

Sub-metering in North Carolina

In general, sub-metering of electricity, natural gas, or water for purpose of allocating portions of a single bill is not allowed in the State of North Carolina except for nonprofit organizations. See sub-metering for Condominiums in the section below.

G.S. 62-3(23)a.1 defines a “public utility” as a person who delivers or furnishes piped gas for the production of light, heat or power to or for the public for compensation. There is a large body of case law dealing with what constitutes “the public” and “compensation” under this definition. The Commission and the appellate courts have generally taken an ad hoc approach to this question depending on the “regulatory circumstances” of the case. In Utilities Commission v. Simpson, 295 N.C. 519, 524, 246 S.E.2d 753, 757-58 (1978), the North Carolina Supreme Court said: “Some of these circumstances are (1) nature of the industry sought to be regulated; (2) type of market served by the industry; (3) the kind of competition that naturally inheres in that market; and (4) effect of non-regulation or exemption from regulation of one or more persons engaged in the industry. The meaning of ‘public’ must in the final analysis be such as will, in the context of the regulatory circumstances . . . accomplish ‘the legislature’s purpose and comport with its public policy.’” Cases relying on the Simpson analysis typically involve landfill gas situations rather than resale or sub-metering situations.

G.S. 62-3(23)d. states that the term “public utility” does not include a person not otherwise a public utility who furnishes such service only to himself, his employees or tenants, when the service is not resold to or used by others. This exception, however, does not apply to a person (other than a nonprofit organization serving only its members) who provides utility service to employees or tenants by individual meters. The Commission has interpreted the term “meter” to include methods or devices that attempt to determine the relative usage of electricity, natural gas, or water for purposes of allocating portions of a single bill.

Over the years, the General Assembly has made provision for the resale of various utility services, either by exempting resale or by providing for special certificates. G.S. 62-3(23) h. exempts the resale of electricity by campgrounds and marinas from the definition of “public utility” under certain conditions. Otherwise, a certificate would be required. G.S. 62-110(d) provides for the issuance of certificates for sharing and resale of telephone service provided to persons who occupy the same contiguous premises; G.S. 62-110(e) provides for the issuance of certificates for sharing and resale of telephone service provided to colleges and universities. G.S. 62-110(g) provides for the issuance of certificates for resale of water and sewer service to persons who occupy the same contiguous premises.

While there is no explicit prohibition against resale or sub-metering, if doing so would cause a person to come within the definition of “public utility” a certificate would be required and that would involve showing that the underlying utility is unwilling or unable to provide the service directly. This was the situation years ago with a hotel in New Bern that wanted to resell electricity to users of a marina. The underlying utility did not object and a certificate was issued to Shipyard Power & Light (which was later destroyed by a hurricane). (If G.S. 62-3(23)h had been enacted, a certificate would

not have been required.) This was also the situation before the enactment of G.S. 62-110(g). Fitting these situations into the existing regulatory framework was a challenge to say the least. After all, the reseller could discontinue utility service and relinquish his certificate by ceasing to resell and including the cost in rental fees.

The best way to divide a bill is by contract that provides for a fixed amount every month.

Sub-metering for Condominiums:

Commission Order dated December 20, 2007 in Docket No. [G-53, Sub 0](#) contains the following statement: *“The cost of the residential electrical and natural gas usage that will be master metered will be billed to the unit owners’ association and will be a common expense. The association will allocate the cost to its members based on usage in accordance with the G.S. 47C-3-115(c) as measured by submeters. The General Counsel of the Commission has advised the Applicant that the exception from the definition of a “public utility” for a “nonprofit organization serving only its members” under G.S. 62-3(23)d applies to the association.”*