourishes grass and planting in common areas is rolled into tenants' bills at some complexes.

Hank Fasig, 46, a tenant in 333 Apartments, said he was informed last summer he would have to begin paying for water, though his lease didn't specify it.

"I'm on a fixed income," said Fasig, who said he's disabled and 75% blind.

He said he was given the choice of signing an agreement or having his rent raised. Moving was not possible on short notice in his condition, he said.

A \$50 deposit was required, and then the bills came.

One totaled \$70, he said, though he is a single person who uses water moderately and has no washing machine.

With the new expenses, Fasig says, "I had to go to churches for food and things."

He said his rent went up, too, after the lawsuit was filed.

"This really did hurt me bad," he said.

Attorney Jean Harrison, representing Fasig and the others filing suit, is seeking through the courts to turn the case into a larger class action to include complex dwellers elsewhere.

"Unscrupulous people are taking advantage," Harrison said. "In low-income areas it's the worst."

"It's nothing more than an opportunity for a landlord to make as much money off a tenant as they can."

In the case of Village Place bills, the sewer and water charges are not broken out, making it difficult to understand the charges or compare to Metro rates, she said.

The bills look like a standard utility company's bill, giving a false sense about its legitimacy, Harrison said. The landlords in some complexes secure agreements to cut off a tenant's water with little recourse, which they've done.

"They should be regulated," she said. "As long as Metro is doing the billing, we know they're not out to make a huge profit. It's a service."

The Tennessee Regulatory Authority, which oversees privately owned utilities, has kept out of the fray so far.

"We're still researching the entire issue," said TRA spokesman Greg Mitchell.

Utilities usually have been granted the right to exclusive service rights in a district, said Robert Foster, deputy director of the state's Division of Water Supply.

It would be illegal for another entity to sell water in a district under those conditions, he said.

"Some choose to defend that right and some choose not to," Foster said.

Metro Water Services, for one, is gearing up.

"We are the water purveyor, and they can't be," said Buddy Williams, Metro Water Services director. "We're in the process of drafting Metro legislation to prevent them from billing."

A current Metro code allows, in theory anyway, a

residential building owner to put in individual meters, only if there are 15 or fewer units, but that, too, should be changed, Williams said.

The new individual meters, which can be more accurate and read electronically, are the wave of the future, Williams said. The private companies that are installing them now would continue to do so under the law that will be proposed.

"We would really take out the middle man. We think that will be beneficial to everybody, including apartment dwellers and owners," he said.

Ross said he wants his company to stay in the billing business but would support "fair and straightforward legislation to supervise and assure the public is protected as the submetering moves forward."

West said a legislative study committee will look into submetering this year.

"They're being held hostage," he said of tenants.

"Utilities are audited. These companies are not. Do we know it's a true billing?"

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Published by
The Tennessean
Tuesday, 12/08/98

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HOUSING & UTILITIES

Which complexes can charge for water?

Staff Reports

Midstate tenants who are being charged a flat rate or metered rate by a complex not on the following list can report it by calling toll-free to 1-888-891-TDEC. cq

Davidson County: Arbor Creek Apts., Breckenridge Apts., Brookridge Apts., Club at Hickory Hollow, Enclave at Brentwood Apts., Evelyn Drive Duplexes, Glastonbury Woods Apts., Harbour Town Apts., Hartford House Apts., Hickory Hill Apts., Jefferson Square Condominiums, Jeffersonian Apts., Legacy Hills Apts., Oakcrest Condominiums, Pagoda Condominiums, Post Green Hills-Stokes Apts., Post Green Hills-Woodmont, Shadowbluff Apts., The Lakes Apts., Waterford Crossings Apts., Welch Bend Apts., West End Apts.

Rutherford County: Birchwood Apts., Colony House Apts., Holly Park Apts., Oak Park II Apts., Park IV Apts., Tivoli Place Apts.

Montgomery County: Clarksville Housing Authority.

Sumner County: Hickory Point Apts., Littlestone of Village Green, Williamsburg Apts.

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APPENDIX E

Filed for intro on 02/11/99

HOUSE BILL 713
By West

AN ACT to amend Tennessee Code Annotated, Title 7, relative to utilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 35, Part 1, is amended by adding the following as a new section thereto:

Section _____. (a) It shall be unlawful to impose a fee for the processing or handling of billing of utility services when such utility services are sold to a consumer for residential use.

(b) No tenant of an apartment building shall be charged separately for water service unless each tenant of the apartment building has a separate meter to measure accurately the amount of each tenant's water consumption.

SECTION 2. This act shall take effect July 1, 1999, the public welfare requiring it.

