

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Rita Benton, Jagi Shahani, Bobbie Morrison,
Malcolm Bordelon, Chris Ulicki, Alleen
Gulesserian, Patricia Blevins, James Dutkewicz,
Paul Singer, Michael McConnell, Gordon P.
Patnude, Gretchen Kline, Paul Ausbeck, Janice
Hirata, James S. Hunter, Penelope A. Hunter,
Lionel Allan, Mary Allan, Linda Mullen, Bill
Mullen, Richard W. Palmer, James Tucker, Karen
Tucker, Brenda Mehringer, Larry Mehringer,
Anthony March, Catherine Gardner, Mark
Berghold, Beverly Berghold, Erma Johnson, and
other Ratepayers similarly situated,

Complainants,

vs.

San Jose Water Company (U168W),

Defendant.

C.17-06-009
(Filed June 7, 2017)

**SAN JOSE WATER COMPANY'S
ANSWER TO COMPLAINT**

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July 24, 2017

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ANSWER TO COMPLAINT**

Pursuant to Rule 4.4 of the California Public Utility Commission's ("Commission") Rules of Practice and Procedure, defendant San Jose Water Company ("SJWC" or "Company") answers the complaint filed by the Complainants in this proceeding on June 7, 2017 (the "Complaint"). The Complaint was served on SJWC on June 22, 2017, and therefore this Answer is timely.

I. INTRODUCTION

The Complaint alleges that SJWC improperly billed its customers, including Complainants, by failing to prorate its readiness-to-serve charges when new rate changes were implemented during a customers' billing period. Complainants also allege that SJWC has improperly "double-billed" them for the readiness-to-serve charge following a change in SJWC's billing practice in January 2017. On that basis, Complainants claim that the Commission "should require SJWC to refund all its customers the double-billing charged during the billing period of transition, and also refund the cumulative total of the total difference between the new service charge and the appropriate prorated service charge for each service charge rate increase that occurred from the modification date until now plus interest."¹ Complainants claim that such a refund would be "most likely in excess of \$13 million."²

As explained below, the Complaint is without merit and should be denied because SJWC's billing practices have been consistent both with applicable laws, rules, and regulations and also with SJWC's Commission-approved tariffs.

II. BACKGROUND

On January 15, 2017, SJWC received a customer inquiry from Ms. Rita Benton, one of the named Complainants, regarding how SJWC bills its readiness-to-serve charges. At issue was whether or not the readiness-to-serve charge is or should be prorated when a rate change occurs within a billing period. In subsequent communications, Ms. Benton added a claim that SJWC had double-billed its readiness-to-serve charge.

¹ Complaint, Formal Complaint Form, p. 3.

² *Id.*

A. SJWC’s Tariff Does Not Address Whether Readiness-to-Serve Charges Should Be Prorated to Reflect Rate Changes Occurring During the Billing Period but Guidance May Be Sought in Other Billing Practices.

SJWC’s Tariff Rule No. 9 defines procedures governing the rendering and payment of bills. Tariff Rule No. 9 provides for proration of charges based on the duration of the billing period for opening periods, closing bills, and bills for non-standard billing periods,³ but does not address whether proration of charges is required when a change of rates becomes effective during a customer’s billing period.

Guidance as to whether proration is appropriate in these circumstances may be sought from other SJWC billing practices, especially for the initial billing of new customers. In this context, reference will also be made to SJWC Tariff Rule No. 7, which governs service deposits.⁴

B. SJWC Formerly Issued Opening Bills That Required Payment of a Service Deposit.

SJWC’s Tariff Rule No. 9 addresses the issuance of opening bills, stating:

The opening bill for metered service will not be less than the established monthly minimum or readiness to serve charge for the service. Any amount paid in excess of the prorated charges otherwise applicable to the opening period will be credited against the charge for the succeeding regular billing period, except that no such credit shall accrue if the total period of service is less than one month.⁵

Consistent with this provision of Tariff Rule No. 9, it was SJWC’s practice for many years to have customers initiate service with an in-person visit to the water company’s office, with

³ SJWC Tariff Rule No. 9, §A.3. Tariff Rule No. 9 is provided as Attachment A to this Answer.

⁴ SJWC Tariff Rule No. 7 is provided in Attachment B to this Answer.

⁵ *Id.*, §A.1.b. Tariff Rule No. 9 provides that bills for flat rate service are payable in advance. *Id.*, §A.2.a. For many years, however, SJWC has provided metered services to all its customers with the exception of fire services.

payment of an opening bill if a service deposit was necessary to establish credit in accordance with Tariff Rule No. 7. This service deposit was refunded to the customer within 12 months if he or she remained in good standing or terminated service.

C. At Least Since 2011, SJWC Has Discontinued the Issuance of Opening Bills, Instead Issuing a First Bill After Service Has Been Established.

Over recent decades, all SJWC services (except fire services) have been metered and customers more and more commonly have signed up for service by telephone or via e-mail rather than by in-person visits to the Company offices. With these developments, SJWC gradually abandoned the practice of issuing an opening bill. When SJWC implemented a new Customer Care and Billing system in 2011, the Company also implemented a standard policy of billing the service deposit, when required, on the bill rendered after the first reading of the new customer's meter.

Specifically, SJWC's current practice, and its practice at least since 2011, has been not to issue an opening bill when initiating service, but rather to render a bill to a new customer only upon the first reading of the customer's meter. That first bill includes charges for service provided – a prorated portion of the sum of two monthly readiness-to-serve charges proportional to the portion of the initial bi-monthly billing period for which service has been provided⁶ plus volumetric charges for metered usage.

If necessary to establish credit for a new customer, the first bill also includes a service deposit of twice the estimated average monthly bill, which continues to be refunded to the customer within 12 months if he or she has remained in good standing or has

⁶ For example, assuming a 60-day billing cycle, if the new customer's first meter reading was done 15 days after service was established, and the monthly service charge was \$20.00, then the prorated readiness-to-serve charge on the first bill would be $15 / 60 \times \$20 \times 2 = \10.00 .

terminated service.⁷ Thus, in this instance, there may appear to be double billing on the first bill, but the customer is made whole when the service deposit is refunded within the first 12 months of service or upon service termination.

D. In January 2017 SJWC Began Prorating Readiness-to-Serve Charges for Billing Periods During Which Rate Changes Have Become Effective.

Upon further consideration of Ms. Benton's January 15, 2017 inquiry, SJWC reviewed its practice of billing readiness-to-serve charges for billing periods served and evaluating the common practices of other Class A water companies in California. Based on all these considerations, SJWC made the determination on January 30, 2017, that it is appropriate to prorate readiness-to-serve charges for billing periods during which rate changes have become effective. Pursuant to that tariff interpretation, beginning with the most recent rate changes that became effective January 1, 2017, SJWC undertook to prorate readiness-to-serve charges along with quantity charges on customer bills for billing periods during which readiness-to-serve rate changes have become effective.⁸

As a result of that tariff interpretation, the readiness-to-serve charge rate change implemented by Advice Letter No. 498 with an effective date of January 1, 2017, was prorated for all SJWC customers subject to such charges. This change in practice was consistent with the terms of SJWC's Tariff Rule No. 9 and did not require formal Commission approval.

⁷ These elements of the bill are in accordance with Rule No. 9, §A.3, and Rule No. 7, §A.1, respectively.

⁸ Specifically, SJWC applies the new rate to a fraction of the customer's bi-monthly billing period, beginning with the date on which the new rates became effective and ending with the date of which the meter was read, divided by the total number of days during the billing period, while applying the former rates to the remaining fraction of the customer's billing period.

SJWC's Tariff Rule No. 9 lends support to both SJWC's historical and current billing practices, so long as SJWC has followed practices that have not unreasonably discriminated among customers. The Complaint fails to demonstrate that SJWC has implemented its billing methods in a manner that discriminates among customers or is in any way inconsistent with applicable statutes, regulations, or tariffs.⁹ In fact, SJWC's conduct has been wholly consistent with California law, Commission policy, and SJWC's Commission-approved tariffs. The Commission therefore should find that Complainants have no right to any of the relief requested in the Complaint and should deny the Complaint in its entirety.

III. ANSWER TO THE COMPLAINT

SJWC incorporates by reference the affirmative statements made in Section II above. SJWC responds to the specific allegations of the Complaint as follows:

A. Answering Section (F) of the Formal Complaint Form

1. SJWC denies that it "overcharged all of its customers on the Service Charge rates."
2. SJWC denies that it "increased the Service Charge rate prior to the CPUC's approved effective date."
3. Regarding the Complaint's statement that SJWC "modified its billing practice at some point in the past from billing the service charge in advance to billing the service charge in arrears," SJWC affirmatively states that it modified its billing practices,

⁹ The Complaint does allege that "SJWC has discriminatory billing practices..." Complaint, Formal Complaint Form, p. 2. However, Complainant's allegation of "discriminatory billing practices" is vague and unsubstantiated. It is unclear to SJWC what practices Complainants are referencing and what aspects of such practices are alleged to be discriminatory.

effective January 1, 2017, to prorate the readiness-to-serve charge on its bills for metered service customers for instances where there are rate changes that become effective during a customer's billing period. No change occurred on January 1, 2017 in SJWC's established practice of billing both quantity charges and the readiness-to-serve charge to metered service customers for billing periods served, which has been its practice at least since 2011.

4. SJWC denies that, "For the billing period that included the effective date of that change, SJWC double-billed its customers." As explained above in Section II, there has been no recent change in SJWC's longstanding practices of billing the readiness-to-serve for billing periods served and refunding service deposits to customers in good standing within one year or upon terminating service. The only recent change in practice was to institute proration of the readiness-to-serve charge when new rates become effective during a customer's billing period.

5. SJWC denies that, "From the effective date forward, SJWC failed to prorate the service charge when a service charge rate increase occurred." As explained in Section II, SJWC avers that the determination whether to prorate the readiness-to-serve charge is and has been a matter within SJWC's discretion. SJWC further avers that both its prior practice of applying a new service charge without proration and its newly adopted practice of prorating such charges are consistent with applicable law, regulations, and tariff rules, and that SJWC has fully complied with all such requirements.

6. SJWC objects to the allegation that it "has discriminatory billing practices," as vague, unfounded, and lacking relevance to any relief sought by Complainants. SJWC also denies this allegation.

7. SJWC objects to the allegation that it has “excessive rate increases” as vague, unfounded, and lacking relevance to any relief sought by Complainants. SJWC also denies this allegation.

8. SJWC objects to the allegation that it has “record earnings” as vague, unfounded, and lacking relevance to any relief sought by Complainants. SJWC also denies this allegation.

9. SJWC objects to the allegation that it has “excessive use of advice letters” as vague, unfounded, and lacking relevance to any relief sought by Complainants. SJWC also denies this allegation.

10. SJWC objects to the allegation that it has “money and land transfers between SJWC, SJW Land, SJW Group” as vague, unfounded, and lacking relevance to any relief sought by Complainants.

11. SJWC objects to the allegation that it has “a general lack of transparency” as vague, unfounded, and lacking relevance to any relief sought by Complainants. SJWC also denies this allegation.

12. SJWC objects to the reference to “See Attachments” as vague and ambiguous and objects generally to the materials included in Part 1 of the Complaint after the Formal Complaint Form and signature pages and in Parts 2 and 3 of the Complaint (referenced hereinafter as the “Attachments”) as vague, ambiguous, and unsubstantiated. SJWC further objects generally to the Attachments on the basis that said Attachments are provided without a declaration indicating what they are or where they came from. SJWC further objects that portions of the Attachments appear to be incomplete reproductions of electronic communications and/or letters.

13. Notwithstanding SJWC's objections raised in Answering Paragraph 12, above, SJWC admits that portions of the Attachments that appear to be partial reproductions of e-mail or letter communications from John Tang are consistent with:

i. an e-mail message sent by John B. Tang, SJWC's Vice President of Government Relations and Corporate Communications, to Rita Benton, Raminder Kahlon, and Richard Rauschmeier on February 21, 2017;

ii. a letter sent by Mr. Tang to Tayeb K. Mogri on March 1, 2017; and

iii. an e-mail message sent by Mr. Tang to Rita Benton and Raminder Kahlon on March 16, 2017.

