

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Operations, Practices, and Conduct of the San Jose Water Company (U-168-W) Regarding Overbilling Practices.

FILED
PUBLIC UTILITIES COMMISSION
SEPTEMBER 13, 2018
SAN FRANCISCO
I.18-09-003

ORDER INSTITUTING INVESTIGATION

I. INTRODUCTION

By this Order, and pursuant to Rule 5.1 of the California Public Utilities Commission's ("Commission's") Rules of Practice and Procedure, the Commission institutes a formal investigation to determine whether the named Respondent, the San Jose Water Company ("SJWC" or "Respondent") repeatedly overcharged and double-billed its customers in violation of California Public Utilities Code ("PU Code") Section 532 as well as other Commission Orders.

As set forth in the Commission's Consumer Protection and Enforcement Division's ("CPED's") Staff Report ("Staff Report") attached to this Order, SJWC is alleged to have repeatedly violated PU Code Section 532. SJWC's apparent practice for over three decades was to bill its customers the new, increased service charge for the *entire* billing cycle instead of pro-rating the bill so that customers were only charged the new, increased service charge for the period of time in which the new service charge actually became effective.

Additionally, the Staff Report sets forth evidence supporting the allegation that SJWC double-billed its customers when it switched from billing its authorized service charge in advance to billing in arrears. That is, SJWC appears to have first billed its customers in advance for the service charge, then, after converting its billing system to

bill customers in arrears, SJWC applied the same service charge to the bill in arrears, thereby charging customers the same service charge twice.

This OII will consider the evidence forming the basis for these allegations and consider whether this evidence demonstrates a violation of the Public Utilities Code. In addition, this OII will consider CPED Staff's recommendation to issue a significant refund to customers as well as whether fines or other penalties or remedial actions are appropriate.

II. FACTUAL BACKGROUND

In January of 2017, a SJWC customer contacted the company to inquire about SJWC's billing practices. Specifically, the customer inquired about whether SJWC's service charge is pro-rated when a service charge change occurs during a billing period. The customer also inquired as to whether SJWC had double-billed its service charge when converting from billing in advance to billing in arrears.

According to SJWC, the customer's inquiry caused SJWC to review its billing practices and on January 30, 2017, SJWC determined that it would thereafter begin to pro-rate its service charge for billing periods in which that rate change became effective.¹ SJWC instituted this new billing policy beginning with the most recent rate change effective January 1, 2017.

On April 17, 2017, the customer who initially raised the billing issue with SJWC in January filed a complaint with the Commission's Water Division.² The complaint alleged that SJWC failed to accurately pro-rate its customer bills when a rate increase went into effect in the middle of a billing cycle, thereby unlawfully charging customers the new, higher rate for a time-period when that new rate was not yet in effect.

The complaint also alleged that SJWC double-billed its service charge associated with SJWC's provision of water service to its customers when converting from billing in advance to billing in arrears.

¹ San Jose Water Company's Answer to Complaint, at p. 5 C.17-06-009 (July 24, 2017).

² CPED Staff Report at Attachment C.

On May 8, 2017, the Commission's Water Division sent a letter to SJWC notifying it that it was in violation of PU Code 532 and other Commission Orders and directed SJWC to file an advice letter to cure the billing violations raised in the April complaint.³

On June 6, 2017, SJWC filed Advice Letter 510 ("AL 510") with the Commission's Water Division. AL 510 requested authorization to implement a sur-credit to SJWC customers for \$1,794,439 to reflect service charge amounts that it had not prorated from the period of January 1, 2014 to December 21, 2016.

On June 7, 2017, the SJWC customer who initially raised this billing issue, along with 69 other complainants, filed a formal complaint with the Commission.⁴ As with the complaint filed with the Water Division in April, the formal complaint alleged that SJWC had both overbilled customers by failing to properly pro-rate its service charge on customer bills, and that SJWC had double-billed its customers when switching from billing in advance to billing in arrears.

On June 23, 2017, the Commission's Office of Ratepayer Advocates ("ORA") protested AL 510, contending that the Advice Letter raised significant policy questions that the Commission should address in an OII.

On June 28, 2017, the Water Division suspended Advice Letter 510 pending review of the billing issues raised in an OII. Water Division would later reject the Advice Letter due to the Commission's pending investigation of the billing issues.

On July 24, 2017, SJWC filed a response to the formal complaint that generally denied any wrongdoing.⁵ SJWC argued that its tariff does not address whether it is required to prorate its customers' bills to reflect rate changes occurring during a billing cycle. Additionally, SJWC argued that "there may appear to be double billing on the

³ CPED Staff Report at Attachment D.

