

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



September 9, 2020

Edward N. Jackson  
Director, Rates and Regulatory Affairs  
Liberty Utilities (Park Water) Corp.  
9750 Washburn Road  
Downey, CA 90241

Dear Mr. Jackson,

The Commission has approved Liberty Utilities' (Park Water) Advice Letter No. 300, filed on July 15, 2020, regarding compliance with Resolution W-5223.

Enclosed are copies of the following revised tariff sheets, effective February 1, 2020, for the utility's files:

<b>P.U.C.</b>	
<b>Sheet No.</b>	<b>Title of Sheet</b>
1459-W	Schedule No. LC Late Payment Charge
1460-W	Rule No. 11 Discontinuance and Restoration of Service, page 1
1461-W	Table of Contents, Page 1

Please contact Eustace Ednacot at [ERE@cpuc.ca.gov](mailto:ERE@cpuc.ca.gov) or 415-703-1492 if you have any questions.

Thank you,

/s/ROBIN BRYANT

Robin Bryant  
Water Division

Enclosures



Liberty Utilities (Park Water) Corp.  
9750 Washburn Road  
Downey, CA 90241-7002  
Tel: 562-923-0711  
Fax: 562-861-5902

Advice Letter No. 300-W

July 15, 2020

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

Liberty Utilities (Liberty Park Water) Corp. (U 314 W) (“Liberty Park Water”) hereby submits the following revised tariff sheets applicable to water service in its service territory:

<b>CPUC Sheet No.</b>	<b>Title of Sheet</b>	<b>Canceling Sheet No.</b>
1459-W	Schedule No. LC Late Payment Charge	848-W
1460-W	Rule No. 11 Discontinuance and Restoration of Service, page 1	1442-W
1461-W	Table of Contents, Page 1	1458-W

**Summary**

Liberty Utilities (Park Water) Corp. (U 314-W) (“Liberty Park Water”) hereby submits this advice letter in compliance with California Public Utilities Commission (“Commission”) Resolution W-5223 dated June 25, 2020.

**Background and Discussion**

Senate Bill No. 998, approved by the Governor of California on September 28, 2018, revised the California Health and Safety Code by adding a chapter addressing discontinuance of residential water service for nonpayment of a delinquent account. The revisions generally pertain to the notification of discontinuance of water service for residential customers.

On January 22, 2020 Liberty Park Water filed Advice Letter Number (“AL”) 296-W to update Rule Nos. 1, 5, 8, 10, and 11 to incorporate the new provisions in the California Health and Safety Code pertaining to discontinuance of residential water service for nonpayment of an account within Liberty Park Water’s service area.

On February 11, 2020, the California Public Advocates Office (“Cal PA”) protested Liberty Park Water’s AL 296-W. Liberty Park Water timely filed its response to Cal PA’s protest. All issues were resolved except for “interest charges”.

On June 25, 2020 the Commission adopted Resolution W-5223 addressing the implementation of Health and Safety Code Section 116914(a)(2) regarding the definition of “interest charges” and how it should be incorporated into water utilities’ tariffs.

Pursuant to Resolution W-5223, Liberty Park Water files this advice letter to update Rule 11, Discontinuance and Restoration of Service, and Rate Schedule No. LC, Late Payment Charge. Ordering Paragraph 1 of Resolution W-5223 states the following:

1. *Water utilities subject to Health and Safety Code Section 116904(b) that have in their Tariff a late-payment fee or charge shall file a Tier 1 advice letter within twenty days of the effective date of this Resolution to:*
  - a. *Revise Tariff Rule 11 to include the provision as stated in Health and Safety Code Section 116914(a)(2) by adding the following language as a new Section B.1.a(3): “Waiving of [Late Payment Charge/Fee/etc.]. For a customer taking Residential Service who demonstrates household income below 200 percent of the federal poverty level (or is otherwise deemed by the Water Shutoff Protection Act as having a household income of below 200 percent of the federal poverty level), the [Late Payment Charge/Fee/etc.] on past-due bills as authorized in [Schedule No.] shall be waived once every 12 months.”*
  - b. *Add the following language to the Late Payment Fee or Charge Schedule as a separate special condition: “A customer taking Residential Service, whose household income is below 200 percent of the federal poverty level, is entitled to have late payment charges on delinquent bills waived once every twelve (12) months pursuant to Tariff Rule No. 11.B.1.a(3).”*
  - c. *Revise existing special conditions as necessary in the Late Payment Fee or Charge Schedule consistent with revisions to Tariff Rules pursuant to Water Shutoff Protection Act.*
2. *Revisions to Utility Tariffs required in Ordering Paragraph No. 1 are effective beginning February 1, 2020.*

A copy of Resolution W-5223 is included as Attachment A to this advice letter for reference.