SENATE BILL 2848
By McNally

AN ACT to amend Tennessee Code Annotated, Title 7 and Title 65, relative to providing water and sewer services to certain dwellings.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 65, is amended by adding Sections 2 through 7 of this act as a new chapter thereto.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Action" includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined, including an action for possession;

(2) "Building" means any condominium, premanufactured housing, and any building containing more than one (1) residential unit, including apartments, and similar multiple user installations, but does not include hotels, motels, bed and breakfast establishments, or other similar transient lodging;

(3) "Building and housing codes" include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit;

(4) "Constructed" means that a valid use and occupancy or equivalent permit has been issued to a building;

(5) "Landlord" means the owner, property management company, lessor, or sublessor of the dwelling unit or the building of which it is a part;

(6) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity;

(7) (A) "Owner" means one (1) or more persons, jointly or severally, in whom is vested:

(i) All or part of the legal title to property; or

(ii) All or part of the beneficial ownership and a right to the present use and enjoyment of the premises;

(B) "Owner" also includes a mortgagee in possession.

(8) "Person" includes an individual or organization;

(9) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(10) "Rental agreement" means all agreements, written or oral, and valid rules and regulations embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(11) "Rents" means all payments to be made to the landlord under the rental agreement;

(12)(A) "Security deposit" means an escrow payment made to the landlord under the rental agreement for the purpose of securing the landlord against financial loss due to damage to the premises occasioned by the tenant's occupancy other than ordinary wear and tear; and

(12)(B) "Security deposit" does not include advance rentals;

(13) "Submetering" means the installation and operation of equipment to determine the actual use of water for each tenant or premanufactured home owner; and

(14) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

SECTION 3. After the effective date of this act:

(1) No building subject to the provisions of this act shall be constructed unless each residential unit has its own separate water meter or unless submetering equipment for each residential unit is provided;

(2) No existing building subject to the provisions of this act with a master meter may charge individual dwelling units separately for each dwelling unit's water consumption unless each residential unit has its own separate water meter, submetering equipment for each residential unit is provided, or a means of determining water usage is employed by the landlord that is specified by the Tennessee regulatory authority through its rules and regulations;

(3) Water and wastewater utility bills of buildings subject to this act may be issued by a property owner, a manager of such property, or a qualified billing agent;

(4) Water and wastewater service shall not be provided to any person who is not a tenant of the building;

(5) Each water and wastewater utility bill issued pursuant to this act shall have printed on it a phone number for tenants to call in order to resolve any billing disputes;

(6) No tenant's water and wastewater service may be terminated for nonpayment of any water or wastewater utility bill;

(7) Information regarding the water and wastewater submetering and billing arrangement shall be provided in each tenant's rental agreement or contract; and

(8) Each water and wastewater utility bill shall set forth clearly all relevant fees and charges and any other information that is pertinent to the transaction.

SECTION 4. The owner of a building subject to the provisions of this act may install submetering equipment for each individual dwelling unit to allocate equitably the costs of each residential dwelling unit's water consumption. For the purposes of this chapter costs of water consumption shall include the cost of the water consumed, wastewater charges based upon water consumption, and reasonable administrative costs. For the purposes of this section reasonable administrative costs shall include the actual cost of inspecting the submeter, maintenance of submeters, billing, and testing and registration of submeters. The applicable rate or fee for such services shall be posted on all bills provided to tenants. Reasonable administrative costs shall not exceed four dollars (\$4.00) per submeter per month. All charges for the period shall be separately stated along with the opening and closing readings of the meter.

SECTION 5. Every master meter customer is responsible for maintenance and repair of its submeter facilities that are separate from the master meter. Nothing in this act shall require any utility to provide services to submeter facilities.

SECTION 6. The Tennessee regulatory authority is hereby authorized to examine for accuracy billing procedures by buildings subject to the provisions of this act, to require the submission of data on accuracy of submeters, and to require bills to be adjusted accordingly. The size, type and placement of all meters, other flow measuring devices, and any applicable valves and shut-offs may be specified by the authority.

SECTION 7. Notwithstanding any provision of law to the contrary, the landlord of a building subject to the provisions of this act that employs submetering may deduct the unpaid costs of a residential unit's water consumption from the deposit received for such residential unit.

SECTION 8. For the purpose of promulgating rules and regulations by the Tennessee regulatory authority, this act shall take effect upon becoming a law, the public welfare requiring

it. For all other purposes this act shall take effect January 1, 2001, the public welfare requiring it.



Tennessee Regulatory Authority
Authorization No. 316241 (2-2000), 100 copies. This
public document was promulgated at the cost of \$4.580 per