

**Commission Issues  
Water Action Plan  
which  
Ensures Compliance  
with  
Government Code Section 65589.7  
and  
Provides that Utilities Deliver Clean, Safe,  
and  
Reliable Water at Reasonable Rates**

**California Public Utilities Commission  
Water Division**

June 2006

## **Introduction**

### **Amended Government Code**

Senate Bill 1087, approved by the Governor and Chaptered in October of 2005, in part, amended California Government Code Section 65589.7, which requires that both public agencies and private entities providing water or sewer services shall adopt written policies and procedures regarding provision of service to a development that includes low-income housing<sup>1</sup>. In addition, Section 65589.7 requires that these policies and procedures shall take into account specific sections of the Water and Health and Safety Code.

In an effort to provide guidance to the private water utilities regulated by the California Public Utilities Commission (Commission) and assure the legislature that rules and procedures are in place for privately held water utilities to follow, the Water Division (WD) summarizes in this report the existing code, rules, and regulations that assure both the existence of low-income programs for customers of private water utilities as well as the non-discrimination of those customers. All of the regulated water utilities must comply with the dictates of the Commission and applicable law and code.

In addition to the existing Commission code, rules, and regulations that assure full compliance, the WD has instructed all regulated water utilities per a letter dated June 27, 2006 (see attachment B), to file a tariff (see Attachment C) as a supplemental measure to highlight compliance with Section 65589.7.

### **Commission Compliance with Amended Government Code**

#### **Water Action Plan**

The Water Action Plan adopted by the Commission on December 15, 2005, identifies policy objectives that will guide the Commissions regulation of privately held water utilities and highlights the actions it anticipates taking in order to implement these objectives. In fulfilling these objectives, the Commission follows four key water principles:

- ◆ Safe, high quality water,
- ◆ Highly reliable water supplies,
- ◆ Efficient use of water, and
- ◆ Reasonable rates and viable utilities.

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<sup>1</sup> See Attachment A for Government Code Section 65589.7.

Building off of these four key principles, the Commission has developed six key objectives:

- ◆ Maintain Highest Standards of Water Quality,
- ◆ Strengthen Water Conservation Programs to a Level Comparable to those of Energy Utilities,
- ◆ Promote Water Infrastructure Investment,
- ◆ Assist Low Income Ratepayers,
- ◆ Streamline CPUC Regulatory Decision-making, and
- ◆ Set Rate that Balance Investment, Conservation, and Affordability.

Given that one of the key objectives of the Water Action Plan is to assist low-income water utility ratepayers, the Commission can assure interested parties that this Commission promotes low-income programs for regulated water utilities.

### *Non-Discrimination Provisions in PU Code*

PU Code 453 states, in part, that a public utility shall not prejudice or disadvantage anyone based on “race, religious creed, color, national origin, ancestry, physical handicap, medical condition, occupation, sex, marital status or change in marital status...localities...or classes of service”<sup>2</sup>.

Decision 02-04-017 in I.00-05-020<sup>3</sup>, refers to PU Code 728, which states, in part, that “Whenever the commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility for or in connection with any service, product,

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<sup>2</sup> **PU Code 453.** (a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

(b) No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, occupation, sex, marital status or change in marital status. A person who has exhausted all administrative remedies with the commission may institute a suit for injunctive relief and reasonable attorney's fees in cases of an alleged violation of this subdivision. If successful in litigation, the prevailing party shall be awarded attorney's fees.

(c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(d) No public utility shall include with any bill for services or commodities furnished any customer or subscriber any advertising or literature designed or intended (1) to promote the passage or defeat of a measure appearing on the ballot at any election whether local, statewide, or national, (2) to promote or defeat any candidate for nomination or election to any public office, (3) to promote or defeat the appointment of any person to any administrative or executive position in federal, state or local government, or (4) to promote or defeat any change in federal, state, or local legislation or regulations.

(e) The commission may determine any question of fact arising under this section.

<sup>3</sup> Decision 02-04-017 addresses the Investigation on the Commission's Own Motion into the Status, Rates, Rules, Operations, Service, Facilities, Contracts, and Practices of the Union Pacific Railroad Company in the Supply, Distribution, and Sale of Water by the Keene Water System to the Communities of Keene and Woodford in Kern County. This decision references a prior decision in the Application of the Francis Land and Water Co. (1961) 58 Cal. P.U.C. 506.

or commodity, or the rules, practices, or contracts affecting such rates or classifications are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and in force.”<sup>4</sup>

These existing codes, the Commissions decisions, and the Commission’s monitoring provides for protection from discrimination by public utilities.