### **Tier Designation**

Pursuant to Resolution W-5223, this advice letter is submitted with a Tier 1 designation.

### **Effective Date**

Pursuant to Resolution W-5223, Liberty Park Water requests this filing become effective on February 1, 2020.

### **Notice and Service**

In accordance with General Order 96-B, General Rules 4.3 and 7.2, and Water Industry Rule 4.1, a copy of this advice letter will be electronically transmitted on July 15, 2020 to competing and adjacent utilities and other utilities or interested parties having requested such notification. During the COVID-19 pandemic, Liberty Park Water can only provide electronic copies of this advice letter to the service list. Pursuant to Water Industry Rule 3.2 of General Order 96-B, public notice is not required.

### **Response or Protest**

Anyone may respond to or protest this advice letter. A response supports the filing and may contain information that proves useful to the Commission in evaluating the advice letter. A protest objects to the advice letter in whole or in part and must set forth the specific grounds on which it is based. These grounds are:

- (1) The utility did not properly serve or give notice of the advice letter;

- (2) The relief requested in the advice letter would violate statute or Commission order or is not authorized by statute or Commission order upon which the utility relies;
- (3) The analysis, calculations, or data in the advice letter contain material error or omissions;
- (4) The relief requested in the advice letter is pending before the Commission in a formal proceeding;
- (5) The relief requested in the advice letter requires consideration in a formal hearing or is otherwise inappropriate for the advice letter process; or
- (6) The relief requested in the advice letter is unjust, unreasonable, or discriminatory, provided that such a protest may not be made where it would require re-litigating a prior order of the Commission.

A protest shall provide citations or proofs where available to allow staff to properly consider the protest. A response or protest must be made in writing or by electronic mail and must be received by the Division of Water within 20 days of the date this advice letter is filed. The address for mailing or delivering a protest is:

Tariff Unit, Water Division, 3<sup>rd</sup> floor  
California Public Utilities Commission  
505 Van Ness Avenue, San Francisco, CA 94102  
[Water.division@cpuc.ca.gov](mailto:Water.division@cpuc.ca.gov)

On the same date the response or protest is submitted to the Water Division, the respondent or protestant shall send a copy by mail (or e-mail) to Liberty Park Water, addressed to:

Edward N. Jackson  
Director, Rates and Regulatory Affairs  
Liberty Utilities (West Region)  
9750 Washburn Road  
P. O. Box 7002  
Downey, CA 90241  
Fax: (562) 861-5902  
E-Mail: [AdviceLetterService@libertyutilities.com](mailto:AdviceLetterService@libertyutilities.com)

Cities and counties that need Board of Supervisors or Board of Commissioners approval to protest should inform the Division of Water and Audits within the 20-day protest period so that a late filed protest can be entertained. The informing document should include an estimate of the date the proposed protest might be voted on.

If you have not received a reply to your protest within 10 business days, contact Edward Jackson at (562) 923-0711.

Very truly yours,

LIBERTY UTILITIES (PARK WATER) CORP.

*/s/ Edward N. Jackson*

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Edward N. Jackson  
Director, Rates and Regulatory Affairs (West Region)  
[Edward.Jackson@libertyutilities.com](mailto:Edward.Jackson@libertyutilities.com)

ENJ/aml

Enclosures

**SCHEDULE NO. LC**  
**LATE PAYMENT CHARGE**

**APPLICABILITY**

Applicable to all service

**TERRITORY**

Within the entire service area of the Company

**RATES**

Late Charge: A late charge of 1.5% on unpaid balance subject to special conditions and minimum charge below.

Minimum Charge: The minimum charge is \$1.00

**SPECIAL CONDITIONS**

1. A balance is unpaid and subject to a late charge if the bill is Past-Due, or delinquent, as defined in Rule No. 11, Section B.1.a.
2. The late charge should be imposed only once on a delinquent bill since the account would be shut off before a subsequent bill and then subject to the reconnection fee as authorized by Tariff Rule No. 11.
3. All bills shall be subject to the reimbursement fee as set forth on Schedule No. UF.
4. A customer taking Residential Service, whose household income is below 200 percent of the federal poverty level, is entitled to have late payment charges on delinquent bills waived once every twelve (12) months pursuant to Tariff Rule No. 11.B.1.a(3). (N)  
|  
(N)

(Continued)

**Rule No. 11**

**DISCONTINUANCE AND RESTORATION OF SERVICE**

**A. Customer's Request for Discontinuance of Service**

- 1. A customer may have service discontinued by giving not less than two days' advance notice thereof to the utility. Charges for service may be required to be paid until the requested date of discontinuance or such later date as will provide not less than the required two days' advance notice.
- 2. When such notice is not given, the customer may be required to pay for service until two days after the utility has knowledge that the customer has vacated the premises or otherwise has discontinued water service.

