



**Policy 17 - Theft of Service**

**ADOPTION DATE: NOVEMBER 6, 1996**

**Revision #1 Dated January 3, 2004**

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**EFFECTIVE DATE: NOVEMBER 6, 1996**

**RESPONSIBLE FOR ADMINISTERING POLICY:**

**Manager, Governing Board**

**BACKGROUND AND PURPOSE**

It is accepted utility practice in the United States that the customer is responsible for payment of service and other duly authorized charges. The customer must also realize that the service he/she doesn't pay for will be paid for by other customers.

The utility is run for the benefit of all present and future customers, and while no customer shall intentionally be treated unfairly, no customer shall be treated in a way that compromises the interests of other customers.

**LIMITATIONS**

The utility is subject to various state and federal regulations and has no discretion to provide service in a manner which would violate these regulations.

**RECORD KEEPING DURATION**

All records regarding theft of service & tampering shall be kept for a minimum of three years.

## **OMISSIONS**

In the absence of specific rules or policies, the disposition of situations involving theft of service shall be made by the Governing Board in accordance with its usual and customary practices.

## **POLICY STATEMENT**

1 ... Tampering with utility equipment or stealing service will be grounds for discontinuance of utility service. Theft of service shall include, but not be limited to the following:

- a) Opening valves at the curb or meter that have been turned off by utility personnel;
- b) Breaking, picking, damaging or cutting-off locks;
- c) By-passing meters in any way;
- d) Taking unmetered water from hydrants by anyone other than an authorized official of a recognized fire department; fire insurance company or utility for any purpose other than firefighting, testing or flushing of hydrants;
- e) Use of sprinkler system water service for any purpose other than fire protection;
- f) Removing, disabling or adjusting meter registers;
- g) Connecting to or intentionally damaging water lines, valves or other appurtenances for the purpose of stealing or damaging utility equipment;
- h) Moving the meter or extending service without permission of the utility
- i) any other intentional act of defacement, destruction or vandalism to utility property or act that affects utility property;
- j) Any intentional blockage or obstruction of utility equipment.

2... A “notice of violation” may be mailed or otherwise delivered at the discretion of the utility manager if:

- a) evidence suggests the possibility of theft of utility service at the customer’s premises;

b) the violation does not constitute an immediate threat of safety or equipment integrity to the system.

The customer will be ordered to immediately cease any unlawful practice.

3... No "notice of violation" will be mailed or delivered and customer service is subject to immediate cut-off in any of the following situations:

a) In the opinion of utility manager, theft of service is definitely evident on the customer's premises;

b) When in the opinion of the manager a situation exists that may endanger public health;

4 ... In addition, the customer will be subject to a \$500.00 violation payment as well as service call charges, labor and replacement parts as detailed by the utility.

5 ... If the utility determines theft of service has occurred, it reserves the right to adjust the customer's current bill and the bills for the past twelve (12) months usage. If the approximate amount of service that was stolen cannot be reasonably determined, the customer's usage will be set at two to four times the minimum bill, as set on a case by case basis by the governing board of the utility according to the facts of each case.

6 ... Service will not be restored until all payments for the following are received by the utility:

a) Adjusted payment for utility service;

b) Violation payment (see section 4 above);

c) All service call charges;

d) Labor;

e) Replacement parts;

f) Reinstatement of service charge.

7 ... Service will be reinstated only during regular working hours, Monday through Friday, except in the case of an emergency.

8 ... Discontinuance of service by the utility shall not release the customer from liability for payment for service already received or from liability from payments that thereafter become due under the minimum bill provisions or other provisions of the customer's contract.

9 ... The utility shall not be liable for any loss or damage resulting from the discontinuance of service.

10 ... The customer/owner whose name appears on the application for service is the customer/owner responsible for payment of all charges. That customer/owner is also responsible for any rules or policy violations that occur regarding the utility service to that property. Personal participation by the customer in any such violation shall not be necessary to impose personal responsibility on the customer.

11 ... In the event any customer/property owner fails to pay any utility fee or charge, the customer/property owner shall pay all costs of collection including court costs and reasonable attorney's fees incurred by the utility in collecting such sums.

12 ... The utility shall have the right to refuse to render service to an applicant or to any member of an applicant's household who is living at the same address whenever such person(s) is (are) delinquent on any payment to the utility or had his or her service discontinued because of a violation of the regulations or policies

### **RECORD KEEPING DURATION**

All records regarding theft of service shall be kept for a minimum of three years.

### **OMISSIONS**

In the absence of specific rules or policies, the disposition of situations involving theft of service shall be made by the Governing Board in accordance with its usual and customary practices.

The following is a copy of the part of the Tennessee Code Annotated that deals with tampering with utilities.

### **65-35-102. Prohibited acts.**

It is unlawful for a person to:

- (1) (A) Knowingly tap, cut, burn, break down, injure, destroy or otherwise interrupt or interfere with the current, lines, cables, poles, towers, fixtures or appliances utilized to furnish service to the general public by any telephone or telegraph company, or electric light or power company engaged in furnishing communication, light or power by electricity: or  
  
(B) In any way injure, remove, destroy or interfere with any gas, sanitary sewer, or water fixtures or appliances;
- (2) Obtain or attempt to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the

transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of the lawful price, charge or toll therefore, or for any person to cause another to avoid such payment for such service, or for any person for the purpose of avoiding payment, to conceal or to assist another to conceal from any supplier of telecommunication service or from any lawful authority the existence or place of origin or of destination of any telecommunication, or for any person to assist another in avoiding payment for such service, or from any lawful authority the existence or place of origin or of destination of any telecommunication, or for any person to assist another in avoiding payment for such service, either through the making of multiple applications for service at one (1) address, or otherwise:

- (3) Obtain or attempt to obtain by use of any fraudulent scheme, device, means or method, electric, sanitary sewer, water, or gas service, with intent to avoid payment of the lawful price, charge or toll therefore, or for any person to cause another to avoid such payment for such service, or for any person to assist another in avoiding payment for electric, sanitary sewer, water, or gas service, either through the making of multiple applications for service at one (1) address, or otherwise;
- (4) Divert or use electrical power with the intent to defraud or deprive any public or private electric power supplier from receiving proper charges or payment for such electrical power; or
- (5) Commit any of the following acts which would make gas, electricity, telephone, sanitary sewer service, or water available to tenant or occupant by committing any of the following acts:
  - (A) Connect any tube, pipe, wire or other instrument with any meter, device or other instrument used for conducting telephone, gas, electricity, sanitary sewer service, or water in such a manner as to permit the use of the telephone, gas, electricity, sanitary sewer service, or water without same passing through a meter or other instrument recording the usage for billing;
  - (B) Alter, injure or prevent the action of a meter, valve, stopcock, or other instrument used for measuring quantities of telephone, gas, electricity, sanitary sewer service, or water;
  - (C) Break, deface or cause to be broken or defaced any seal, locking device or other parts that make up a metering device for recording usage of telephone, gas, electricity, sanitary sewer service, or water or a security system for such recording device;

(D) Remove a metering device for measuring quantities of telephone, gas, electricity, sanitary sewer service, or water;

(E) Transfer from one (1) location to another a metering device for measuring utilities of telephone, gas, electricity, sanitary sewer service, or water;

(F) Use a metering device belonging to the utility that has not been assigned to the location and installed by the utility;

(G) Adjust the indicated consumption, jam the measuring device, bypass the meter or measuring device with a jumper so that it does not indicate use of registers incorrectly or otherwise obtain quantities of telephone, gas, electricity, sanitary sewer service, or water from the utility without same passing through a metering device for measuring quantities of consumption for billing; or

(H) Fabricate or use a device to pick or otherwise tamper with the locks used to deter electric current diversion, telephone diversion, gas diversion, water diversion, sanitary sewer service diversion, meter tampering and meter thefts.

**65-35-103. Evidence of violation**

(a) Any property on which it is found to have telephone, electric, gas, sanitary sewer, or water utilities tampered with in violation of 65-35-102, and capable of receiving telephone, electricity, gas, sanitary sewer, or water service as a result of the use of any method of diversion prohibited in that section, is prima facie evidence and creates against the tenant or occupant a presumption of intent to tamper or divert in violation of the provisions of 65-35-102.

(b) The presence upon property served by a utility of a metering device altered to improperly monitor the amount of utility service used on or by such property is presumptive evidence that the utility customer has diverted or used utility service with the intent to deprive or defraud the utility from receiving proper charges or payment for such utility service in violation of the provisions of this chapter.

**65-35-104. Civil liability—Damages– Liens-Perfection of Liens.**

(a) Any person violating the provisions of 65-35-102 is liable civilly for damages resulting from such violation, including actual, compensatory, incidental and punitive damages.

- (b) The damages shall be three (3) times the utility's estimated loss of revenue, plus reasonable attorney's fees and costs associated with such loss.
- (c) A finding of guilt in violation of 65-35-102, as part of an action brought to impose the penalties under 39-14-104, is conclusive evidence of liability for civil damages recovered under this chapter in any court of appropriate jurisdiction in a proceeding to assess civil damages against the guilty part.
- (d) Regardless of any criminal charge or lack thereof, any utility may nevertheless bring a civil action in any court of appropriate jurisdiction against the owner, occupant or tenant and allege the violation of any of the acts prohibited by 65-35-102; and upon finding that the person has violated 65-35-102, the court shall likewise determine the estimated loss of revenues and award judgment for sums specified in subsections (a) and (b).
- (e)
  - (1) Any utility that can properly establish the amount of utility service fraudulently taken on or by any premises occupied by the owner thereof shall have the right to declare a lien for the value of such utility service against the property on which the utility service is taken.
  - (2) The lien shall be filed within one (1) year of the date of the utility's first
  - (3) (A) The lien shall be perfected upon the filing of a notice with the office of the register of deeds of the county in which the property upon which the lien is claimed is located, and such lien shall be second only to liens of the state, county, or municipality for taxes and special assessments, and any valid lien, right, or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. Such notice shall contain the name of the titleholder(s) of the property upon which the lien is claimed, the property address, a description of the property sufficient to identify it, the signature and address of the entity claiming the lien, and the amount claimed by such entity.
    - (B) The priority of liens established by this subdivision shall apply to all liens filed pursuant to this subsection on or after April 10, 1990.
  - (4) If the utility has not registered the notice as provided in subdivision (e) (3), such lien shall not be effective against a bona fide purchaser for value without actual or constructive knowledge of the fraudulently diverted utility service.

(f) Civil actions pursuant to the provision of this section shall be commenced within the time required by Tennessee law in an action to recover damages for the loss of property.