### **Commission Water Low-Income Programs**

In its recently issued Water Action Plan, the Commission detailed, in part, both its existing and proposed actions regarding low income rate assistance (LIRA) programs for customers of regulated water utilities.<sup>5</sup> As required by PU Code Section 739.8, the Commission considers and has implemented rate assistance programs for low income water utility ratepayers.<sup>6</sup> Currently, all Class A water utilities either have a LIRA program or are in the process of requesting authorization of one.<sup>7</sup>

The Commission is also active on the Low-Income Oversight Board (LIOB), with Commissioner Grueneich participating as a board member. In addition, staff of the Water Division (WD) act as liaison and technical support to the LIOB, providing information and assistance regarding water LIRA programs. The LIOB was established by the legislature to advise the Commission on energy low-income assistance programs of regulated utilities under the jurisdiction of the Commission as well as serve as liaison for the Commission to low-income ratepayers and their

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<sup>4</sup> 728. Whenever the commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility for or in connection with any service, product, or commodity, or the rules, practices, or contracts affecting such rates or classifications are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and in force.

In determining and fixing rates for a telephone corporation pursuant to this section or pursuant to Section 455, or in determining whether or not a proposed rate increase is justified pursuant to Section 454, the commission shall, among other things, take into consideration any evidence offered concerning the quality of the particular telephone corporation's services as compared with that of telephone corporations in adjacent territory, and the permissible rates for comparable service charged by telephone corporations in adjacent territory.

<sup>5</sup> [http://www.cpuc.ca.gov/static/hottopics/3water/051109\\_wateractionplan.htm](http://www.cpuc.ca.gov/static/hottopics/3water/051109_wateractionplan.htm)

<sup>6</sup> **PU Code 739.8.** (a) Access to an adequate supply of healthful water is a basic necessity of human life, and shall be made available to all residents of California at an affordable cost.

(b) The commission shall consider and may implement programs to provide rate relief for low-income ratepayers.

(c) The commission shall consider and may implement programs to assist low-income ratepayers in order to provide appropriate incentives and capabilities to achieve water conservation goals.

(d) In establishing the feasibility of rate relief and conservation incentives for low-income ratepayers, the commission may take into account variations in water needs caused by geography, climate and the ability of communities to support these programs.

<sup>7</sup> A Class A water utility serves 10,000 or more customers.

representatives. Senate Bill 580, which was Chaptered and signed by the Governor in 2005, added new duties to the LIOB, including advising the Commission on water low-income assistance programs of regulated utilities under the jurisdiction of the Commission as well as serving as liaison for the Commission to low-income ratepayers and their representatives.

To improve and expand on the current water low-income assistance programs, the WD is also:

- 1) Actively researching the feasibility and effectiveness of instituting a statewide standard LIRA program for all regulated water utilities, instead of the existing individual company programs that were adopted on a case-by-case basis;
- 2) Investigating the feasibility of instituting a “pooling system” (similar to the Universal Service Telephone Lifeline fund) to collect revenues and distribute funds for costs incurred by water utilities associated with their LIRA programs; and
- 3) Investigating alternative solutions, such as changes to the PU Code, to provide low income rate assistance to residents of multi-family housing units (because these water users are not individually metered, they are not customers of the water utilities).

### **Conclusion**

Therefore, based on the objectives and actions of the Water Action plan and the Commission’s existing rules, regulations, and code, the Commission can assure interested parties that regulated water utilities are in compliance with Section 65589.7 of the California Government Code.

**ATTACHMENT A**  
**Amended Government Code**

**65589.7.** (a) The housing element adopted by the legislative body and any amendments made to that element shall be immediately delivered to all public agencies or private entities that provide water or sewer services for municipal and industrial uses, including residential, within the territory of the legislative body. Each public agency or private entity providing water or sewer services shall grant a priority for the provision of these services to proposed developments that include housing units affordable to lower income households.

(b) A public agency or private entity providing water or sewer services shall adopt written policies and procedures, not later than July 1, 2006, and at least once every five years thereafter, with specific objective standards for provision of services in conformance with this section. For private water and sewer companies regulated by the Public Utilities Commission, the commission shall adopt written policies and procedures for use by those companies in a manner consistent with this section. The policies and procedures shall take into account all of the following:

(1) Regulations and restrictions adopted pursuant to Chapter 3 (commencing with Section 350) of Division 1 of the Water Code, relating to water shortage emergencies.

(2) The availability of water supplies as determined by the public agency or private entity pursuant to an urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code.

(3) Plans, documents, and information relied upon by the public agency or private entity that is not an "urban water supplier," as defined in Section 10617 of the Water Code, or that provides sewer service, that provide a reasonable basis for making service determinations.

