
Office of Utilities Regulation

DIRECTIVE TO THE NATIONAL WATER COMMISSION TO CEASE THE APPLICATION OF THE LATE PAYMENT FEE ASPECT OF THE PAYMENT COMPLIANCE INITIATIVE AND THE ISSUANCE OF MULTIPLE BILLS IN A SINGLE BILLING CYCLE

DIRECTIVE



OFFICE OF UTILITIES REGULATION

2017 March 31

DOCUMENT TITLE AND APPROVAL PAGE

1. **DOCUMENT NUMBER:** 2017/WAS/001/DIR.001

2. **DOCUMENT TITLE:**

Directive to the National Water Commission to cease the application of the Late Payment Fee and the issuance of Multiple Bills in a Single Billing Cycle.

3. **PURPOSE OF DOCUMENT**

To rectify and prevent the erroneous application of the Late Payment Fee aspect of the Payment Compliance Initiative to the National Water Commission's customers' accounts and to cease the issuance of multiple bills in a single billing cycle.

4. **APPROVAL**

This document is approved by the Office of Utilities Regulation and becomes effective on the 2017 March 31.

On behalf of the Office



Joseph Matalon
Chairman

Date: 2017 March 31

**OFFICE OF UTILITIES REGULATION
DIRECTIVE
2017/WAS/001/DIR.001**

(Issued pursuant to Sections 4 of the Office of Utilities Regulation Act)

IN THE MATTER OF:

THE OFFICE OF UTILITIES REGULATION ACT

AND

THE NATIONAL WATER COMMISSION ACT

AND

**THE NATIONAL WATER COMMISSION'S
APPLICATION OF THE LATE PAYMENT FEE
ASPECT OF THE PAYMENT COMPLIANCE
INITIATIVE AND THE ISSUANCE OF MULTIPLE
BILLS IN A SINGLE BILLING CYCLE**

TO: NATIONAL WATER COMMISSION

WHEREAS:

1. The National Water Commission (NWC) is a body corporate established by virtue of section 3 of the National Water Commission Act (“NWC Act”).
2. Pursuant to subsections 4(1)(d) and (e) of the NWC Act, the function of the NWC inter alia, is to “*within the limits of its resources provide and improve water supply services throughout the Island*” and “*maintain and operate water supply services provided by the Commission*”.

3. Pursuant to section 4(1) of the Office of Utilities Regulation Act (“OUR Act”) the Office of Utilities Regulation (“OUR/Office”) is empowered to regulate the supply or distribution of water and the provision of sewerage services.

4. Pursuant to section 4(2)(a) of the OUR Act, the Office may give directions to a licensee so as to ensure that the needs of the consumers are being met. Section 4(2)(a) reads as follows:

“The Office may, where it considers necessary give directions to any licensee or specified organization with a view to ensuring that –

(a) The needs of consumer of the services provided by the licensee or specified organization are met; ...”

5. Section 10 of the OUR Act empowers the Office to request such information from a licensee and the licensee is obliged to provide same. Section 10(1) reads as follows:

“10. (1) The Office may require a licensee or specified organization to furnish such information or submit such returns at such intervals as the Office may require in relation to the operations of that licensee or specified organization.”

6. Section 11 of the OUR Act also sets out the authority of the Office to approve rates:

“11. (1) Subject to subsection (3), the Office may, either of its own motion or upon application made by a licensee or specified organization (whether pursuant to subsection (1) of section 12 or not) or by any person, by order published in the Gazette prescribe the rates or fares to be charged by a licensee or specified organization in respect of its prescribed utility services.

(2) For the purposes of this section, the Office may conduct such negotiations as it considers desirable with a licensee or specified organization, industrial, commercial or consumer interest, representatives of the Government and such other persons or organizations as the Office thinks fit.

(3) The provisions of the subsections (1) and (2) shall not apply in any case where an enabling instrument specifies the manner in which rates may be fixed by a licensee or specified organization.”

7. The Office issued a Determination Notice entitled, “*National Water Commission – Payment Compliance Initiative*” (Document No. 2015/WAS/003/DET.001) dated 2015 July 28 (Determination Notice), approving NWC’s request for the implementation of a payment compliance initiative as of 2015 August 27. In the Determination Notice, the Office determined as follows:
- “(1a) *The Office gives its non-objection to the \$250 being applied to NWC customers’ accounts as an incentive or penalty, where applicable.*
- (1b) *The Late Payment Fee does not apply to customers who are disconnected by the NWC. Customers who have been disconnected should only pay the reconnection fee for the reconnection of the service.*
- (1c) *The Late Payment Fee should only apply to bills for which payment is due after the stipulated effective date.”*
8. During the period 2015 October to May 2016, it came to the Office’s attention, by way of complaints from NWC customers, that a late payment fee was being applied to their accounts although their bills were settled in full on/before the due date of the bills received. The six related contacts received were logged into the Customer Information Database used by the Consumer Affairs Unit.
9. Upon receipt of the initial complaints, the OUR contacted various NWC parish offices and its customer care centre which confirmed that the NWC was applying the Payment Compliance Initiative (in particular, the Late Payment Fee) where the customers initially received estimated bills but the subsequent actual reading indicated that consumption was underestimated. In such instances, the NWC held the view that the customer did not pay the full amount that was due for that billing period and applied the Late Payment Fee; although the full amount as presented on the estimated bill was paid by the due date.
10. The Office finds the NWC’s approach in such instances, contravened the Office’s determination as encapsulated in the Determination Notice which specifies that “*the Late Payment Fee should only apply to bills for which payment is due after the stipulated effective date*”.
11. By way of an email dated 2015 October 21 (attached hereto as **Annex 1A**), the OUR brought the issue to the attention of the NWC, who was asked to conduct an investigation and take the necessary actions to ensure:

- “1. *That NWC’s customer service agents are provided with the necessary training to enable them to provide accurate information on the applicability of this initiative; and*
2. *The reversal of the Late Payment Fee and the application of the Early Payment Incentive to all accounts that were erroneously affected.”*

The NWC was also requested to provide the relevant information that would confirm adjustments to the affected accounts by 2015 November 6.

12. The NWC responded by way of email of 2016 February 19 advising that the adjustment for all affected accounts was complete. However, evidence of the adjustment was only provided for one account that was mentioned in the initial e-correspondence sent to the NWC on 2015 October 21. A copy of the said email of 2016 February 19 is attached hereto as **Annex 1B**.
13. The NWC advised in a meeting of 2016 March 15 with the OUR that the erroneous application of the Late Payment Fee is a systemic one that is being addressed. The NWC also advised the OUR that in light of the systemic issues which caused the erroneous application of the LPF, the decision was taken to suspend its application. However, NWC was not able to give a timeline for the resolution of the system error.
14. The Gleaner’s lead article of 2016 April 10, titled: **“Water Robbery! - NWC Milking Customers Of More Than \$20m Monthly Through Late Payment Fees”** highlighted the erroneous application of the Late Payment Fee as well as, the practice of the NWC to generate more than one bill within a single billing cycle.
15. The Office notes NWC’s practice of issuing multiple bills when the initial bill for a billing period is based on an estimate of the consumption and thereafter, a reading is obtained and applied to the account within the same billing period. NWC then generates a replacement bill and issues same using the actual reading obtained and includes the Late Payment Fee, if the reading indicates that the preceding estimate was an under-estimation of the consumption. Additionally, the Office also notes that where the replacement bill is not paid, the customer’s supply may be disconnected.
16. The Office holds the position that customers would reasonably expect to be issued one bill in a single billing cycle. Further, this practice assists in the perpetuation of the erroneous application of the Payment Compliance Initiative, in that, customers

may be subject to a Late Payment Fee being applied in a billing period although they would have previously settled an initial bill issued by the NWC on, or before the due date specified in that bill.

17. Despite the request for confirmation that the necessary adjustments have been applied to all affected accounts in the OUR's correspondence of 2015 October 21, the OUR has not yet been informed by the NWC as to the number of customers affected and the details of the corrective actions taken.
18. Further, without any formal notification, the OUR was made aware of the resumption of the application of the Late Payment Fee aspect of the Payment Compliance Initiative by NWC through an Advertorial of Sunday, 2017 February 26. A copy of the said Advertorial is attached hereto as **Annex 1C**.
19. In light of the aforesaid Advertorial, the OUR, by way of letter dated 2017 March 3, again wrote to the NWC on 2017 March 3 requesting the details with respect to the suspension and resumption of the Late Payment Fee. The OUR also requested NWC to submit a response by 2017 March 10; however same has not been received. A copy of the said letter dated 2017 March 3 is attached hereto as **Annex 1D**.

Based on the foregoing, the Office **HEREBY DIRECTS** NWC as follows:

- (i) **TO CEASE AND DESIST** the application of the Late Payment Fee until further notification from the Office;
- (ii) **TO SUBMIT** information to the Office regarding the systemic issues which resulted in the erroneous application of the Late Payment Fee and the resolution of same no later than **2017 April 18**;
- (iii) **TO SUBMIT** documentary evidence of the reversal of the Late Payment Fee or the application of the Early Payment Incentive to affected accounts as at 2015 September 2 to date, no later than **2017 April 18**;
- (iv) **TO CEASE AND DESIST** its current practice of dispatching multiple bills in a single billing cycle and the NWC shall issue **a single bill per billing cycle**. Where readings are obtained subsequent to an estimated bill being generated and dispatched, any relevant adjustment/recalculation shall be applied to the account in the next billing cycle.

TAKE NOTICE that failure by NWC to comply with this Directive as indicated and within the time specified herein, will render it liable to prosecution pursuant to the provisions of sections 9 and 10 of the OUR Act with respect to any of the provisions of the Directive set out above that are not complied with by the Licensee.

AND FURTHER TAKE NOTICE that this Directive becomes effective on **2017 March 31**.

BY ORDER OF THE OFFICE OF UTILITIES REGULATION

.....

Joseph Matalon
Chairman

2017 March 31

ANNEXES 1A AND 1B

Copies of emails dated 2015 October 21 and 2016 February 19

ANNEXES 1C AND 1D

Copies of the Advertorial of Sunday, 2017 February 26 of Letter dated 2017 March 3