

Legally (Relevant



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Late Charges – the Legal Guardrails

The last Legally Relevant column in the KRWA magazine reviewed legal limitations on utility rates and ratemaking. This column will similarly look at legal limitations on late charges – those fees and charges assessed when bills are not paid in a timely manner. We previously noted an almost surprising lack of legal authority controlling water rates, whether in the form of statutes, court cases or Attorney General's opinions. There is actually a considerable amount of such law related to late charges. The reason why so much law has developed around late charges is not known, but one possibility is that there is considerable opportunity for abuse and that harsh late charges tend to hurt disadvantaged customers the most.

Late Charges Serve Two Purposes

Late charges serve two legitimate purposes. Timely payment is important to maintain a steady cash flow needed to pay operating expenses and service debt. Late charges incentivize customers to pay on time, helping maintain that stream of cash. The other purpose is to put the cost of late payment on those

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persons who are paying late and not the customers who are timely. Late payment requires administration of these late accounts, including monitoring, creation, and distribution of late notices, etc. Late charges should include these costs, to be collected as a component of these charges.

Practices Vary

Cities and RWDs use several different methods to calculate late charges as there is simply no single right way to do it/ Some use a flat fee, for example, \$5.00 added to the amount of the unpaid bill. Others use a percentage of the amount due, for example, 10 percent) of the unpaid bill. A survey of several cities and RWDs found fixed fees of up to \$25 (assessed only at the point of shutoff) and percentage fees ranging from 1.5 percent to 10 percent of the unpaid bill. Courts and Attorney General opinions have approved of varying amounts and methods of calculation but have also imposed limitations.

Legal Limitations on Late Charges

There is no maximum amount, maximum percentage, or other hard rule of what is an acceptable late charge. However, there are legal rules concerning how these fees can be imposed on a customer. A Kansas Supreme Court case from 1977, *Jones v. KG&E*, dealt with late charges imposed by a KCC-regulated public electric and gas company. The court approved of the practice of assessing a percentage charge of 10% on bills that were unpaid more than 15 days after the bill was generated. It rejected the argument that the practice was illegal as usurious (exceeding allowable interest charges – more on that later). However, it found that it was unreasonable for customers who were only 15 days late to pay the same fee as those who were several months late.

Soon after, in 1980, an Attorney General’s opinion applied this rule to municipal utilities – those operated by cities and RWDs – approving a city ordinance that applied a 10 percent charge on late bills, then added 8 percent per annum interest until the bill was paid. The charges were found to be reasonably related to the costs to the city for late payment and served as an incentive to prompt payment. The AG added that with

municipal utilities, there was also a “reasonableness” test, that late charges must always be fair, reasonable, and not arbitrary or excessive, no matter how the charges are determined and applied.

How (and How Not) to Develop a Policy for Late Charges

With that background in mind and understanding that this can all sound to the reader like a lot of vague legal mumbo-jumbo, here are a few suggestions on how to use late charges:

1. Make the effort actually to study what late payment accounts cost the utility. Get a report from the employee(s) who handle these accounts, detailing the average number of accounts that are late each month, the dollar amount of those bills that are timely paid versus those that are late, the approximate amount of time that employees spend administering the late accounts and the employees’ hourly cost (salary plus benefits), and incidental expenses such as notices, postage, etc. Make a record of this effort and the results. Calculate an average actual per account cost and include this in the late charge. Then, consider a component that will incentivize timely payment. This is the hardest, most subjective element. It needs to be reasonable, not excessive. It is intended to incentivize, not punish!

2. Do not compound charges. A 10 percent late charge may be reasonable using the method described above. But adding another 10 percent every month thereafter on the full balance until paid is not reasonable. Not only is it unreasonable, but if coupled with a lack of effort actually to collect the amount due, it can result in the practice being deemed to be an extension of open-ended credit that puts the utility in violation of the usury statutes, KSA 16-201 et seq.



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3. Do not refer to the charge as “interest” or a “tax”. Both words are loaded with legal implications for utilities and should be avoided.

4. Set out the late charge as a separate line item on any bill to the customer from the amount of the utility water and other service charges.

5. A separate reconnection fee can be charged if service is shut off. As with the late charge, study the actual costs of reconnection and use that information to calculate a reasonable reconnection fee. This fee should be designed to recover the estimated actual costs of the reconnection, not to punish those whose service was disconnected.

6. Once the policy is created, stick to it! Staff should be instructed that the policy must be enforced uniformly and consistently according to its terms. Case-by-case exceptions can start to look like discrimination, possibly based on illegal criteria, that can spell trouble for the utility.

Conclusion

Late charges are a useful tool to help utilities meet their obligations of providing reliable, affordable, and safe water to their customers. Using some care and effort in developing a policy can serve this important purpose and keep the utility out of legal trouble.

Letters

Continued from page 3.

Brian Bowles – Chancey, Bruce and Janelle really appreciated the sewer training trailer on June 20. They enjoyed getting hands-on experience with taking the pumps apart. Bruce and Janelle are new to the industry. The next day they talked about the stories and experiences that you shared with them. I hope KRWA continues to support the sewer training trailer and more communities get the chance to use it for training.

Charlie Schwindamann – Bruce and Janelle really had a great time helping you collect lagoon blankets in Agra on June 11. Neither of them have any lagoon experience and I think the information shared will be helpful when they go to take their small systems test. Please let us know if you are in the area again and have more opportunities like this for the apprentices to participate.

*Ken Anderson
Water/Wastewater Plant Supervisor
City of Norton*

First off, I want to say thank you (Daryn Martin) for hosting a Stenner Pump and LCRR class in Russell. It was very informative and exciting enough that I brought my knowledge back to the operators and began sharing

it with them. They were instantly asking me to locate the next available class so they could participate.

Second, you’ve only just left Russell again, but this trip was more personal than the LCRR class and I believe it deserves a more heartfelt thank you than the first one. Once again, both the veteran operators and the new operators, plus the distribution system operators are all talking amongst themselves, sharing your information, and being excited about getting another free chlorine burnout under way. It’s such a wonderful feeling to be the superintendent and watch my operators laugh and smile while having a conversation about a burnout. Two years ago we were a mess and it was stressful, I felt like the only person who wanted to go through with this process and even I was afraid it would go horribly. Then when nothing happened aside from the water quality improving the following year, you would have thought we were making and selling liquid gold. Everyone was happy and proud of the accomplishment. Now, here we are, no fear except that you aren’t available to come visit with us, like you’re our lucky charm. (See you next year!)

Finally, I’m hoping this will be a simple request. You’ve done great things for us so far and I almost... almost feel bad for requesting more from you, but it’s nothing new that KRWA hasn’t done already. I think the online schedule shows 2021 as the last time that Surface Water Treatment classes were held. I was wondering if there was a plan to hold more of these classes? And, if it is one type of class or if KRWA splits the training into a Basic and an Advanced class? I would like to have the entire production department attend, which would be seven operators. The trick is, in order to get everyone to one type of class (Basic or Advanced), we would need it to be two days long so I could send half the first day and half the second day. This is due to running a day shift and a night shift, so the night shift crew would have to trade shifts with the day shift crew in order to attend.

Let me know what you find out. From everyone at Russell, “We appreciate you and all of KRWA staff!”

*Diana VanBruggen
Water Production Superintendent
City of Russell*



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