(c) A public agency or private entity that provides water or sewer services shall not deny or condition the approval of an application for services to, or reduce the amount of services applied for by, a proposed development that includes housing units affordable to lower income households unless the public agency or private entity makes specific written findings that the denial, condition, or reduction is necessary due to the existence of one or more of the following:

(1) The public agency or private entity providing water service does not have "sufficient water supply," as defined in paragraph (2) of subdivision (a) of Section 66473.7, or is operating under a water shortage emergency as defined in Section 350 of the Water Code, or does not have sufficient water treatment or distribution capacity, to serve the needs of the proposed development, as demonstrated by a written engineering analysis and report.

(2) The public agency or private entity providing water service is subject to a compliance order issued by the State Department of Health Services that prohibits new water connections.

(3) The public agency or private entity providing sewer service does not have sufficient treatment or collection capacity, as demonstrated by a written engineering analysis and report on the condition of the treatment or collection works, to serve the needs of the proposed development.

(4) The public agency or private entity providing sewer service is under an order issued by a regional water quality control board that prohibits new sewer connections.

(5) The applicant has failed to agree to reasonable terms and conditions relating to the provision of service generally applicable to development projects seeking service from the public agency or private entity, including, but not limited to, the requirements of local, state, or federal laws and regulations or payment of a fee or charge imposed pursuant to Section 66013.

(d) The following definitions apply for purposes of this section:

(1) "Proposed developments that include housing units affordable to lower income households" means that dwelling units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(2) "Water or sewer services" means supplying service through a pipe or other constructed conveyance for a residential purpose, and does not include the sale of water for human consumption by a water supplier to another water supplier for resale. As used in this section, "water service" provided by a public agency or private entity applies only to water supplied from public water systems subject to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

(e) This section is intended to neither enlarge nor diminish the existing authority of a city, county, or city and county in adopting a housing element. Failure to deliver a housing element adopted by the legislative body or amendments made to that element, to a public agency or private entity providing water or sewer services shall neither invalidate any action or approval of a development project nor exempt a public agency or private entity from the obligations under this section. The special districts which provide water or sewer services related to development, as defined in subdivision (e) of Section 56426, are included within this section.

(f) The Legislature finds and declares that this section shall be applicable to all cities and counties, including charter cities, because the Legislature finds that the lack of affordable housing is a matter of vital statewide importance.

## ATTACHMENT B

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



June 27, 2006

TO ALL COMMISSION REGULATED WATER AND SEWER SERVICE UTILITIES

Chapter 727, Statutes of 2005 (SB 1087) amended Section 65589.7 of the Government Code. This section requires that water and sewer providers must grant priority for service allocations to proposed developments that include housing units affordable to lower-income households. It requires that the Public Utilities Commission adopt written policies for use by its regulated water and sewer companies in a manner consistent with the law.

The attached draft tariff language has been developed by Jason Reiger of our Legal Division. Please add it to Rule 3 of your Tariff Rules and send me an advice letter to add the new language to your tariffs. If you have any questions I can be reached at (415) 703-1739 or [flc@cpuc.ca.gov](mailto:flc@cpuc.ca.gov).

Very truly yours,

A handwritten signature in blue ink that reads "Fred L. Curry".

Fred L. Curry, Chief  
Water Branch  
Water Division

## ATTACHMENT C

### Draft Tariff Language

#### F. Service to Affordable Housing

Applications for service to a proposed development that includes housing units affordable to lower income households shall not be denied, conditioned, or reduced unless the utility finds in writing that said action is necessary due to the existence of one or more of the following:

1. The utility does not have "sufficient water supply," as defined in paragraph (2) of subdivision (a) of Section 66473.7 of the Government Code, or is operating under a water shortage emergency as defined by Section 350 of the Water Code, or has reached the limit of its capacity to supply water pursuant to Section 2708 of the Public Utilities Code, or does not have sufficient water treatment or distribution capacity, to serve the needs of the proposed development, as demonstrated by a written engineering analysis and report.
2. The utility is subject to a compliance order issued by the State Department of Health Services that prohibits new water connections.
3. The utility providing sewer service does not have sufficient treatment or collection capacity, as demonstrated by a written engineering analysis and report on the condition of the treatment or collection works, to serve the needs of the proposed development.
4. The utility providing sewer service is under an order issued by a regional water quality control board that prohibits new sewer connections.
5. The applicant for service has failed to agree to reasonable terms and conditions relating to the provision of service generally applicable to development projects, including, but not limited to, the requirements of local, state, or federal laws and regulations.

Unless otherwise stated, definitions of the language herein are governed by Section 65589.7(d) of the Government Code.