**B. Discontinuance of Service by Utility**

**1. For Non Payment of Bills**

- a. Past-Due Bills. When bills are rendered monthly or bimonthly, they will be considered past due if not paid within 19 days from the date of mailing.

**(1) Residential Service**

For the purposes of this Rule, residential service means water service to a residential connection that includes single-family residences, multifamily residences, mobilehomes, including, but not limited to, mobilehomes in mobilehome parks, or farmworker housing. When bills are rendered monthly or bimonthly, they will be considered past due if not paid within 19 days from the date of mailing. The utility shall allow every residential customer a total of 79 days from the date of mailing its bill for services, postage prepaid, to make payment of the bill prior to discontinuance of service. The utility shall not discontinue residential service for nonpayment of a delinquent account unless the utility first gives notice of the delinquency and impending discontinuance, in conformance with Rule No. 8.A.3, which establishes notice periods ranging from 7 to 15 days, depending on the occupancy type. The utility will provide notices timely to ensure that the applicable notice period included in the total 79-day period referenced above.

**(2) All Other Service (Nonresidential)**

The utility shall not discontinue nonresidential service for nonpayment of a delinquent account unless the utility first gives notice of the delinquency and impending discontinuance in conformance with Rule No. 8.A.4.

**(3) Waiving of Late Payment Charge**

For a customer taking Residential Service who demonstrates household income below 200 percent of the federal poverty level (or is otherwise deemed by the Water Shutoff Protection Act as having a household income of below 200 percent of the federal poverty level), the Late Payment Charge on past-due bills as authorized in Schedule No. LC shall be waived once every 12 months.

(N)  
|  
(N)

(Continued)

**TABLE OF CONTENTS**

The following listed tariff sheets contain all effective rates and rules affecting the charges and service of the utility, together with other pertinent information:

<b><u>Subject Matter of Sheet:</u></b>	<b><u>C.P.U.C. Sheet No.</u></b>	
Title Page .....	1407-W	
Table of Contents .....	1461-W, 1458-W	(T)
Preliminary Statement.....	1421-W, 1408-W, 1274-W, 1316-W, 1275-W, 1276-W, 1357-W, 1297-W, 1203-W, 1320-W, 1298-W, 1309-W, 1336-W, 1415-W, 1424-W, 1425-W	
Service Area Map Los Angeles County .....	914-W, 499-W through 502-W, 1410-W	

**Rate Schedules:**

Schedule No. PR-1-R	Residential Metered Service .....	1417-W, 1427-W	
Schedule No. ME-1-R	General Metered Service .....	1430-W	
Schedule No. PR-1-NR	Nonresidential Metered Service.....	1418-W, 1428-W	
Schedule No. PR-4F	Non-Metered Fire Sprinkler Service.....	1419-W, 1363-W	
Schedule No. PR-5	Fire Flow Testing Charge .....	1155-W	
Schedule No. PR-6	Reclaimed Water Service.....	1420-W, 1365-W	
Schedule No. PR-9CM	Construction & Other Temporary Meter Service.....	1158-W	
Schedule No. 14.1	Water Shortage Contingency Plan.....	1233-W through 1238-W	
Schedule No. LC	Late Payment Charge.....	1459-W	(T)
Schedule No. UF	Surcharge to Fund PUC Reimbursement Fee .....	1402-W	
Schedule No. CARW	California Alternative Rates for Water .....	1366-W, 921-W	
Schedule No. CARW-SC	California Alternative Rates for Water Surcharge .....	1367-W	