⁴ C.17-06-009 (June 7, 2017).

⁵ San Jose Water Company's Answer to Complaint, C.17-06-009 (July 24, 2017).

[new customer's] first bill,” but that this is due to a service deposit later refunded to the customer.⁶

The Commission is currently holding the formal complaint in abeyance pending the resolution of other matters involving SJWC.⁷

CPED opened an investigation of SJWC's billing practices in August 2017. This OII, and the attached CPED Staff Report, are the result of that investigation.

III. LEGAL AND REGULATORY BACKGROUND

Rule 5.1 of the Commission's Rules of Practice and Procedure provides, “[t]he Commission may at any time institute investigations on its own motion.” The Commission has jurisdiction over SJWC as a Class A water utility. Section 701 of the Public Utilities Code authorizes the Commission to “supervise and regulate every public utility in the State ... and do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.” Additionally, PU Code § 702 provides that:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

Based on CPED's investigation, the Commission finds it reasonable to investigate the allegations identified in the Staff Report to determine whether any violations of the PU Code or this Commission's rules or orders occurred, and to determine whether penalties shall be imposed.

California Public Utilities Code § 532 is the relevant statutory provision at issue in this proceeding, although potential violations of additional statutes, orders, or regulations

⁶ San Jose Water Company's Answer to Complaint, at p. 5 C.17-06-009 (July 24, 2017).

⁷ Order Extending Statutory Deadline, C.17-06-009 (June 7, 2018).

may become relevant during the course of this proceeding. PU Code § 532 states in relevant part:

no public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time . . .

This OII will determine whether SJWC has violated PU Code § 532 and any other applicable statutes, regulations, or Commission orders as may be raised during the course of this proceeding. This OII will also determine whether restitution, penalties, or other remedies are appropriate should violations be found.

IV. THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION'S PRELIMINARY FINDINGS.

A. SJWC Failed to Properly Pro-Rate its Customers Bills, Thereby Over-Charging Customers for Rates Not Yet in Effect in Violation of the Public Utilities Code.

SJWC's customer bills are made up of a monthly or bi-monthly service charge and "quantity charges" reflecting a customer's usage of water for the billing period.⁸ The Commission must approve and authorize both the service charge and quantity charge. SJWC is not permitted to charge its customers a higher rate than those authorized by the Commission per PU Code § 532.

However, CPED's Staff Report presents evidence that up until January 1, 2017, SJWC failed to pro-rate service charge rate changes that occurred within a billing period. Thus, if a new, increased service charge became effective during a billing cycle, SJWC would bill the customer based on the new, increased service charge for that entire billing cycle. Consequently, SJWC charged and collected higher service charge rates than were authorized for that portion of the billing cycle prior to the effective date of the new service charge rates.

⁸ Note that SJWC often refers to this service charge as a "readiness-to-serve" charge.

That SJWC did not pro-rate its service charge rates does not appear to be in dispute. SJWC has admitted that “[w]hat we have not done until January 1, 2017, was prorate any readiness-to-serve charge rate changes that occurred within the billing period.”² Instead, in its response to the June 6, 2017 formal complaint, SJWC argued that its Tariff Rule No. 9 did not require it to pro-rate its service charges, and thus, it did nothing wrong.

SJWC has also already proposed a customer refund of approximately \$1.7 million. However, SJWC’s proposed refund only reflects non-prorated service charges for the years 2014-2017. CPED’s Staff Report presents evidence that SJWC has improperly charged its customers in this manner since at least 1987. Moreover, CPED’s Staff Report details that it calculated a higher refund amount for the years 2014-2017 than the amount proposed by SJWC.

B. SJWC Double-Billed its Customers When Converting from Billing in Advance to Billing in Arrears in Violation of the Public Utilities Code.

CPED’s Staff Report also presents evidence that SJWC double-billed its customers when it converted from billing its service charge in advance to billing in arrears. SJWC converted its billing practice in January 2011. However, as presented in the Staff Report, customers receiving a bill prior to the conversion were charged the service charge in advance. Those same customers then received the same service charge on their bill in arrears.

If this allegation is proven correct, SJWC would have collected this same service charge from its customers twice.

While the assessed service charge would have been reviewed and authorized by the Commission, SJWC was never authorized to apply this service charge twice within the same billing period. This allegation, if proven, would constitute another violation of PU Code § 532.

