

220 CMR 29.00 BILLING PROCEDURES FOR RESIDENTIAL RENTAL PROPERTY OWNERS CITED FOR VIOLATION OF THE STATE SANITARY CODE 105 CMR 410.354 OR 105 CMR 410.254

Section

- 29.01: Scope and Purpose
- 29.02: Applicability
- 29.03: Definitions
- 29.04: Citation of Sanitary Code Violation
- 29.05: Tenant Customer Responsibility
- 29.06: Utility Company Responsibility
- 29.07: Determination of Retroactive Time Period and Amount of Property Owner's Responsibility
- 29.08: Determination of Minimal Use Violation
- 29.09: Dispute and Hearing Procedure
- 29.10: Tenant Customer Refund
- 29.11: Due Dates
- 29.12: Exclusion
- 29.13: Waiver

29.01: Scope and Purpose

The purpose of 220 CMR 29.00 is to establish rules to implement the requirements of 105 CMR 410.354 and 105 CMR 410.254 of the State Sanitary Code and to establish procedures which allow electric and gas companies to bill owners of residential rental property for past utility service improperly billed to tenant customers in instances where an authorized agency has certified that a violation(s) of the State Sanitary Code existed during the occupancy of the tenant customer and such violation(s) pertained to the metering of electricity and/or gas.

29.02: Applicability

- (1) 220 CMR 29.00 applies to all investor-owned electric and gas companies and to all municipal electric and gas departments, corporations and plants subject to the jurisdiction of the Department of Public Utilities.
- (2) If any provision of the terms and conditions of any electric or gas company is in conflict with 220 CMR 29.00, 220 CMR 29.00 shall be controlling.
- (3) 220 CMR 29.00 is not intended to supersede or limit any rights or remedies available under the laws of the Commonwealth of Massachusetts.

29.03: Definitions

The terms set forth below shall be defined as follows in 220 CMR 29.00:

Certifying Agency, a state, city or town agency mandated to enforce the Sanitary Code regulations pursuant to 105 CMR 410.354 and 105 CMR 410.254.

Citation, a written report issued by a certifying agency for violation of 105 CMR 410.354 or 105 CMR 410.254.

Consumer Division, a division within the Department of Public Utilities. The Consumer Division may conduct informal hearings pursuant to 220 CMR 25.02(4)(b).

Correction Notice, a written report of correction of the Sanitary Code citation issued by the Certifying Agency.

Department, the Department of Public Utilities. The Department may conduct adjudicatory proceedings pursuant to M.G.L. c. 30A.

Minimal Use Violation, A Sanitary Code violation(s) pursuant to 105 CMR 410.354 or 105 CMR 410.254 that individually or in the aggregate includes interior and/or exterior common area illumination (excluding exterior flood light(s)), smoke, fire and/or security alarm(s), door bell(s), cooking range, and common area electrical outlets, provided that the violation(s) does not also include the wrongful connection to the meter serving the dwelling unit of the tenant customer of heating, air conditioning, hot water heating, electrical pump(s), clothes dryer, refrigerator or freezer.

Property Owner, any person who alone or severally with others has legal title to any residential rental dwelling, dwelling unit, mobile dwelling unit, including a mobile home park; or any person who has care, charge or control of any dwelling, dwelling unit or mobile dwelling unit or mobile home park in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of title, or mortgagee in possession or agent, trustee or other person appointed by the courts, or any officer or trustee of the association of unit owners of a condominium.

Receipt, in the case of a bill or notice required by 220 CMR 29.00, receipt shall be presumed to be three days after the date of mailing, or if a bill or notice is delivered rather than mailed, on the date of delivery.

Sanitary Code, the regulations governing the metering of electricity and gas pursuant to 105 CMR 410.354 and 105 CMR 410.254.

Tenant Customer, an electric or gas company's current or former customer of record who was billed for electric or gas service for a period during which a Sanitary Code

violation(s) existed as cited by a Certifying Agency.

Utility Company, an investor-owned electric or gas company or a municipal electric or gas department, corporation or plant subject to the jurisdiction of the Department.

29.04: Citation of Sanitary Code Violation(s)

- (1) Validity. A citation issued by a Certifying Agency to the property owner shall be presumed accurate and the accuracy of the citation shall not be contested before the Department.
- (2) Effective Date of Citation.
 - (a) The effective date of the citation shall be the actual date of inspection of the dwelling as referenced in the citation.
 - (b) If the actual date of inspection is not referenced in the citation, the effective date of the citation shall be the date that appears on the face of the citation issued to the property owner.
- (3) Effective Date of Correction of Violation.
 - (a) The effective date of correction of the violation(s) set forth in the citation shall be the actual date of reinspection of the dwelling as referenced in the written correction notice issued by the Certifying Agency to the property owner. The property owner shall give such correction notice to the utility company pursuant to 220 CMR 29.06(3)(e);
 - (b) If the actual date of reinspection is not referenced in the correction notice, the effective date of correction of the violation(s) set forth in a citation, shall be the date that appears on the face of the correction notice issued to the property owner;
 - (c) If more than 30 days elapse between the effective date of correction and the date of notice to the utility company of such correction, the property owner shall be responsible for paying for the electric or gas service provided to the tenant customer until the date that the property owner provides a copy of the correction notice to the utility company.

29.05: Tenant Customer Responsibility

- (1) Rental Agreement. When a tenant customer is identified by the company as its customer of record, it will be presumed that the property owner and the tenant customer established a rental agreement that provides for the tenant customer to pay for the electricity or gas used in the dwelling unit which is the subject of the violation.
- (2) Obligation. A tenant customer, within 60 days of receipt of a Sanitary Code citation pursuant to 105 CMR 410.354 and/or 105 CMR 410.254, shall provide the utility company with a copy of the citation and shall inform the utility

company of the name and current address of the property owner subject to the citation. Failure of the tenant customer to provide the utility company with a copy of the citation within 60 days of its receipt shall bar the tenant customer from obtaining a refund pursuant to 220 CMR 29.00.

- (3) Occupancy. A tenant customer may submit a copy of the citation to the utility company even if the tenant customer is not currently occupying the dwelling unit which is the subject of the citation. However, the tenant customer must have been an occupant of the dwelling unit and a tenant customer of the utility company at the time that the dwelling unit was inspected by the Certifying Agency and cited for a violation(s) pursuant to 105 CMR 410.354 and 105 CMR 410.254.

29.06: Utility Company Responsibility

- (1) Obligation. Upon receiving a copy of a citation pursuant to 105 CMR 410.354 or 105 CMR 410.254, the utility company shall:
- (a) Determine, pursuant to 220 CMR 29.08, whether the Code violation(s) meets the requirements of minimal use;
 - (b) Determine, pursuant to 220 CMR 29.07(1), the property owner's time period of responsibility for electric and/or gas service previously billed to the tenant customer;
 - (c) Determine, pursuant to 220 CMR 29.07(2) or 220 CMR 29.08(1), the amount previously billed to the tenant customer for the time period established pursuant to 220 CMR 29.07(1);
 - (d) Place in escrow the amount of money paid by or on behalf of the tenant customer during the time period of the existence of the Sanitary Code violation as determined pursuant to 220 CMR 29.07 or 220 CMR 29.08(1); and
 - (e) Transfer the account of the tenant customer into the name of the property owner.
- (2) Notice To Tenant Customer. Within 30 days of receipt of a Sanitary Code citation, a utility company shall inform the tenant customer in writing that:
- (a) The account has been transferred into the name of the property owner;
 - (b) The amount incorrectly billed and paid by or on behalf of the tenant customer during the time period of the existence of the Sanitary Code violation pursuant to 105 CMR 410.354 and/or 105 CMR 410.254 as determined pursuant to 220 CMR 29.07(2)(a) or 220 CMR 29.08(1) has been placed in escrow;
 - (c) The tenant customer shall not be responsible for the cost of electric or gas service to the dwelling unit which is the subject of the violation, until the effective date of correction of the violation pursuant to 220 CMR 29.06(3)(d); and

- (d) The tenant customer may dispute the dollar amount and/or the amount of time for which the property owner is responsible for electric or gas service previously billed to the tenant customer, by contacting the Consumer Division pursuant to 220 CMR 25.02(4)(b) and 220 CMR 29.09(1) within 60 days of the date of the utility company's written notice issued pursuant to 220 CMR 29.06.
- (3) Notice to Property Owner. Within 30 days of receipt of a citation, an electric and/or gas company shall inform the property owner in writing that:
- (a) The property owner's name shall appear as the customer of record on the account for the dwelling unit subject to the violation as of the effective date of the citation;
 - (b) The property owner is responsible for the cost of electric or gas service to the dwelling unit which is the subject of the violation, for the time period determined pursuant to 220 CMR 29.07(1);
 - (c) The property owner is currently responsible for paying the amount specified as determined pursuant to 220 CMR 29.07(2)(a) or 220 CMR 29.08(1).
 - (d) The property owner is responsible for paying for electric or gas service provided to the tenant customer until the effective date of correction of the Sanitary Code violation pursuant to 220 CMR 29.04(3);
 - (e) Upon correction of the Sanitary Code violation(s), the property owner must obtain a written correction notice from the Certifying Agency that the violation(s) has been corrected and the property owner must provide the utility company with a copy of such notice of correction within 30 days of the date of correction pursuant to 220 CMR 29.04(3);
 - (f) Upon receipt of the correction notice, a utility company shall remove the property owner's name from the account for the dwelling unit subject to the violation and the property owner shall no longer have financial responsibility for this account; and
 - (g) The property owner may dispute the dollar amount or the amount of time for which the property owner is responsible for electric or gas service previously billed to the tenant customer by contacting the Consumer Division of the Department pursuant to 220 CMR 25.02(4)(b) and 220 CMR 29.09(1) within 60 days of the date of the utility company's written notice issued pursuant to 220 CMR 29.06.

29.07: Determination of Retroactive Time Period and Amount of Property Owner's Responsibility

- (1) Time Period. A utility company shall determine the time period of the property owner's responsibility for paying for service previously billed to the tenant customer resulting from the Sanitary Code violation(s) pursuant to 105 CMR 410.354 and/or 105 CMR 410.254 as the lesser of (a), (b) or (c):
- (a) By calculating back two years from the effective date of the citation,

- pursuant to 220 CMR 29.04(2); or
- (b) By referencing back to the date that the tenant customer became customer of record for service to the dwelling unit that is the subject of the violation; or
 - (c) By reviewing billing history for the dwelling unit that is the subject of the violation over a two year period back from the effective date of the citation, pursuant to 220 CMR 29.04(2) to determine the approximate date of commencement of the Sanitary Code violation(s).
- (2) Amount.
- (a) Unless calculating the property owner's responsibility on the basis of minimal use pursuant to 220 CMR 29.08(1), a utility company shall calculate the amount of the property owner's responsibility by determining the amount previously billed to the tenant customer for the time period established pursuant to 220 CMR 29.07(1).
 - (b) The property owner also shall be responsible for electric and/or gas service provided to the tenant in the dwelling unit subject to the violation(s) from the effective date of the citation pursuant to 220 CMR 29.04(2) to the effective date of correction pursuant to 220 CMR 29.04(3).
 - (c) A utility company shall not collect from a customer on account of failure to pay any bill due for gas or electricity furnished for domestic purposes any charges as, or in the nature of, a penalty pursuant to M.G.L. c. 164, § 94D.

29.08: Determination of Minimal Use Violation(s)

- (1) Minimal Use Violation(s). A Code violation(s) that individually or in the aggregate includes interior and/or exterior common area illumination (excluding exterior flood light(s)), smoke, fire and/or security alarm(s), door bell(s), cooking range, and common area electrical outlets. If any one or all of these energy users are cited by the Certifying Agency as wrongfully connected to the meter serving the dwelling unit of the tenant customer, provided the Certifying Agency has not also cited the wrongful connection of heating, air conditioning, hot water heating, electrical pump(s), clothes dryer, refrigerator or freezer on the meter serving the dwelling unit, the utility company shall bill the property owner \$10.00 per month for the retroactive time period determined pursuant to 220 CMR 29.07(1).
- (2) Dispute. A tenant customer may dispute the utility company's classification of a Code citation as a minimal use violation(s) by contacting the Consumer Division of the Department pursuant to 220 CMR 25.02(4)(b) and 220 CMR 29.09(1) within 60 days of the date of the utility company's written notice issued pursuant to 220 CMR 29.06(2).

29.09: Dispute and Hearing Procedure

- (1) The property owner or tenant customer may dispute the utility company's classification of a Code citation as a minimal use violation, or may dispute the time period and/or the dollar amount for which the property owner is responsible for electric or gas service provided to the tenant customer by contacting the Consumer Division of the Department, pursuant to 220 CMR 25.02(4)(b), 220 CMR 29.06(2)(d), 220 CMR 29.06(3)(g), and/or 220 CMR 29.08(2) within 60 days of the date of the written notice from the utility company pursuant to 220 CMR 29.06(2) and 220 CMR 29.06(3). The Consumer Division shall investigate the dispute and make findings.
- (2) After the Consumer Division has informed the property owner, tenant customer and utility company of its findings, either the property owner, tenant customer or utility company may request an informal hearing before the Consumer Division. The request for an informal hearing must be filed in writing with the Consumer Division within 14 days of the date of notification of the findings of the Consumer Division's investigation.
- (3) When an informal hearing is conducted, the Consumer Division shall issue a written decision. The property owner, tenant customer or utility company may, within 14 days, appeal the written decision to the Commission of the Department pursuant to 220 CMR 25.02(4)(c).

29.10: Tenant Customer Refund

- (1) The utility company must refund to the tenant customer that amount which was incorrectly billed and paid by or on behalf of the tenant customer as determined pursuant to 220 CMR 29.07(2). Such refund may first be credited to any outstanding balance on the tenant customer's account with the utility company for electric or gas service and any remaining refund amount shall be distributed to the tenant customer.
- (2) Third party payments made by social service agencies or other charitable organizations on behalf of the tenant customer which form part of the refund amount may first be credited to any outstanding balance on the tenant customer's account with the utility company for electric or gas service and any remaining refund amount shall be distributed to the tenant customer.
- (3) The utility company shall render a refund to the tenant customer no later than 30 days after the expiration of any applicable time period set forth in 220 CMR 29.00.
- (4) When a written decision of the Consumer Division is appealed to the Commission of the Department, no monies shall be refunded until a final

adjudicatory decision has been rendered.

- (5) In no event shall an electric or gas company withhold the tenant customer's refund until the debt is collected from the property owner.

29.11: Due Dates

Failure to adhere to the applicable notice, dispute and hearing procedure dates set forth in 220 CMR 29.00 by either the property owner, tenant customer or the electric or gas company shall bar claims under 220 CMR 29.00 by the party who failed to adhere to the dates as set forth herein.

29.12: Exclusion

When it is shown that some of the electricity and/or gas used in a dwelling unit was registered by a meter other than the meter serving the dwelling unit which is the subject of the violation, and the electric or gas company's records show that the tenant customer was not billed for such usage, the tenant customer shall not recover a reimbursement of utility payments on the basis of a Code citation as contemplated by 220 CMR 29.00.

29.13: Waiver

The Department may, where appropriate, grant an exception to any provisions of 220 CMR 29.00.

REGULATORY AUTHORITY

220 CMR 29.00: M.G.L. c. 164, § 76C.