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The Honorable Senator Stan Clark
300 S.W. 10th Street
Topeka, KS 66612-1504

Re: Comments to H.B. 2772-Landlords as Subject to State Corporation Commission Jurisdiction

Dear Senator Clark:

I am writing on behalf of the National Submetering and Utility Allocation Association (NSUAA), National Water & Power (NW&P) and Viterra Energy Services (VES), collectively referred to herein as NSUAA. The NSUAA is a trade association comprised of manufacturers of submetering equipment, providers of utility billing services and owners and managers of multi-unit properties. Our membership currently generates over 25,000,000 utility bills to residents annually in the United States and operates in 25 countries worldwide. The NSUAA appreciates the opportunity to provide comments on this important issue.

Conservation

BY REQUIRING THE USE OF A METER AS THE SOLE MEANS OF REMOVING LANDLORDS FROM STATE CORPORATION COMMISSION JURISDICTION, KANSAS' FUTURE ABILITY TO SAVE WATER THROUGH CONSERVATION WILL BE GREATLY REDUCED.

According to the Kansas Water Office, the drought alert level was recently raised to emergency status in a 17-county area of northwest and west central Kansas. Northwest Kansas counties covered include Cheyenne, Decatur, Graham, Norton, Rawlins, Sheridan, Sherman and Thomas. Counties covered in west central Kansas include Gove, Greeley, Lane, Logan, Ness, Scott, Trego, Wallace and Wichita. ¹ Presumably conservation of water, a precious natural resource continues to be of great importance to the State. If H.B. 2772 passes, it would eliminate the ability to save up to 1.3 billion gallons of water per year in the State. (See analysis below). While some people will argue that billing without the use of a meter (called allocation based billing or billing using a Ratio Utility Billing System (“RUBS”)) does not result in conservation, **we disagree with those statements.**

RUBS billing has been demonstrated to save a significant amount water in apartment properties. Let’s look at two studies that, because they included a large database, are considered statistically valid (rather than anecdotal).

1. In 1999, Indecon performed a study of RUBS and submetered billing at three dozen properties in Florida, Texas and California. Water use at apartment properties that used billing systems was compared with water use properties that did not have billing systems. RUBS properties used 6% to 27% less water than properties that employed no billing system. Submetered properties used 18% to 39% less water than properties that employed no billing system.
2. In 2002, in support of an inquiry of RUBS billing in Howard County, MD NW&P analyzed all of the 17 properties that were being billed in Howard County by NW&P. NW&P compared water use during the initial month of billing with water use one year later, two years later and three years later. The average property reduced water use by 12% after adopting a RUBS billing system, which is right in line with the Indecon survey discussed above.

There is also considerable anecdotal evidence that RUBS billing results in water conservation. Here are a few examples.

1. Equity Residential (EQR) is a property owner that is probably the largest user of RUBS billing in the country. They have seen RUBS programs reduce water use in their communities by 13%.
2. NW&P reviewed the water use patterns of a property that it is billing in Costa Mesa, CA. After two years on a RUBS program, water use had dropped by 27 percent, and use was trending further downward in the third year of the program.

*Note that all of the conservation numbers above fall into the 6 – 27% range. This indicates that all observations are in general agreement, and RUBS billing does conserve water. Now let’s consider the important implications of this.

Applying these results in Kansas, it is interesting to estimate the conservation benefits that could be achieved if H.B. 2772 is passed with the language recommended at the end of this letter, and RUBS billing continues to be adopted on a widespread basis. There are approximately 188,000 multi-family dwelling unit located in Kansas. Nationwide, for apartment properties that have no billing program in place, the average dwelling unit uses about 150 gallons per day of water. Using the conservation results in the Indecon study, the NW&P study and as witnessed through the anecdotal evidence discussed above, estimates can be developed for the conservation levels that are achievable in Kansas.

Let’s assume that Kansas follows the national pattern where half of all apartments are billed via RUBS methods, and half are billed via submetered methods. That means there could potentially be 94,000 apartments billed via RUBS methods and 94,000 units billed via submetered methods. The units billed via RUBS methods would save up to 1.3 billion gallons per year. How did we arrive at these numbers?

If a dwelling unit were subject to a RUBS billing program, the residents of that unit would save 9 to 40 gallons of water per day. (150 gallons per day x 6% or 27%).

¹ From the Kansas Water Office Website: <http://www.kwo.org/>

During the course of a year, the residents of that dwelling unit would save 3,285 to 14,600 gallons of water. (9 x 365 or 40x 365)

During the course of a year, the residents of a typical apartment property of 250 dwelling units would save 821,250 to 3.6 million gallons of water (250 x 3,285 or 250 x 14,600).