**LIST OF CONTRACTS AND DEVIATIONS:** 723-W

**Rules:**

No. 1	Definitions .....	1432-W, 1433-W	
No. 2	Description of Service.....	400-W	
No. 3	Application for Service .....	345-W, 916-W	
No. 4	Contracts .....	346-W	
No. 5	Special Information Required on Forms .....	1453-W, 1454-W, 1434-W, 1435-W	
No. 6	Establishment and Re-establishment of Credit .....	347-W	
No. 7	Deposits.....	1014-W, 1161-W	
No. 8	Notices .....	1436-W through 1439-W	
No. 9	Rendering and Payment of Bills .....	1097-W through 1100-W	
No. 10	Disputed Bills.....	1440-W, 1441-W	
No. 11	Discontinuance and Restoration of Service .....	1460-W, 1443-W through 1452-W	(T)
No. 12	Information Available to Public.....	353-W, 354-W	
No. 13	Temporary Service .....	355-W, 356-W	

(Continued)

(To be inserted by utility)	Issued By:	(To be inserted by Cal. P.U.C.)
Advice No. <u>300-W</u>	<u>GREGORY S. SORENSEN</u>	Date Filed <u>07/15/2020</u>
	Name	
Dec. No.      _____	<u>PRESIDENT</u>	Effective <u>02/01/2020</u>
	Title	Resolution No. <u>W-5223</u>



**Attachment A**  
**Resolution W-5223**

DATE OF ISSUANCE: 06/26/2020

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

WATER DIVISION

RESOLUTION W-5223

June 25, 2020

**RESOLUTION**

**(RES. W-5223) THIS RESOLUTION DETERMINES THAT THE TERM “INTEREST CHARGES” IN HEALTH AND SAFETY CODE SECTION 116914 (a)(2) INCLUDES ANY CHARGES OF FEES THAT WATER UTILITIES SUBJECT TO HEALTH AND SAFETY CODE SECTION 116904(b) IMPOSE ON DELINQUENT WATER BILLS.**

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**SUMMARY**

This Resolution addresses the implementation of Health and Safety Code Section 116914(a)(2) in Tier 1 Advice Letters filed by Commission-jurisdictional water utilities in compliance with Health and Safety Code Section 116904(b). This Resolution concludes that the term “interest charges” in Health and Safety Code Section 116914(a)(2) includes any late-payment charges or fees imposed on delinquent water bills. Water utilities that are subject to Health and Safety Code Section 116904(b) and that impose any charges or fees on delinquent water bills pursuant to their Tariffs shall revise their Tariffs to include the provision as stated in Health and Safety Code Section 116914(a)(2) as ordered by this Resolution. The Tariff changes are effective February 1, 2020 pursuant to Health and Safety Code Section 116904(b).

**BACKGROUND**

All Californians are ensured the right to safe, clean, affordable, and accessible water as declared by Section 106.3 of the Water Code. On September 28, 2018, then California Governor Jerry Brown signed into law Senate Bill 998, which added Chapter 6, the Water Shutoff Protection Act (“Act”), to Part 12 of Division 104 of the Health and Safety

Code (H&S Code). The Act modifies water utilities' practices regarding disconnection of their customers' water service due to nonpayment of water bills, thereby ensuring customers the right to water. In particular, the Act defines mandates that protect a target population of beneficiaries: residential customers with a household income below two hundred percent (200%) of the federal poverty level (H&S Code § 116914). One of these mandates is the waiving of interest charges imposed on delinquent water bills once every twelve (12) months (H&S Code § 116914(a)(2)).

On December 10, 2019, Water Division instructed Commission-jurisdictional water utilities subject to H&S Code § 116904(b) to file individual Advice Letters implementing the provisions mandated in the Act into their tariffs. Water Division requested the affected water utilities to submit individual advice letters by January 27, 2020 in order to meet the compliance date of February 1, 2020 as mandated in the Act.

## **NOTICE AND PROTESTS**

Nine Class A water utilities, three Class B water utilities, fifteen Class C water utilities, and seven Class D water utilities submitted advice letters in compliance with H&S Code § 116904(b) and Water Industry Rule 7.3.1(3) of General Order 96-B.

California Public Advocates Office (Cal PA) timely protested Liberty Park Water's AL 296-W on February 11, 2020; Liberty Apple Valley's AL 238-W and Suburban's AL 344-W on February 12, 2020; Cal Water's AL 2372-W on February 13, 2020; and Great Oaks' AL 283-W on February 18, 2020. Cal PA's protests raised a number of issues regarding the compliance of utility advice letters with the Act. Water Division resolved all but one of the issues raised in Cal PA's protests through a disposition letter issued March 13, 2020. The one outstanding issue raised in Cal PA's protests and resolved in this resolution is the omission of H&S Code § 116914(a)(2) from some water utility tariffs, which requires waiver of interest charges on delinquent bills once every 12 months for customers with household income below 200 percent of the federal poverty level .

## DISCUSSION

### Interpretation of the Term “Interest Charges” In H&S Code § 116914(a)(2)

Liberty Apple Valley Ranchos Water Company (“Liberty Apple Valley”), Liberty Park Water Company (“Liberty Park Water”), California Water Service Company (“Cal Water”), and Suburban Water Systems (“Suburban”), hereon referred to collectively as “Utilities”, responded to Public Advocates Office’s (“Cal PA”) individual protests to Advice Letter Nos. 238-W, 296-W, 2372-W, and 344-W, respectively. The one unresolved matter in Cal PA’s protests is the Utilities failed to include the provision stated in H&S Code § 116914(a)(2) that for customers with household income below 200 percent of the federal poverty level, utilities are to “[w]aive interest charges on delinquent bills once every 12 months.” The common response in the Utilities’ individual replies to Cal PA’s protests is that each utility is not authorized by the Commission to impose “interest” charges on delinquent water bills and, as such, H&S Code § 116914(a)(2) is inapplicable. However, Liberty Apple Valley, Liberty Park Water, and California- American Water Company (“Cal-Am”) include a charge on delinquent water bills in their individual tariff schedules. The charge is referred to as either a “Late Payment Fee” or a “Late Payment Charge” without explicitly using the term “interest charge.” The utilities argue that H&S Code § 116914(a)(2) does not extend to either a Late Payment Fee or a Late Payment Charge.

With respect to H&S Code § 116914(a)(2), the Utilities interpret the term “interest” relying on the “plain meaning” rule of statutory construction :

[I]n the interpretation of a statute, where the language is clear, its plain meaning should be followed.

Great Lakes Properties, Inc. v. El Segundo (1977) 19 Cal.3d 152, 155  
(citations omitted.)

Black’s Law dictionary defines “interest rate” as “the cost of borrowing funds or capital earned on loaned funds.” The Oxford Dictionary defines “interest” as “money paid regularly at a particular rate for the use of money lent, or for delaying the repayment of a debt.” Therefore, the Utilities allege that where water utilities elect to impose any charges on delinquent water bills without explicitly identifying those charges

as “interest”, those charges are *not* subject to the requirement under H&S Code § 116914(a)(2).

The Commission has standard templates for various tariff provisions, but it does not have a standard template for a schedule imposing charges on delinquent water bills. Although the Commission approves proposed tariff schedules covering these charges, it does not dictate how the water utilities are to structure the conditions for imposing those charges. Liberty Apple Valley’s and Liberty Park Water’s tariffs include “Schedule No. LC: Late Payment Charge.” This schedule lists several “Special Conditions”, one stating:

The late charge should be imposed only once on a delinquent bill since the account would be shut off before a subsequent bill...

The terms “interest” and “interest rates” are not used in this schedule. Imposing the “Late Payment Charge” once on a delinquent bill can be viewed as functionally different from the technical definition of the term “interest.” Cal-Am’s Schedule No. CA-FEES differs from Liberty Apple Valley’s and Liberty Park Water’s Schedule No. LC. Cal-Am compounds its “Late Payment Fee” over all balances that are past due:

A late charge of 1.5% on unpaid balance will be assessed customers will be notified on the monthly issued bill that the 1.5% late fee will be applied to any account that is not paid before the past due date shown on the bill. . . . the fee shall be assessed on all open balances regardless of whether it is an initial or subsequent bill when a total balance has not been paid or there should have been a shut off for non-payment agreement. . . .

Cal-Am’s practice of assessing the “Late Payment Fee” over all past due balances is functionally similar to the technical definition of “interest.” However, Schedule No. CA-FEES also does not explicitly use the terms “interest” or “interest rates”.

*Enforcing the Intent of the Legislature*

Courts presume that every word of a statute has meaning and disfavor statutory interpretation that renders words meaningless:

[W]henever possible, significance must be given to every word [in a statute] in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage.

People v. Rodriguez (2012) 55 Cal.4th 1125, 1131 (citations omitted.)

Permitting water utilities to interpret the term “interest” by its “plain meaning” allows them to control whether or not the waiver requirement applies merely by manipulating the descriptions and conditions of any charges imposed on delinquent bills tset forth in their tariff schedules. This interpretation renders H&S Code § 116904(b) meaningless as applied to the waiver requirement under H&S Code § 116914(a)(2. ) In addition, courts have found that the “plain meaning” rule cannot be used to thwart the purpose of the legislation:

[T]he ‘plain meaning’ rule does not prohibit a court from determining whether the literal meaning of the statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of the statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.

