

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 18, 2024

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUR-2024-00186

Ex Parte: In the matter of amending regulations governing gas and electric submetering of tenants

ORDER ESTABLISHING PROCEEDING

The Rules for Electricity and Natural Gas Submetering and for Energy Allocation Equipment, 20 VAC 5-305-10 *et seq.* ("Submetering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-245.3 of the Code of Virginia ("Code"), establish requirements for owners using submetering and energy allocation equipment to measure and fairly allocate the costs of electric or gas to tenants of residential, commercial, or mixed-use properties.

Chapter 557 (House Bill 1376) of the 2024 Virginia Acts of Assembly ("Chapter 557") added the following language to Code § 56-245.3 to make clear that residential and non-residential unit owners shall be considered tenants for purposes of the Submetering Rules:

D. For the purposes of rules promulgated pursuant to this section, billing requirements and all other rules related to submetering or energy allocation equipment use by tenants of an apartment house, office building, shopping center, or campground shall apply to residential and nonresidential unit owners.

The Commission Staff ("Staff") has advised the Commission that, given this change, the current Submetering Rules must be revised to reflect the change set forth in Chapter 557. To initiate this proceeding, Staff has prepared proposed amendments to Rules 20 VAC 5-305-10 and 20 VAC 5-305-20 of the Submetering Rules ("Proposed Amendments"), which are appended to this order.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that a proceeding should be established to consider amending the Submetering Rules in keeping with the expanded definition of "tenant" in Chapter 557.

The Commission finds that notice of Staff's Proposed Amendments should be given to potentially interested persons, and that interested persons, whether or not they received direct notice from Staff, should be provided an opportunity to file written comments or request a hearing on the Proposed Amendments. The Commission further finds that a copy of the Proposed Amendments should be sent to the Office of the Registrar for publication in the *Virginia Register of Regulations*.

To promote administrative efficiency and timely service of filings upon participants, the Commission will, among other things, direct the electronic filing of comments and pleadings unless they contain confidential information, and require electronic service on participants in this proceeding.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed as Case No. PUR-2024-00186.
- (2) All comments or other documents and pleadings filed in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure.¹ Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and shall comply with Rule 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. Any person seeking to hand deliver and

¹ 5 VAC 5-20-10 *et seq.* ("Rules of Practice").

physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

(3) Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Rules of Practice, the Commission directs that service on participants and Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, participants and Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no participant or Staff is impeded from participating in this matter.

(4) The Commission's Office of General Counsel shall forward a copy of this Order Establishing Proceeding to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

(5) An electronic copy of the Proposed Amendments may be obtained by submitting a request to Michael A. Cizenski, Deputy Director in the Commission's Division of Public Utility Regulation at the following email address: mike.cizenski@scc.virginia.gov. An electronic copy of the Proposed Amendments can also be found at the Division of Public Utility Regulation's website: scc.virginia.gov/pages/Rulemaking. Interested persons may also download unofficial copies of the Order and the Proposed Amendments from the Commission's website: scc.virginia.gov/pages/Case-Information.

(6) Within ten (10) business days hereof, Staff shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to individuals,

organizations, and companies who have been identified by Staff as potentially being interested in this proceeding.

(7) On or before January 13, 2025, any interested person may comment on or request a hearing on the Proposed Amendments by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable, as a practical matter, to submit comments electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2024-00186. Individuals should be specific in their comments on the Proposed Amendments and should address only those issues pertaining to the amendment of Code § 56-245.3 pursuant to Chapter 557. Issues outside the scope of addressing this amendment will not be open for consideration. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the comments, documents or other pleadings filed in this proceeding.

(8) On or before February 28, 2025, Staff shall file with the Clerk of the Commission a report on or a response to any comments or requests for hearing submitted to the Commission on the Proposed Amendments.

(9) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

Project 8108 - Proposed**State Corporation Commission****Chapter 305 Rules for Electricity and Natural Gas Submetering and for Energy Allocation
Equipment****20VAC5-305-10. Definitions.**

Certain words as used in this chapter shall be understood to have the following meaning:

"Apartment house" means a building or buildings with the primary purpose of residential occupancy containing more than two dwelling units all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house includes residential condominiums and cooperatives whether rented or owner-occupied.

"Building" means all of the individual units served through the same utility-owned meter within an apartment house, office building, or shopping center as defined in this section.

"Campground" means and includes but is not limited to a travel trailer camp, recreation camp, family campground, camping resort, camping community, or any other area, place, parcel, or tract of land, by whatever name called, on which three or more campsites are occupied or intended for occupancy, or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites and facilities is granted gratuitously, or by rental fee, lease, or conditional sale, or by covenants, restrictions, and easements. "Campground" does not include a summer camp, migrant labor camp, or park for mobile homes as defined in §§ 32.1-203 and 35.1-1 of the Code of Virginia, or a construction camp, storage area for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions, and conditions from providing sanitary facilities within the individual owner's property lines.

"Campsite" means and includes any plot of ground within a campground used or intended for occupation by the camping unit.

"Commission" means the State Corporation Commission of Virginia.

"Dwelling" means a room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

"Energy allocation equipment" means any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any dwelling unit, nonresidential rental unit, or campsite within an apartment house, office building, shopping center, or campground.

"Energy unit" means the billing units for energy delivered to the master-metered customer. For electricity, the units are generally kilowatt hours (Kwh). For natural gas, the units are generally therms, but may be dekatherms (Dth), cubic feet (cf), hundreds of cubic feet (Ccf), or thousands of cubic feet (Mcf).

"Master meter" means a meter used to measure for billing purposes, all electric or natural gas usage of an apartment house, office building, shopping center, or campground, including common areas, common facilities, and dwelling or rental units therein.

"Month" or "monthly" means the period between two consecutive meter readings, either actual or estimated, at approximately 30-day intervals.

"Nonresidential rental unit" means a room or rooms in which retail or commercial services, clerical work, or professional duties are carried out.

"Office building" means a building or buildings containing more than two rental units which are rented primarily for retail, commercial, or professional use, with rental paid at intervals of one month or longer. Office buildings can include residential and non-residential unit owners.

"Owner" means any owner, operator, or manager of an apartment house, office building, shopping center, or campground engaged in electrical or natural gas submetering or the use of energy allocation equipment.

"Owner-paid areas" means those areas for which the owner bears financial responsibility for energy costs which include but are not limited to areas outside individual residential or nonresidential units or in owner-occupied or - shared areas such as maintenance shops, vacant units, meeting units, meeting rooms, offices, swimming pools, laundry rooms, or model apartments.

"Shopping center" means a building or buildings containing more than two stores which are rented primarily for commercial, retail, or professional use. Shopping centers can include residential and non-residential unit owners.

"Submeter" means electric energy or natural gas measurement device used in submetering.

"Submetering" means dwelling or rental unit electrical or natural gas direct remetering performed by the owner to measure the tenant's electrical or natural gas usage and to render a bill for such usage.

"Submetering equipment" means equipment used to measure actual electricity or natural gas usage in any dwelling unit, nonresidential rental unit, or campsite when such equipment is not owned or controlled by the electric or natural gas utility serving the apartment house, office building, shopping center, or campground in which the dwelling unit, nonresidential rental unit, or campsite is located.

"Tenant" means the occupant, or occupants, or residential and non-residential unit owners of a submetered dwelling, rental unit, or campsite.

"Utility" means the supplier of electric service or natural gas service to a master meter.

20VAC5-305-20. General requirements.

Residential and non-residential unit owners shall be considered tenants for billing requirements and all other rules herein related to submetering or energy allocation equipment.

Submetering or energy allocation equipment may not be used in any dwelling unit unless all dwelling units in the apartment house utilize such equipment to the extent permitted by the physical facilities.

Any individual nonresidential rental unit, store, or campground may utilize submetering or energy allocation equipment, provided the rental agreement or lease between the owner and the tenant clearly states that the nonresidential rental unit, store, or campsite is or will be using submetering or energy allocation equipment.

All rental agreements and leases between the owner and the tenants shall clearly state that the dwelling unit, nonresidential rental unit, or campsite utilizes submetering or energy allocation equipment, that the basis of bills for electric or natural gas consumption will be rendered based on readings of such equipment, and that any disputes relating to the amount of the tenant's bill and the accuracy of the equipment will be between the tenant and the owner. Where applicable, the provisions of the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq. of the Code of Virginia) will govern the landlord-tenant relationship concerning the use of submetering or energy allocation equipment on all related issues other than those covered by these rules.

Each owner shall be responsible for providing, installing, sealing (if necessary), and maintaining all submetering or energy allocation equipment necessary for the measurement or allocation of the costs for electrical energy or natural gas consumed by tenants.

Any electric submeter installed will be of a type and class to register properly the electrical consumption of the dwelling unit, nonresidential rental unit, or campsite, and such meter will meet

the standards of the American National Standards Institute, Inc., Standard C12.1-2008 Code for Electricity Metering (ANSI C12.1).

Any natural gas submeter installed will be of a type and class to register properly the natural gas consumption of the dwelling, nonresidential rental unit, or campsite, and such meter will meet the standards of the American National Standard Institute Standards ANSI B109.1 (2000) and B109.2 (2000) for Diaphragm Type Gas Displacement Meters and ANSI B109.3 (2000) for Rotary Type Gas Displacement Meters (hereafter, ANSI B109).

Any energy allocation equipment installed will be of a type and class appropriate to the heating, ventilation, and air conditioning (HVAC) system of the apartment house, office building, shopping center, or campground and used in accordance with the manufacturer's installation specifications and procedures for such energy allocation equipment.

Any owner installing submetering or energy allocation equipment shall notify the commission and the utility providing electric or natural gas service to the apartment house, office building, shopping center, or campground in writing within 90 days of completion of such installation that the equipment has been installed and shall give the name of the apartment house, office building, shopping center, or campground; number of dwelling units, nonresidential rental units, or campsites in the project; location; mailing address of the owner; the approximate date of installation of the equipment; and the type, manufacturer, and model number of such equipment.

Natural gas submetering and energy allocation equipment, including related piping and materials, for which the owner is responsible shall be installed, operated, and maintained by the owner in conformity with all municipal, state, and federal requirements, including but not limited to § 56-257.2 of the Code of Virginia, and with the 2006 edition of the National Fuel Gas Code.

No building or buildings which qualify as an apartment house, office building, or shopping center shall be excluded from this chapter because the apartment house, office building, or shopping center contains a mixture of dwelling units and nonresidential rental units.