B. Answering Section (G)(4) of the Formal Complaint Form

14. SJWC avers that Section (G)(4) of the Formal Complaint Form contains only unfounded legal conclusions to which no response is required.

15. To the extent that Section (G)(4) of the Formal Complaint Form includes any material allegations that are not specifically addressed above, such allegations are denied.

16. SJWC affirmatively declares that it has complied with all applicable laws, regulations, and tariffs in all actions relevant to the Complaint and, therefore, Complainants' request for relief should be denied in all respects.

C. Answering Section (H) of the Formal Complaint Form

17. SJWC avers that Section (H) of the Formal Complaint Form contains only unfounded legal conclusions to which no response is required.

18. To the extent that Section (H) of the Formal Complaint Form includes any material allegations that are not specifically addressed above, such allegations are denied.

19. SJWC affirmatively declares that it has complied with all applicable laws, regulations, and tariffs in all actions relevant to the Complaint and, therefore, Complainants' request for relief should be denied in all respects.

IV. AFFIRMATIVE DEFENSES

1. As a first and separate affirmative defense, SJWC re-alleges and incorporates herein each and every one of its affirmative allegations set forth above.

2. As a second and separate affirmative defense, SJWC avers that the Complaint fails to state a cause of action for which relief may be granted because, *inter alia*, the Complaint does not allege an act or omission to act in violation of any provision of law, rule, regulation, or order of the Commission.

3. As a third and separate affirmative defense, SJWC avers that the Complainant is barred from recovery because SJWC has complied with all applicable laws, rules, regulations, and tariffs, including, but not limited to, SJWC's Tariff Rule No. 9.

4. As a fourth and separate affirmative defense, SJWC avers that to the extent that Complainants seek refunds of payments with respect to bills rendered more than three years prior to Ms. Benton's inquiry of January 15, 2017, the Complaint's claim for a refund is barred by law, specifically Section 736 of the California Public Utilities Code.¹⁰

V. SCOPING MEMO INFORMATION

SJWC disagrees with the Complainants' proposed categorization of this proceeding and statement on issues to be considered.

¹⁰ See also, e.g., D.12-08-031, *DCOR, LLC v. Southern California Edison Co.*

A. Category of Complaint

The Complainants propose a “ratesetting” categorization for the Complaint.¹¹ However, Complainants are not challenging the reasonableness of SJWC’s rates, but rather are challenging the propriety of certain aspects of SJWC’s billing practices. Therefore, the proper categorization for this Complaint is “adjudicatory.”

B. Need for Evidentiary Hearings

SJWC is hopeful that any disputes as to the facts that may be material to the Complaint can be resolved as the proceeding progresses, thereby eliminating any need for evidentiary hearings. However, at this time, SJWC agrees with Complainants that there are facts in dispute that may require evidentiary hearings.

Complainants request that hearings “be held within 10 miles of 18555 Ravenwood Drive, Saratoga, CA 95070.”¹² SJWC opposes that specific request as unjustified and affirmatively states that the location of any hearings should be selected for the convenience of the Commission, Commission staff, SJWC’s customers, and SJWC.

C. Issues to be Considered

There is only one relevant issue in this case: Whether SJWC’s billing practices with respect to proration of readiness-to-serve charges on customer bills for billing periods during which rate changes have become effective have been and are consistent with applicable laws, rules, regulations, and tariffs.

¹¹ Complaint, Formal Complaint Form, p. 2.

¹² *Id.*, p. 3.

D. Proposed Schedule

The Complaint does not include a proposed schedule in that portion of the Formal Complaint Form. Therefore, pursuant to Rule 4.4 of the Commission Rules of Practice and Procedure, SJWC proposes the procedural schedule below for the Commission’s consideration of the relief requested, consistent with SJWC’s proposal to categorize the Complaint as adjudicatory:

Event	Date
Complaint Served	June 22, 2017
Answer to be Filed	July 24, 2017
Prehearing Conference	August 3, 2017
Scoping Memo	August 17, 2017
Concurrent Direct Testimony to be Served	September 15, 2017
Concurrent Rebuttal Testimony to be Served	October 6, 2017
Evidentiary Hearings	October 17-18, 2017
Concurrent Opening Briefs to be Filed	November 16, 2017
Concurrent Reply Briefs to be Filed	December 7, 2017
Presiding Officer’s Decision (“POD”)	1st Quarter 2018
Appeals and Requests for Review	30 days after POD
Responses	15 days after last appeal
Commission Review	By June 22, 2018

VI. CONCLUSION

Complainants' claims are without basis. Therefore, SJWC respectfully requests that the Commission deny the Complaint.

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Attorneys for DEFENDANT,
SAN JOSE WATER COMPANY

July 24, 2017

Attachment A

San Jose Water Company
Tariff Rule No. 9

Rule No. 9

RENDERING AND PAYMENT OF BILLS

A. Rendering of Bills

(N)

Bills for service will be rendered each customer on a monthly or bi-monthly basis at the option of the utility, unless otherwise provided in the rate schedules.

1. Metered Service

- a. Meters will be read at regular intervals for the preparation of periodic bills and as required for the preparation of opening bills, closing bills and special bills.
- b. The opening bill for metered service will not be less than the established monthly minimum or readiness to serve charge for the service. Any amount paid in excess of the prorated charges otherwise applicable to the opening period will be credited against the charge for the succeeding regular billing period, except that no such credit shall accrue if the total period of service is less than one month.
- c. It may not always be practicable to read meters at intervals which will result in billing periods of equal numbers of days.
 - 1. Should a monthly billing period contain less than 27 days or more than 33 days a prorata adjustment in the bill will be made.
 - 2. For a bi-monthly billing period of 54 through 66 days the charge for metered service will be computed by doubling the monthly minimum or readiness to serve charge, and the number of cubic feet to which each block rate is applicable on a monthly basis.
 - 3. For billing periods other than monthly or bi-monthly, adjustments will be made proportionate to that for a monthly billing period.
- d. Bills for metered service will show at least the reading of the meter at the end of the period for which the bill is rendered and the meter constant, if any, the number and kinds of units, and the date of the current meter reading.

(N)

(To be inserted by utility)

Issued by

(To be inserted by Cal. P.U.C.)

Advice No. 294

Fred R. Meyer

Date Filed Oct 27 1997

Vice President

Effective Nov 01 1997

Dec. No. _____

Regulatory Affairs

Resolution No. W-4060

TITLE

Rule No. 9

RENDERING AND PAYMENT OF BILLS
(Continued)

e. Each meter on a customer's premises will be considered separately and the readings of two or more meters will not be combined, except where combination of meter readings is specifically provided for in the applicable rate schedule, or where the utility's operating convenience of necessity may require the use of more than one meter, or a battery of meters. In this case, the monthly readiness to serve charge will be computed upon the resultant diameter of the total combined discharge areas of such meters. (N)

f. If, because of unusual conditions or for reasons beyond the utility's control, it is unable to read the customer's meter on the scheduled reading date, it may bill the customer for estimated consumption during the billing period and make any necessary corrections when a reading is obtained. Estimated consumption for this purpose will be calculated considering the customer's prior usage, the utility's experience with other customers of the same class in that area, and the general characteristics of the customer's operations. Adjustments for any underestimate or overestimate of a customer's consumption will be reflected on the first regularly scheduled bill rendered, and based on an actual reading following the period of inaccessibility. (N)

2. Flat Rate Service

- a. Bills for flat rate service are payable in advance.
- b. The opening bill for flat rate service will be the established monthly charge for the service. Any amount paid in excess of the prorated charges otherwise applicable to the opening period will be credited against the charge for the succeeding regular billing period, except that no such credit shall accrue if the total period of service is less than one month.

3. Proration of Bills

- a. The charges applicable to opening periods, closing bills and bills rendered for periods corresponding to less than 27 days or more than 33 days for monthly billing periods will be computed as follows:

(To be inserted by utility)

Issued by

(To be inserted by Cal. P.U.C.)

Advice No. 294

Fred R. Meyer

Date Filed Oct 27 1997

Vice President

Effective Nov 01 1997

Dec. No. _____

Regulatory Affairs

Resolution No. W-4060

TITLE

Rule No. 9

RENDERING AND PAYMENT OF BILLS
(Continued)

(1) Metered Service

The amount of the readiness to serve charge and the quantity in each of the quantity rate blocks will be prorated on the basis of the ratio of the number of days in a period to the number of days in an average billing period. The measured quantity of usage will be applied to such prorated amounts and quantities.

(2) Flat Rate Service

The billing period charge will be prorated on the basis of the ratio of the number of days in the period to the number of days in an average billing period.

(3) Average Billing Period

The number of days in an average billing period is defined as 365 divided by the number of billing periods in a year (30.4 days for a monthly billing period).

B. Payment of Bills

Bills for service are due and payable upon presentation, and payment may be made at the commercial office of the utility or to any representative of the utility authorized to make collections. Collection of closing bills may be made at the time of presentation. If a customer tenders a check in payment of any bill and such check is not honored by the customer's bank, the utility may assess the customer a bad check service charge of \$4.75.

(To be inserted by utility)

Issued by

(To be inserted by Cal. P.U.C.)

Advice No. 294

Fred R. Meyer

Date Filed Oct 27 1997

Vice President

Effective Nov 01 1997

Dec. No. _____

Regulatory Affairs

Resolution No. W-4060

TITLE

Attachment B

San Jose Water Company
Tariff Rule No. 7

Rule No. 7

DEPOSITS

A. Amount to Establish Credit

(N)

1. Metered Service

a. To establish credit by deposit, the amount for all service will be twice the estimated average monthly bill.

b. To establish credit by deposit, the amount for all other service will be twice the estimated average periodic bill when bills are rendered monthly or bimonthly, but in any event not more than twice the estimated monthly bill nor less than the amounts set forth above.

2. Flat Rate Service

No deposit will be required, except as prescribed for temporary service in Rule No. 13.

B. Amount to Re-establish Credit

1. Former Customers

To re-establish credit for an applicant who previously has been a customer of the utility and during the last 12 months of that prior service has had service discontinued for non-payment of bills, the amount will be twice the estimated average monthly or bimonthly bill to be rendered for the service requested.

2. Present Customer

To re-establish credit for a customer whose service has been discontinued for non-payment of bills, the amount will be twice the average monthly or bimonthly bill to be rendered for that service.

C. Applicability to Unpaid Accounts

(N)

Deposits made under this rule will be applied to unpaid bills for service when service has been discontinued.

(To be inserted by utility)

Issued by

(To be inserted by Cal. P.U.C.)

Advice No. 156

Fred R. Meyer

Date Filed Sep 29 1980

Chief Fin. Officer

Effective Oct 29 1980

Dec. No. _____

and Treasurer

Resolution No. _____

TITLE

Rule No. 7

DEPOSITS
(Continued)

D. Return of Deposits

- 1. Upon discontinuance of service, the utility will refund the balance of the customer's deposit in excess of unpaid bills for that service for which the deposit was made.
- 2. After the customer has, for 12 consecutive months, paid bills for service on the average within 15 days after presentation, the utility will refund the customer's deposit with interest as provided in Paragraph E of this rule. (N)

E. Interest on Deposits (D)

- 1. Interest on deposits held will be paid by the utility at the rate of 7% per annum for the first 12 consecutive months during which the customer has paid bills for service within an average period of 15 days after presentation, and for additional time thereafter up to the date of refund; provided, however, that no interest shall accrue after mailing to the customer or the customer's last known address the refund or a notice that the refund is payable. (T)
- 2. No interest will be paid if service is discontinued within the initial 12-month period. (T)

(To be inserted by utility)

Issued by

(To be inserted by Cal. P.U.C.)

Advice No. 156

Fred R. Meyer
Chief Fin. Officer
and Treasurer

Date Filed Sep 29 1980

Effective Oct 29 1980

Dec. No. _____

Resolution No. _____

TITLE

VERIFICATION

I am an officer of the defendant corporation herein, and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in **SAN JOSE WATER COMPANY'S ANSWER TO COMPLAINT** are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 24th day of July, 2017, at San Jose, California.



By: _____

John B. Tang
Vice President of Regulatory Affairs &
Government Relations
San Jose Water Company