If all 94,000 apartment units in Kansas used RUBS methods of billing, this would save 308 million to 1.3 billion gallons of water per year. (94,000 x 3,285 or 94,000 x 14,600).

The flow of wastewater would similarly be reduced in the millions to billions of gallons.

Now let's consider the probable result if H.B. 2772 were passed as is.

All RUBS billing would be prohibited.

All hot or cold water ratio submetering appears to be prohibited as well because of the requirement that the resident be billed at the same rate charged by the city or water district (hot or cold water ratio submetering is a method that utilizes a submeter, but which measures only the hot or cold usage, which is then used to derive a charge for the quantity of water not measured). Since the majority of properties in all states including Kansas (approximately 80%) are plumbed in such a way that require hot or cold water ratio submetering or use of RUBS methods (or a fairly cost prohibitive point of use metering alternative), eliminating hot or cold water allocation would then act to prohibit use of most of the submeters that have already been installed (creating a stranded investment to property owners). It would also eliminate the principal method used to retrofit submeters in existing properties.

Taken together, these prohibitions would result in the industry losing 80 percent of the billing business in Kansas

With 80 percent of properties no longer using a billing system (or prohibited from implementing a billing system in the future without fear of regulation from the Corporation Commission) for water and sewer services, the annual potential conservation achievable would drop dramatically.

Many of the properties currently using RUBS, or hot or cold water ratio billing would simply increase rents in order to recover their water and sewer costs.

RUBS Billing Reduces the Flow of Wastewater

Often not discussed in detail, but still very important nonetheless, is the potential conservation impact on wastewater treatment. When a resident draws less water from the tap, they also send less water down the drain. In most instances, for every one-gallon reduction in the amount of water used, there is a corresponding one-gallon reduction in the flow of wastewater. Moreover, because the use of RUBS billing has the capability to reduce water consumption, it also has the capability to reduce the flow of wastewater.

When the flow of wastewater is reduced, there are many benefits.

Residents benefit from lower sewer bills.

The local sewage treatment plant has less stress on it, thus there is less likelihood of a plant breakdown that could impact the quality of receiving water.

Because less wastewater flows to sewage treatment plants, plant operating costs are lower. Meanwhile, there is less pressure to expand treatment plants, and this reduces the need to invest capital cost in new plants.

All these factors result in lower taxes.

Business Considerations

Property owners across the country use RUBS methods of billing on a significant percentage of their portfolios. Several Real Estate Investment Trusts (REITs) currently use RUBS methods in virtually all of their properties nationwide. If Kansas did not provide a property owner with the freedom or opportunity to bill for resident utility use, this may cause a REIT or other property owner to avoid investing additional funds in Kansas, thereby potentially reducing Kansas's tax base.

Apartment Resident Remedies

Any payments to the landlord by its resident, whether for rental or other services, are governed by the rental agreement. Whether the resident or the landlord has breached that agreement is a matter for the civil courts to

determine. These civil courts provide the resident with adequate remedies in cases where the landlord uses RUBS methods to bill a property. Complaints regarding submetering are similar in nature to complaints involving improper rent increases, uninhabitable premises, failure to make necessary repairs and other historically landlord-tenant issues.

Existing Properties

The vast majority of multi-family units are served by a few master meters. Many of these properties are plumbed in such a way that exorbitant amounts of money would need to be spent re-plumbing the entire property or installing a point of use type of system. RUBS programs (and hot/cold water ratio metering) on the other hand, can be instituted quickly without substantial cost to the owner, which can immediately begin to drive conservation.

Environmental Benefits

RUBS billing also benefits the environment. In many areas, including Kansas, we have seen severe drought conditions. Some states have forced property owners to adhere to mandatory conservation plans. Proactive conservation through billing programs that allow both submetering and RUBS methods of billing will help to avoid situations such as these.

Recommendation

The NSUAA supports passage of H.B. with the following recommended changes:

1. In line 18 the words “or without” were stricken from the original bill as introduced. We respectfully urge that these words be added back in to allow for other types of billing such as RUBS.
2. In lines 19-21 we recommend a change that would accommodate the hot or cold water ratio billing scenario. Accordingly, the following is a redline of the language as it now appears in the bill, detailing our recommended changes: “...so long as the landlord charges **all the tenants on the property for no more than what the landlord is billed** ~~at the same rate charged by the city or the water district plus the actual cost of billing and collection of such charge to the landlord.~~”-

The NSUAA greatly appreciates that opportunity to comment on H.B. 2772. Please feel free to contact either of us directly with any questions that you have on these comments or if you require additional information.

Sincerely,

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