² CPED Staff Report at p. 4 (citing data request response from SJWC).

V. REMEDIES**A. Remediation**

SJWC has already proposed a sur-credit to its customers to reflect non-prorated service charges collected from its customers from 2014-2017 in the amount of approximately \$1.7 million.

However, as detailed in its Staff Report, CPED examined this same time-period and calculated a sur-credit of over \$2 million. CPED additionally proposes a sur-credit of approximately another \$2 million to reflect the 1987-2013 time period in which SJWC appears to have employed the same billing practice.

Further, CPED also calculates that the total amount of double billing when SJWC converted from billing in advance to billing in arrears amounts to nearly \$5 million.

Thus, at issue in this proceeding is the proper refund amount owed to customers. Additional remedial measures may be included such as further changes to SJWC's billing, transparency, or corporate practices as necessary to prevent further injury to customers.

B. Fines and Penalties

If proven in this proceeding, the information discussed above could warrant financial penalties. For proven offenses that occurred before January 1, 2012, under Sections 2107 and 2108, staff may recommend, and the Commission may consider, penalties against SJWC in the amount of \$500 to \$20,000 per offense, per day. For proven offenses that occurred after January 1, 2012, staff may recommend, and the Commission may consider, penalties in the amount of \$500 to \$50,000 per offense, per day.

Additionally, PU Code § 2108 states that “[e]very violation . . . is a separate and distinct offense, and in case of a continuing violation each day’s continuance thereof shall be a separate and distinct offense.”

As such, this proceeding will consider the appropriate level and calculation of penalties warranted for SJWC’s conduct.

VI. PRELIMINARY SCOPING MEMO

Within 30 days of the mailing date of this order, Respondent shall file and serve a response to this OII. If more time is needed, Respondent shall meet and confer with Staff prior to requesting an extension from the Administrative Law Judge (“ALJ”).

The assigned ALJ will set a schedule for the Prehearing Conference (“PHC”). The PHC will address scoping and scheduling issues. Shortly thereafter, the Assigned Commissioner will issue a scoping memo setting forth the scope of the proceeding, establishing a procedural schedule, and determining the category of this proceeding.

VII. PROCEEDING CATEGORY & NEED FOR HEARING

We determine that this proceeding is adjudicatory as defined in Rule 1.3(a), and evidentiary hearings may be necessary. The categorization is appealable under Rule 7.6 of the Commission’s Rules of Practice and Procedure.

VIII. EX PARTE COMMUNICATIONS PROHIBITED

Article 8 of the Commission’s Rules of Practice and Procedure applies to all communications with decision makers and advisors regarding the issues in this proceeding. This proceeding is categorized as adjudicatory and Rule 8.2(b) prohibits *ex parte* communications.

THEREFORE, IT IS ORDERED that:

1. An investigation on the Commission’s own motion is hereby instituted to determine whether the San Jose Water Company (“SJWC”) violated any provision of the California Public Utilities Code or other Commission orders.
2. SJWC is named as the Respondent in this investigation.
3. The Commission may adopt fines or penalties under Public Utilities Code Section 2107 and a remedial action plan to deter and prevent future violations.
4. Staff shall continue to investigate the operations of Respondent. Staff may propose to amend the OII to raise additional charges in a motion to amend the OII which shall be supported by a Staff declaration supporting the proposed amendments or changes.

5. Pursuant to Rule 7.1(c), of the Commission’s Rules of Practice and Procedure, this proceeding is categorized as adjudicatory, and deemed to require evidentiary hearings. Ex parte communications are prohibited. The determination as to the category is appealable under Rule 7.6 of the Commission’s Rules of Practice and Procedure.

6. A prehearing conference shall be convened before an Administrative Law Judge for the purpose of considering the establishment of a schedule in this matter, including the dates, time, and location for an evidentiary hearing.

7. The Executive Director shall cause a copy of this Order to be served electronically and by certified mail on SJWC:

Palle Jensen, Director, Regulatory Affairs
110 W. Taylor Street
San Jose, CA 95110-9903
palle.jensen@sjwater.com

Martin A. Mattes
Nossaman LLP
50 California Street, Suite 3400
San Francisco, CA 94111
MMattes@nossaman.com

John B. Tang,
VP - Regulatory Affairs & Government
Relations
San Jose Water Company
110 W. Taylor St.
San Jose, CA 95110
John.Tang@SJWater.com

This order is effective today.

Dated September 13, 2018, at San Francisco, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners