



**CALIFORNIA PUBLIC UTILITIES COMMISSION
CONSUMER PROTECTION AND
ENFORCEMENT DIVISION**

STAFF REPORT

**INVESTIGATION OF OVERBILLING
BY SAN JOSE WATER COMPANY**

**BY VÍCTOR BAÑUELOS
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1 **I. EXECUTIVE SUMMARY**

2 This report by the Utility Enforcement Branch (UEB) of the Consumer Protection and
3 Enforcement Division (CPED) of the California Public Utilities Commission (CPUC/
4 Commission) documents the results of UEB’s investigation into San Jose Water Company’s
5 (SJWC) (U-168-W) alleged improper billing practices. CPED Staff (Staff) commenced its
6 investigation upon receipt of the referral by the Commission’s Water Division Director,
7 Raminder Kahlon.¹

8 UEB’s investigation confirmed that SJWC failed to properly prorate its service
9 charge on its customers’ bills for at least 30 years, from 1987 to 2017. In doing so, SJWC
10 overcharged its customers over \$4 million. SJWC is in apparent violation of Public Utilities
11 Code (PU Code) Section 532 by billing its customers for rates that were not effective during
12 the time service was rendered.

13 Staff’s investigation also found that SJWC double-billed its customers for service
14 charges when it changed its billing system in 2011 from billing in advance to billing in
15 arrears. Staff’s research and analysis point to almost \$5 million of duplicate billing for
16 service charges during the conversion.²

17 CPED recommends that the Commission open an Order Instituting Investigation
18 (OII) to determine the extent to which SJWC violated the PU Code and to determine
19 appropriate penalties, reparation, and other remedies.

20 **II. COMPANY INFORMATION**

21 SJWC is a Class A water company that has been providing water service since 1866.³
22 SJWC provides water delivery service for residents within the San Jose metropolitan area. In
23 addition to regular water delivery, SJWC offers potable and recycled water delivery.⁴ SJWC
24 is owned by the SJW Group (SJW), which is a publicly traded company listed on the New

¹ Attachment A. Water Division Memo to UEB; August 22, 2017.

² Service charge also referred herein as a “readiness-to-serve charge” is a fixed monthly or bi-monthly charge designed to collect revenues to cover operating and maintenance expenses.

³Attachment B. SJWC Response to DR-WTR-00003-01 on September 28, 2017, p. 1.

⁴ Ibid, p. 2.

1 York Stock Exchange. The SJW Group also owns the SJW Land Company, and SJWTX,
2 Inc.⁵

3 **III. BACKGROUND OF CONSUMER COMPLAINTS**

4 On April 17, 2017, Ms. Rita Benton, representing Water Rates Advocates for
5 Transparency, Equity and Sustainability (WRATES), on behalf of herself and 69 other SJWC
6 Complainants (collectively referred to herein as Complainants) submitted a complaint to the
7 CPUC Water Division. The Complainants stated:

8 SJWC overcharged all of its customers on the service charge rates. SJWC
9 increased the service charge rate prior to the CPUC's approved effective
10 date. SJWC modified its billing practice at some point in the past from
11 billing the service charge in advance to billing the service charge in
12 arrears. For the billing period that included the effective date of that
13 change, SJWC double-billed its customers. From the effective date
14 forward, SJWC failed to prorate the service charge when a service charge
15 rate increase occurred.⁶
16

17 On May 8, 2017, the CPUC's Water Division Director, Rami Kahlon, sent a letter to
18 SJWC notifying it that it was in violation of P.U. Code 532 and other Commission Orders
19 and directed SJWC to file an advice letter to cure the billing violations.⁷

20 On June 6, 2017, SJWC submitted Advice Letter (AL) 510 to the Commission,
21 requesting the CPUC's authorization for SJWC to provide a three-year refund to all of its
22 customers for the service charges that were not prorated for a three-year time period, from
23 January 1, 2014 to December 31, 2016.

24 On June 7, 2017, the Complainants formally submitted the complaint to the CPUC.
25 The complaint was formally docketed as C.17-06-009 and, on June 22, 2017, the formal
26 complaint was served to SJWC.

27 On June 23, 2017, the Office of Ratepayer Advocates (ORA) protested AL 510.
28 ORA contended that AL 510 raised significant policy questions and is highly controversial.
29 ORA then recommended rejection of AL 510 in order to preserve the integrity of the
30 regulatory process and to afford due process of law. ORA also requested that the

⁵ Ibid, pp. 1-2.

⁶ Attachment C. C.17-06-009, Complaint (Part 1 of 3); June 07, 2017, p. 2.

⁷ Attachment D. Water Division Letter to SJWC; May 8, 2017.

1 Commission consolidate the issues contained in C.17-06-009 as well as AL 510 within the
2 scope of an OII. The OII would serve to “determine the cause, magnitude and appropriate
3 remedies associated with the overcharging of ratepayers.” ORA also stated that, “the fact
4 that multiple customers were overcharged is undisputed.”⁸

5 On June 28, 2017, the Water Division suspended AL 510 pending review of an OII.

6 On July 24, 2017, SJWC filed a response to C.17-06-009, asserting that “Tariff Rule
7 No. 9 provides for proration of charges based on the duration of the billing period for
8 opening periods, closing bills, and bills for non-standard billing periods, but does not address
9 whether proration of charges is required when a change of rates becomes effective during a
10 customer’s billing period.”⁹

11 On August 7, 2017, the Water Division provided the City of Cupertino with a letter -
12 in response to a prior letter from the City inquiring about legal billing practices - stating:

13 Customers may only be charged rates that are authorized and in effect.
14 Questions raised regarding the correctness of the calculation for customer
15 refunds: how many years are to be considered in calculating refunds; and
16 if any penalties or fines that should be imposed on SJWC for its past
17 practices all will be adjudicated by the Commission pursuant to the
18 processing of C.17-06-009.¹⁰

19
20 On August 11, 2017, the Water Division rejected SJWC’s AL 510 due to the fact that
21 the “CPUC is in the process of conducting a thorough investigation and audit of SJWC’s past
22 and present billing practice... to determine the proper dollar amount to be refunded to the
23 customers for past overcharges.”¹¹

24 On August 22, 2017, Raminder Kahlon, Director of the Water Division, sent CPED a
25 memo requesting CPED conduct an investigation into the unfair and erroneous practices
26 which seem to have existed for many years.

27 This report documents the results of UEB’s investigation into the alleged billing
28 practices.

⁸ Attachment E. ORA Protest Letter; June 23, 2017, p. 2.

⁹ Attachment F. San Jose Water Company’s Answer to Complaint; July 24, 2017, p. 3.

¹⁰ Attachment G. Water Division Letter to City of Cupertino; August 7, 2017.

¹¹ Attachment H. Water Division Disposition of Advice Letter No. 510; August 11, 2017, pp. 1-2.

1 **IV. SJWC OVERCHARGED ITS CUSTOMERS IN VIOLATION OF**
2 **PU CODE 532**

3 Section 532 of the California PU Code states that "... no public utility shall charge, or
4 receive a different compensation for any product... or for any service rendered or to be
5 rendered, than the rates...and charges applicable thereto as specified in its schedules on file
6 and in effect at the time..." SJWC failed to prorate its service charge on customer bills, thus
7 improperly applying a rate that was not effective during the time the service was rendered,
8 and overcharging its customers in the process. In addition, SJWC double-billed its customers
9 for service charges when converting from billing in advance to billing in arrears.

10 **A. SJWC Failed To Prorate Service Charges On**
11 **Customer Bills**

12 SJWC provides its customers with recycled and potable water delivery service. In
13 exchange, SJWC customers pay either a monthly or bimonthly service charge. In addition to
14 the service charge, "quantity charges," or usage rates, are added to a customer's bill. These
15 additional usage rates are dependent on the amount of water delivered to the customer. In
16 order for SJWC to increase its service charge and usage rates, it is required to follow the
17 Commission's rules for filing an advice letter and demonstrating proof of the reasonableness
18 of the rate increase in accordance with SJWC's costs of maintenance and operation. Once
19 the advice letter is approved by the CPUC, the new rates are set in place on the stated
20 effective date. Until the new rates become effective, the previously approved rates are the
21 only lawful rates a utility can charge for the provision of service.

22 SJWC admits that it has never adhered to this billing practice since it started
23 operations. SJWC stated, "What we have not done until January 1, 2017, was prorate any
24 readiness-to-serve charge rate changes that occurred within the billing period."¹² Thus, if an
25 advice letter became effective midway in a billing cycle, the customer was being assessed the
26 full service charge established in the newly approved advice letter, rather than a combination
27 of the previously adopted charges along with the new service charges. Furthermore,
28 evidence of SJWC's failure to prorate its service charge dates back to as early as 1987, 30
29 years from the date of SJWC's admission.¹³

¹² Attachment I. DR-WTR-00003-02, SJWC Data Response to CPED on November 8, 2017, p. 3.

¹³ Attachment J. SJWC Customer Bill; August 3, 1987.

1 CPED sent a data request to SJWC to determine the root cause of the issue raised by
2 the Complainants. In SJWC’s data response to CPED,¹⁴ as well as in its response to
3 C.17-06-009, SJWC admitted the following:

4 SJWC reviewed its practice and that of other Class A water companies in
5 California. Based on these considerations, SJWC determined on January
6 30, 2017, that it was appropriate to prorate readiness-to-serve charges for
7 billing periods during which rate changes have become effective.¹⁵

8
9 In other words, SJWC admitted that it was not appropriate to charge its customers the
10 newly approved service charges before the effective dates. For the billing period in which
11 SJWC received the Commission’s approval for a rate increase, it wrongly applied the newly
12 approved rates to the *entire* billing period instead of only applying the newly approved rates
13 from the effective date onward.

14 **1. SJWC Admitted To Overcharging Its**
15 **Customers \$1,794,439 For Three Years By Not**
16 **Prorating Service Charges**

17 In its AL 510 filing, SJWC proposed to “implement a surcredit to refund readiness-to-
18 serve rate changes as a result of a change in billing service effective January 1, 2017.”¹⁶
19 SJWC supported its filing with calculations demonstrating the proposed surcredit for every
20 type of service SJWC offered¹⁷ from January 1, 2014 to December 31, 2016, which totaled
21 to **\$1,794,439.**¹⁸

¹⁴ Attachment B. DR-WTR-00003-01, SJWC Data Response to CPED; September 28, 2017, p. 4.

¹⁵ Attachment F. San Jose Water Company’s Answer to Complaint; July 24, 2017, p. 5.

¹⁶ Attachment K. SJWC AL 510; June 6, 2017.

¹⁷ Attachment L. SJWC “AL 510, Attachment A, *Service Charge Surcredit*”; June 6, 2017.

¹⁸ Based on the data SJWC utilized to calculate the “Total Meter Charge Surcredit for all Schedules,” which was also referred to as the “Revenue to be Refunded in Meter Charge Surcredit” in SJWC’s Surcharge Calculation Workpaper, SJWC provided CPED staff in its Data Response WTR-00003-02 on November 8, 2017, with a complete record of all instances, between the dates of January 1, 2014 to December 31, 2016, in which SJWC failed to prorate its service charge during the time when a new service charge was approved by the CPUC but not yet effective.

1 **2. Staff Calculated A Higher Amount Of**
2 **Overcharges Totalling \$2,061,203 For The Same**
3 **Three Year Period**

4 Staff’s calculation of the total amount of overcharges to be refunded by SJWC for
5 calendar years 2014, 2015, and 2016, is **\$2,061,203**, which is \$266,764 more than the amount
6 determined by SJWC. This variance is attributed to the different assumptions in the number
7 of days in a monthly billing period used in Staff’s calculation methodology, as described in
8 Attachment M.¹⁹ Staff applied its derived total aggregated refund amount to SJWC’s
9 Surcharge Calculation Worksheet to determine the appropriate refund for a three-year period
10 (2014 to 2016) for each service type.²⁰

11 **3. Evidence Shows That SJWC Has Been**
12 **Overcharging Customers For At Least The Past**
13 **30 Years**

14 SJWC stated in its response to C.17-06-009 that it did not prorate service charges in
15 the past. Evidence in the form of customer bills dating as far back as August 1987 shows
16 that SJWC has indeed been improperly billing its customers by failing to prorate its service
17 charges for at least 30 years.²¹

18 In order to estimate the total overcharges from 1987 to 2013, Staff utilized all of the
19 data provided by SJWC, which included approved SJWC Advice Letters, the effective dates
20 of those Advice Letters, the monthly service charges for each meter type and the total
21 number of SJWC customers for each effective date.²² Staff then aggregated all the individual
22 service charge adjustments that occurred between 1987 to 2013 for each meter type and for
23 each advice letter approved during this time period. Staff assumed that the Advice Letters
24 and their approved service charges became effective mid-way through the billing period and
25 thereby divided the total aggregated difference between all of the approved service charge
26 changes during the aforementioned time period by two. The average service charge for an

¹⁹ Attachment M. Staff Calculation Methodology for Determination of Appropriate Refund Amount for Each Separate Billing Record.

²⁰ Attachment O. Staff’s recalculation of AL 510, Attachment A, “*CPED Staff Calculation of SJWC Service Charge Surcredit.*”

²¹ Attachment P. SJWC Customer Bills - 1987 to 2017.

²² Attachment Q. SJWC Data Response WTR-00003-05; March 28, 2018.

1 entire billing period calculated in this manner would be equivalent to charging the initial
2 service charge for the first half of the billing period, and then the new service charge for the
3 second half of the billing period. Subtracting this average service charge from the higher
4 service charge that had been erroneously charged for the entire billing period results in one
5 reasonable estimate of what could have been the total overcharges per customer per meter
6 type.

7 To provide an estimate of the total amount of refunds owed by SJWC, Staff applied a
8 ratio methodology. Based on the number of customers provided by SJWC in Attachment A
9 of SJWC AL 510, the Service Charge Surcredit Worksheet, Staff calculated a ratio of the
10 number of customers for each meter size to the total number of customers.²³ This ratio was
11 then multiplied by the total number of SJWC customers for each instance in which an advice
12 letter became effective. Staff then multiplied the estimated individual customer refund
13 amount for the same advice letter time period by the estimated number of customers for this
14 same time period. Staff estimates, based on its aggregate calculation, that SJWC owes
15 customers a refund of an additional amount of \$1,989,691. This is in addition to the
16 2,061,203 calculated for the 2014-2017 period.

17 See Attachment S for detailed calculations of the individual customer refund amounts
18 as well as the total refund amount due to SJWC's failure to prorate its customers' service
19 charges from 1987 to 2013²⁴

20 **B. SJWC Double-Billed Customers For Service Charges**
21 **When It Converted From Billing In Advance To**
22 **Billing In Arrears**

23 The Complainants allege that SJWC double-billed its customers during the first
24 billing period when SJWC converted from billing in advance to billing in arrears, thereby
25 violating PU Code 532.²⁵ If a customer had already been billed in advance for the service
26 charge, the subsequent bill issued to the same customer upon SJWC's conversion to billing in

²³ Attachment R - Calculation of Ratios for the Number of Customers for Each Meter Size to the Total Number of Customers.

²⁴ Attachment S. Calculation of Service Charge Refunds - 1987-2013.

²⁵ Attachment C. C.17-06-009, Complaint (Part 1 of 3); June 07, 2017, p. 2.

1 arrears should not have included a service charge because doing so would impose the service
2 charge on the customer's bill twice for the same billing period.

3 Ms. Benton stated in her June 7, 2017 complaint that, "There is no evidence on recent
4 bills that SJWC suspended its service charge for one billing cycle in order to change its
5 billing practice for the service charge from in advance to in arrears. A service charge has
6 been charged on each of my water bills since 2006."²⁶ Ms. Benton subsequently supplied
7 CPED with a compilation of all of the service charges imposed by SJWC from November 4,
8 1999 to June 29, 2017.²⁷ This list shows that there was never a billing period with a
9 suspended service charge. Based on this evidence, it is apparent that SJWC did not properly
10 adjust its billing procedure in 2011, or any time thereafter, to suspend the service charge for
11 the month in which system conversion occurred. SJWC's failure to do so has resulted in
12 double billing.

13 For all customers who initiated service prior to 2011, in accordance with SJWC's
14 Tariff Rule No.9,²⁸ SJWC's billing practice was to bill in advance.²⁹ SJWC stated that it has
15 been their practice since the installation of their new Customer Care and Billing system in
16 2011 to bill the service charge for each billing period in arrears.³⁰ However, SJWC noted
17 that it is unable to establish precisely when the company transitioned from billing in advance
18 to billing in arrears.³¹ In fact, in no billing period following January 2011 does a bill appear
19 wherein there is an absence of a service charge.

20 In order to determine the amount owed to SJWC's customers from this double
21 billing, Staff referred to the data provided by SJWC in its data response that included the
22 total number of SJWC customers on January 1, 2011.³² Staff applied the same calculation

²⁶ Attachment T. C.17-06-009, Complaint (Part 3 of 3); June 07, 2017, p. 4.

²⁷ Attachment U, Ms. Rita Benton's Historical Listing of All Readiness-to-Serve Charges Imposed by SJWC From November 1999 to June 2017.

²⁸ Attachment N. San Jose Water Company Tariff Rule No. 9(A)(1)(b).

²⁹ Attachment F. San Jose Water Company's Answer to Complaint, July 24, 2017, g. 4.

³⁰ Attachment I. SJWC Data Response WTR-00003-02; November 8, 2017, p. 3.

³¹ Neither in SJWC's Answer to the Complaint nor in SJWC's Data Response to CPED DR-WTR-00003-02, was SJWC able to provide suitable evidence of when the transition from billing in advance to billing in arrears actually occurred.

³² Attachment Q. SJWC Data Response WTR-00003-05; March 28, 2018.

1 result for the ratio of customers per service type and meter size described in section IV.A.3
2 of this report to estimate the number of SJWC customers for a specific service type and
3 meter size on January 1, 2011. The estimated number of customers was then multiplied by
4 the service charge approved in AL 422. This calculation points to a total amount owed of
5 \$4,935,235 (Please refer to Table 1 below for detailed calculations).

1

TABLE 1**Calculation of Amount Owed for Double Billing of Service Charges by Meter Size**

AL Effective Date	Advice Letter	Number of Customers	5/8 x 3/4"	3/4"	1"	1.5"	2"	3"	4"	6"	8"	10"	Total Amount Owed
Jan 01, 2011	422	217,922	Approved AL 422 Monthly Service Charge per Meter Size										
			\$ 16.89	\$ 16.89	\$ 28.14	\$ 56.27	\$ 90.03	\$ 168.83	\$ 281.43	\$ 562.81	\$ 900.51	\$ 1,294.56	
Ratio of Cust per Service Type and Meter Size (per Attachment R - Calculation of Ratios)			0.386%	77.839%	15.189%	1.764%	2.179%	0.634%	0.183%	0.082%	0.013%	0.003%	
Total Amount Owed to Customers per AL and with Corresponding Meter Size			\$ 14,201	\$ 2,865,006	\$ 931,465	\$ 216,308	\$ 427,532	\$ 233,431	\$ 112,187	\$ 100,197	\$ 26,139	\$ 8,768	\$ 4,935,235

2

3

1 Staff provided SJWC with the opportunity to counter the Complainant’s allegations.
2 However, SJWC was unable to provide evidence of how or if the company modified its
3 billing methodology to avoid double-billing for the service charge. Absent such evidence,
4 and in light of a complete historical listing of all service charges imposed by SJWC on its
5 customer, Ms. Rita Benton from November 1999 to June 2017,³³ Staff concludes that SJWC
6 double-billed for service charges during the billing period it converted from billing in
7 advance to billing in arrears, in violation of PU Code 532.

8 **V. CPED RECOMMENDS THAT THE COMMISSION**
9 **INVESTIGATE SJWC TO DETERMINE THE FULL EXTENT**
10 **OF VIOLATIONS AND ORDER APPROPRIATE PENALTIES**
11 **AND/OR REMEDIES**

12 UEB’s investigation uncovered evidence to support an allegation that SJWC violated
13 PU Code 532, which prohibits a public utility from charging a different rate for a service
14 rendered other than the effective rate at the time the service was provisioned. SJWC failed to
15 prorate its service charge on customer bills as far back as 1987, thereby overcharging its
16 customers millions of dollars. In addition, SJWC double-billed its customers for service
17 charges when changing from billing in advance to billing in arrears. CPED recommends that
18 the Commission open an OII to determine the extent of SJWC violations and to determine
19 appropriate penalties, reparations, and other remedies.

³³ Attachment U, Ms. Rita Benton’s Historical Listing of All Readiness-to-Serve Charges Imposed by SJWC From November 1999 to June 2017.