Lungren v. Deukmejian (1988) 45 Cal.3d 727, 735 (citations omitted.)

The legislative history of Senate Bill 998 specifies one of its purposes, which is the establishment of a consistent statewide structure for assisting low-income customers that are at risk of having their water service discontinued due to inability to pay:

Since water is a necessity for life, and since California has declared that access to safe and affordable water is a human right, many low-income ratepayers face troubling trade-offs in order to pay water bills.

Establishing a statewide structure for helping low income ratepayers cope with increasing water rates will reduce difficult tradeoffs families will have to make and improve overall health and safety for many communities and households.

(Assem. Com. On Environmental Safety and Toxic Materials, Rep. on Sen. Bill No. 998 (2017-2018 Reg. Sess.) June 26, 2018, p. 4.)

The legislative history firmly establishes that the intent of the Act is to provide economic relief to low-income customers, as codified in the Act to be the customers that demonstrate a household income below two hundred percent (200%) of the federal poverty level. By the Utilities' narrow interpretation of the word "interest", any charges or fees that water utilities elect to impose on delinquent water bills need not be waived under H&S Code § 116914(a)(2). Although these charges may impose economic hardship on the population of customers this provision intends to protect, the Utilities' interpretation would find that the waiver does not apply to those customers' delinquent water bills. This result contradicts the intent of the Act.

The provision that waives interest charges was included in the Act at its inception. The Act itself does not define the term "interest charges," nor does it mention the term "interest charges" other than in § 116914(a)(2). There is also no indication in the Act that the term "interest charges" is to be interpreted through its technical definition.

Instead, the placement of the term "interest charges" in the H&S Code § 116914(a)(2) and the intent of that section to offer economic relief to low-income customers suggests that the term is intended to represent any charges or fees imposed on delinquent water bills.

### Conclusion

Consistent with the analysis set forth here, Commission-jurisdictional water utilities shall comply with the provisions of the Act on and after February 1, 2020, pursuant to H&S Code § 116904(b).

Commission-jurisdictional water utilities may elect to impose charges or fees on delinquent water bills and describe the conditions of these fees or charges in proposed tariff revisions subject to Commission approval. In order to comply with the legislative intent of the Water Shutoff Protection Act, and H&S Code § 116914(a)(2) specifically, these fees or charges are to be interpreted as "interest" and should be subject to the provision in H&S Code § 116914(a)(2). Water utilities subject to the H&S Code § 116904(b) and which include a late-payment fee or charge in their Tariff, shall revise their Tariff to comply with H&S Code § 116914(a)(2) in two ways.

First, a new section B.1.a(3) should be added to Tariff Rule 11 that reads:

"Waiving of [Late Payment Charge/Fee/etc.]. For a customer taking Residential Service who demonstrates household income below 200 percent of the federal poverty level (or is otherwise deemed by the Water Shutoff Protection Act as having a household income of below 200 percent of the federal poverty level), the [Late Payment Charge/Fee/etc.] on past-due bills as authorized in [Schedule No.] shall be waived once every 12 months."

Second, the following language should be added to the Late Payment Fee or Charge Schedule as a separate special condition:

"A customer taking Residential Service, whose household income is below 200 percent of the federal poverty level, is entitled to have late payment charges on delinquent bills waived once every twelve (12) months pursuant to Tariff Rule No. 11.B.1.a(3)."

Pursuant to H&S Code §116904(b), these Tariff changes should be made effective retroactive to February 1, 2020.

## COMMENTS

The California Water Association (CWA) submitted comments dated June 11, 2020, urging the Commission to withdraw the Proposed Resolution or otherwise revise it to instead conclude that late-payment charges or fees are not "interest charges" for purposes of § 116914(a)(2). If not withdrawn, it also requests that the discussion of Cal PA's protest be revised. Their comments are outlined as follows:

### Comments:

1.) The CWA states that the Proposed Resolution's interpretation of late-payment charges as "interest" is inconsistent with SB 998 and its legislative history. It states that the bill must be interpreted in the context of its application to water systems other than the investor-owned water utilities subject to the Commission's jurisdiction, such as municipal systems. With regard to these water utilities not regulated by the Commission, the CWA notes provisions in both the Public Utilities Code and the Water Code which refer to "penalty" and "interest" separately as applicable to delinquent charges. Since the term "interest" has a legislative meaning distinct from "penalty" (or late-payment charge) for



non-CPUC regulated water utilities, CWA claims that the Commission must presume that the Legislature was aware of this distinction and purposefully chose the term “interest” to the exclusion of penalty-type charges. It states that nothing in the legislative history associated with SB 998 suggests that the Legislature intended to include late-payment penalties along with interest charges under § 116914 (a)(2).

2.) The CWA also claims that the Proposed Resolution’s interpretation of late-payment charges as “interest” is inconsistent with Commission precedent. It cites various Commission decisions in which a late payment is characterized as a penalty rather than a finance charge or interest cost. The CWA concludes that the Resolution’s silence on this precedent is arbitrary and capricious and constitutes legal error.

3.) CWA objects to the Resolution’s characterization of the Public Advocates Office protest as including the issue “whether the wording of H&S Code § 116914(a)(2) which requires waiver of interest charges on delinquent bills once every 12 months applies to late-payment fees/charges found in some water utility tariffs.” CWA notes that the protest stated only that the proposed utility tariffs failed to include the provision described in H&S Code § 116914(a)(2). Therefore, CWA states this is a factual error which should be corrected to make clear that the Public Advocates Office protest was not the source of the issue addressed in this Resolution.

4.) Finally, CWA concludes “...the Commission must recognize that for many drinking water systems, the reality is that having a meaningful enough late-payment charge in place is a critical and necessary tool for incentivizing customers to pay their bills when due and avoiding cash-flow problems that could impact operations.”

Commission response:

1) The CWA’s first comment conflates context with legislative history. SB 998’s legislative history contains no discussion of the term “interest” -- no discussion of inclusion *or* exclusion of late-payments and no discussion of “interest” as a technical term. Nor is there any discussion of the Public Utilities Code or Water Code examples cited by CWA. Therefore, CWA is inaccurate in its assertion that the Resolution is inconsistent with SB 998’s legislative history.

With regard to context, the Commission is aware that SB 998 applies to non-CPUC

regulated water utilities, as is indicated by the distinct deadlines provided under § 116904 of the Act. If, as CWA alleges, the Commission must presume the Legislature used the term “interest” only in the context of non-CPUC utilities, then it must also presume that the Legislature *knew and intended* that CPUC-regulated utilities would not have to comply with the waiver provision under § 116914(a)(2). This interpretation is contrary to § 116904 (b), which states, in part: “An urban and community water system regulated by the Public Utilities Commission *shall comply with this chapter* on and after February 1, 2020.” (emphasis added). Since § 116914(a)(2) falls within the chapter designated, CWA’s interpretation would render § 116904(b) *meaningless as it applies* to this waiver provision. The Resolution has been amended with this clarification.

Further, CWA’s comments state: “Thus, when read with the understanding that it is also applicable to the municipal water systems serving the majority of residents in the State, SB 998’s reference to “interest charges” should be read as referring to the interest charge component only, not to the penalty component as well.” This Resolution makes no assertions as to the applicability of SB 998 to non-CPUC regulated utilities. However, this statement demonstrates CWA’s interpretation that the waiver provision should apply to only *some* of the charges for *some* of the water utilities in California. This interpretation appears clearly inconsistent with the legislative goal of providing economic relief *on a consistent basis* to the vulnerable population identified by the Act.

2) The CWA’s arguments on the effect of precedent in this case are misplaced for two reasons. First, the Commission is not legally bound by previous Commission decisions: [It] is not legal error for us to deviate from prior Commission decisions. The California Supreme Court explained this long-held principle as follows:

The departure by the Commission from its own precedent or its failure to observe a rule ordinarily respected by it is made the subject of criticism, but our reply is that this is not a matter under the control of this court. We do not perceive that such a matter either tends to show that the Commission had not regularly pursued its authority, or that said departure violated any right of the petitioner guaranteed by state or federal constitution. Circumstances peculiar to a given situation may justify such a departure.

(D. 18-11-017, at p. 25, quoting *Postal Telegraph-Cable Co. v. Railroad*

*Commission of the State of California (1925) 197 Cal. 426, 436.)*

Secondly, *the Legislature* is not bound by the Commission's previous opinions. In interpreting a statute, the Commission must consider legislative intent. The Commission cannot enforce a statute simply by deciding what it would have meant based on precedent. The legislative purpose is paramount in this case, regardless of past Commission opinion.

3) To the extent the Proposed Resolution reflected an interpretation of the Public Advocates Office protest relative to the waiver under § 116914(a)(2), the Resolution is revised to clarify Cal PA's protest as the omission of this provision in some water utility tariffs.

4) CWA's discussion regarding the importance of late-payment charges is not persuasive in this case for two reasons. First, the waiver provision applies to a limited portion of the water utility's customer base on a limited basis: once every 12 months for a residential customer that demonstrates a household income below 200 percent of the poverty line. CWA did not demonstrate that this would affect the imposition of late charges on many, if not most, of the water utilities' customers. Second, whether or not the term "interest" includes late charges, the legislative intent behind the waiver of any charges due to non-payment was to reduce the financial burden on a population identified as particularly vulnerable to being unable to pay for water as an essential human right. Nowhere in SB 998's legislative history does the administrative convenience of water utilities in implementing this waiver appear as paramount. Likewise, there is no indication the Legislature used the term "interest" in order to nuance the enforcement of the § 116914(a)(2) waiver provision based on the expediency for water utilities' collection efforts.

In summary: The Resolution has been clarified as described above, including with regard to the Cal PA's protest. All other CWA requests are denied.

## **FINDINGS AND CONCLUSIONS**

1. Senate Bill 998, which added Chapter 6, the Water Shutoff Protection Act ("Act"), to Part 12 of Division 104 of the Health and Safety Code, was signed into law on September 28, 2018.
2. Commission-jurisdictional water utilities submitted advice letters to amend their tariff rules in compliance with Health and Safety Code Section 116904(b).
3. The California Public Advocates Office filed timely protests on a number of

water utilities compliance advice letter for failure to implement the Act, including Health and Safety Code Section 116914(a)(2).

4. Health and Safety Code Section 116914(a)(2) provides that for a residential customer who demonstrates to an urban and community water system household income below 200 percent of the federal poverty level, the urban and community water system shall waive interest charges on delinquent bills once every 12 months.
5. The utilities' responses to California Public Advocates Office's protests indicates that utilities are not authorized by the Commission to charge interest on delinquent bills and, as such, Health and Safety Code Section 116914(a)(2) is not applicable and need not be included in utilities' tariff rules.
6. Three Class A utilities and numerous smaller utilities include a charge on delinquent water bills in their individual tariff schedules. The charge is referred to as either a "Late Payment Fee" or a "Late Payment Charge" without explicitly using the term interest charge.
7. The legislative history of Senate Bill 998 outlines one of its purposes, which is the establishment of a consistent statewide structure for assisting low-income customers that are at risk of having their water service discontinued due to inability to pay.
8. In interpreting statutes, courts presume that every word of a statute has meaning and disfavor statutory interpretation that renders words meaningless.
9. The California Supreme Court in *Lungren v. Deukmejian* (1988) stated that: "The meaning of the statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act."
10. Strictly applying the "plain meaning" rule of statutory construction here would be inconsistent with the legislative intent to include any charges that water utilities may elect to impose on delinquent water bills.
11. It is reasonable that water utilities subject to the Act and that include a late-payment fee or charge in their Tariffs should amend their Tariff Rules and late-payment fee or charge schedule to include the provision in Health and Safety Code Section 116914(a)(2) effective February 1, 2020.

**THEREFORE, IT IS ORDERED THAT:**

1. Water utilities subject to Health and Safety Code Section 116904(b) that have in their Tariff a late-payment fee or charge shall file a Tier 1 advice letter within twenty days of the effective date of this Resolution to:
  - a. Revise Tariff Rule 11 to include the provision as stated in Health and Safety Code Section 116914(a)(2) by adding the following language as a new Section B.1.a(3): "Waiving of [Late Payment Charge/Fee/etc.]. For a customer taking Residential Service who demonstrates household income below 200 percent of the federal poverty level (or is otherwise deemed by the Water Shutoff Protection Act as having a household income of below 200 percent of the federal poverty level), the [Late Payment Charge/Fee/etc.] on past-due bills as authorized in [Schedule No.] shall be waived once every 12 months."
  - b. Add the following language to the Late Payment Fee or Charge Schedule as a separate special condition: "A customer taking Residential Service, whose household income is below 200 percent of the federal poverty level, is entitled to have late payment charges on delinquent bills waived once every twelve (12) months pursuant to Tariff Rule No. 11.B.1.a(3)."
  - c. Revise existing special conditions as necessary in the Late Payment Fee or Charge Schedule consistent with revisions to Tariff Rules pursuant to Water Shutoff Protection Act.
2. Revisions to Utility Tariffs required in Ordering Paragraph No. 1 are effective beginning February 1, 2020.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on June 25, 2020; the following Commissioners voting favorably thereon:

/s/ALICE STEBBINS

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Executive Director

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