



P O R T L A N D  
CITY AUDITOR  
Ombudsman

Nov. 9, 2022

**To:** Commissioner Mapps

**From:** Tony Green, Deputy Ombudsman

**Re:** Unintended consequences of the Portland Water Bureau's policy for setting up accounts

I am writing to draw your attention to a matter that I have been unable to satisfactorily resolve with the Water Bureau. It involves an aspect of the Bureau's policy for setting up accounts called the "first-caller rule." We have evidence that the rule can harm tenants because it allows landlords to commit their renters to pay for utility services without their knowledge or consent. The Water Bureau acknowledged during our investigation that the first-caller rule is not ideal and said they would change it at some point in the future. But they declined to cease the practice in the meantime.

The Bureau's continued practice of the rule is at odds with principles followed by the Oregon Utility Commission, landlord-tenant law, consumer protection practices, and data privacy expectations. It also is not expressly authorized by City Code and has the potential to disproportionately harm people of color and lower-income Portlanders.

A tenant brought this issue to our attention. The tenant said that the Bureau improperly opened an account in the tenant's name based on a phone call from the landlord. The tenant said she and her landlord had not settled which party would be responsible for paying utilities before she moved in without a rental agreement. By opening the account solely on the landlord's word, the Bureau put itself in the middle of a landlord-tenant dispute.

The landlord provided no documentation to the Bureau indicating the tenant had accepted responsibility for paying the utility bill. The tenant said she became aware that the account was in her name but did not pay the bills because she understood the landlord was responsible for them. She said she never consented to being assigned billing responsibility. She eventually moved out of the rental unit and left Portland. When she returned, she learned that the City had sent her account to a private collection agency and \$880 in unpaid charges had ballooned to \$1,410, including collections fees and penalties.

We requested that the Bureau waive the charges and fees given the disputed circumstances. It declined, but reduced the amount owed to \$448. The Water Bureau's position is if a tenant did not give the landlord permission to establish the account, it is the tenant's responsibility to notify the Bureau to object. The Bureau's rule shifts the responsibility from the landlord who opened the account to the



tenant, placing an unfair burden on tenants to unwind a financial obligation they did not commit to or may not have been aware of. If tenants do not act immediately – which occurred in this case – their credit rating is jeopardized and their ability to secure future housing is at risk.

The Bureau's reliance on whomever calls first to set up an account may go beyond what City Code allows. Code Section 21.16.030 says a tenant may accept responsibility for paying the utility bill for their rental unit, but the landlord is ultimately responsible for any unpaid bills if the tenant does not accept responsibility. Code says that either the landlord or the tenant may notify the Water Bureau of the date to open or close a tenant's account. The Code does not say a landlord may establish an account in a tenant's name.

The Bureau's first-caller rule also is out of step with state utility regulation practices, landlord-tenant law, and consumer protection and data privacy principles. The Oregon Public Utility Commission's administrative rules do not authorize water districts and utilities it regulates to open accounts at the request of third parties. The reason: it would place an unfair burden on consumers by making them liable for charges without their consent. A Portland housing attorney found the first-caller rule to be inconsistent with Oregon's landlord-tenant law. Oregon Revised Statutes Chapter 90 governs the relationship between landlords and tenants and includes provisions that prescribe when and how a tenant may be required to pay certain utility charges. The law does not authorize landlords to unilaterally open utility accounts for tenants without their consent.

Consumer protection principles and common sense suggest people should be protected from financial obligations being placed on them without their permission or knowledge. Most service providers require first-party data, such as the last four digits of a person's Social Security Number, before creating an account. Third parties signing up another person for a service without their consent or knowledge would in many contexts constitute fraud or identity theft.

The Bureau's willingness to continue using the first-caller rule has broader consequences for people of color and works against the City's and the Bureau's own equity goals. Black, Latinx, and those from lower-income households are more likely to be renters, according to the Portland Housing Bureau. The Water Bureau's racial equity policy says it is committed "to remov[ing] barriers and dismantl[ing] systems that have failed Portland's most vulnerable communities." And binding policy set by Council committed the City to end racial disparity in government *with urgency*.

To remedy this matter, I am requesting that you direct the Water Bureau to:

1. Immediately cease allowing landlords to open utility accounts in their tenants' names without confirmation that the tenants have approved and are aware of their financial obligations.
2. Adopt a policy for billing responsibility that incorporates the fairness principles that guide the Oregon Utility Commission, landlord tenant-law, consumer protections, and data privacy expectations.
3. Ensure the policy and Bureau practices align with the requirements in Code Section 21.16.030, which outline the roles and responsibilities of landlords and tenants.

