

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

BURTON WATER COMPANY, INC.,

Respondent.

DOCKET UW-200081

SETTLEMENT AGREEMENT

I. INTRODUCTION

1 The staff (Staff) of the Washington Utilities and Transportation Commission (Commission), and Burton Water Company, Inc. (Burton Water or Company), through their authorized representatives, enter into the following Settlement Agreement (Settlement) to resolve all issues in Docket UW-200081.

2 This Settlement is a “full multiparty settlement” as the Commission defines that term in WAC 480-07-730(3)(a) because it resolves all issues raised in this docket between Staff and the Company (the Parties). It is subject to review and disposition by the Commission to determine whether it complies with the applicable legal requirements and whether approval of the Settlement is consistent with the public interest.¹

II. BACKGROUND

3 In September 2018, Staff began investigating whether Burton Water’s practices were in compliance with statutes and rules applicable to Commission regulated water companies. From September 2018 to January 2020, Staff issued several data requests to the Company

¹ WAC 480-07-740 and 750.

and conducted a field visit to Burton Water's facilities. The Company responded to all data requests. Staff also spoke with some of Burton Water's customers and reviewed Commission records pertaining to the Company.

4 At the conclusion of the investigation, Staff determined that the Company had: (1) engaged in unreasonable preference, in violation of RCW 80.28.090, on three occasions, (2) engaged in rate discrimination, in violation of RCW 80.28.100, on one occasion, (3) failed to file a special contract as required by WAC 480-80-143(1) on one occasion, (4) used incomplete water service applications, in violation of WAC 480-110-325, on 12 occasions, and (5) sent incomplete customer bills, in violation of WAC 480-110-375, on 50 occasions.

5 Staff complained against the Company, alleging five causes of action consistent with the determinations described above.² After the complaint was filed, Staff and the Company held a settlement conference. This Settlement resulted from that conference and subsequent discussion.

III. TERMS OF AGREEMENT

6 The Parties have reached an agreement on all issues raised in Docket UW-200081 and present this Settlement for the Commission's consideration and approval. The Parties therefore adopt the following Settlement, which they enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding:

- Admission – Burton Water admits that it committed the violations described in Staff's complaint;

² To clarify, while Staff's complaint alleged that the Company had engaged in unreasonable preference and rate discrimination based on billing similarly situated customers differently, Staff's complaint did not take a position on which of the different methods of billing was correct.

- Penalty – Burton Water will accept a penalty of \$11,000, with \$5,000 due immediately upon the effective date of the Settlement, or payable on a payment plan agreeable to all of the Parties, and \$6,000 suspended. If the Parties cannot agree on the terms of a payment plan, they will petition the Commission to set reasonable terms for such a plan. The Commission will waive the suspended penalty after a period of two years from the effective date of the Settlement, provided that the Company does not commit any repeat violations of the violations at issue in Staff’s complaint during that two year period. In the event that the Commission determines that the Company has committed a repeat violation within two years of the Settlement effective date, the \$6,000 suspended penalty will become immediately due and payable;
- Compliance Items – Burton Water will revise its applications for service to ensure that the applications comply with WAC 480-110-325(1)(d),(f),(g), and (i). Burton Water will also revise its customer bills to ensure that the customer bills comply with WAC 480-110-375(1)(c). Burton Water may request technical assistance from Staff regarding the above revisions. Burton Water will file with the Commission its revisions to Burton Water’s customer bills and applications for service within sixty days of the effective date of this Settlement. Burton Water will also cancel its special contract³ with Polaris Development, LLC and file an update to this docket reflecting the cancellation within forty-five days of the effective date of this Settlement;

³ According to Burton Water, the contract was never implemented.

- Tariff Revisions – Burton Water will revise three portions of its tariff. First, Burton Water will revise its tariff Rule 16 regarding the billing of multiple consumers served by one meter and an allowance for the minimum charge by striking the existing provisions of Rule 16 and replacing them with the following language:

“Rates for water service and supply are those published in the utility's tariff on file with the Commission. Unless otherwise stated in this tariff, the rates apply to a single service, to one customer at one premise. Water service must be subscribed to on an annual basis. No proration or reduction in billing is allowed unless this tariff establishes temporary or seasonal rates.

When conditions require that two or more consumers with separate housekeeping establishments occupy the same or separate dwellings (Accessory Dwelling Units) be supplied through one metered service, consumers using water will be considered a single customer and will be charged the base charge as provided by the schedule of rates for the size of meter installed. If the consumption as shown by the meter exceeds the allowance or usage blocks for the size of the meter, the excess Consumption charge will be computed at the tariffed rates for one customer for the size of meter installed.

See, RCW 80.28.050, RCW 80.28.080, WAC 480-110-431, WAC 480-110-433.”

Staff and the Company agree that the intent of the revision is to prospectively implement a master meter billing approach, whereby a single meter is used to collectively measure the water usage of multiple consumers or tenants on the customer side of the meter.

Second, Burton Water will revise Schedule 3 of its tariff to include language clarifying that the Company may not bill a customer a ready-to-serve charge if the customer is receiving water service.

Third, Burton Water will remove Schedule 1 of its tariff related to non-metered service rates.

Burton Water will file the revisions with the Commission within forty-five days of the effective date of the Settlement. Burton Water agrees that it will not request to withdraw the proposed revisions after filing in the absence of extraordinary circumstances or without agreement from Staff. In the event that Burton Water withdraws the filing in the absence of extraordinary circumstances or Staff agreement, Burton Water will be considered in breach of the Settlement until it refiles the revisions.

In the event that the Commission determines that further clarification or revision of the tariff language is required after Burton Water files its revisions as described above, Burton Water will refile any subsequent revisions within 30 days from the Commission's order rejecting or requiring further modification of the revisions, subject to the same conditions as the first revision.

IV. GENERAL PROVISIONS

- 7 Public interest: The Parties submit that this Settlement promotes the public interest, and that it is appropriate for the Commission's acceptance without conditions under WAC 480-07-750(2)(a).
- 8 Effective date: This Settlement is effective on the service date of a final Commission order approving this Settlement, or on the date that an initial order approving this Settlement becomes a final order pursuant to WAC 480-07-825(7), whichever occurs first.

- 9 Advocacy: The Parties agree to cooperate in submitting this Settlement promptly to the Commission for acceptance. The Parties agree to support adoption of this Settlement in proceedings before the Commission. No party to this Settlement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Settlement.
- 10 Construction: This Settlement shall not be construed against any party solely because that party was a drafter of the Settlement.
- 11 Other proceedings: This Settlement shall have no precedential or preclusive effect in other proceedings except a proceeding to enforce its terms. In the event this Settlement does not become effective, this Settlement shall be null and void, with no binding effect on the Parties and with no precedential or preclusive effect on the Parties regarding the continued litigation in Dockets UW-200081. In the event that the Commission rejects all or any portion of this Settlement, or accepts the Settlement with conditions, each of the Parties reserves the right to withdraw from this Settlement by written notice to the other Parties and the Commission. Written notice must be served within 10 business days of service of the order rejecting part or all of this Settlement or imposing conditions on its approval. In such event, no party will be bound by the terms of this Settlement, and the Parties agree to cooperate in developing a procedural schedule.
- 12 Settlement discussions: The Parties have entered into this Settlement to avoid further expense, inconvenience, uncertainty, and delay. As such, conduct, statements, and documents disclosed during negotiations of this Settlement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Settlement or any Commission order fully adopting those terms.

13 Final agreement: The Parties have negotiated this Settlement as an integrated document to be effective upon execution. This Settlement supersedes all prior oral and written agreements on issues addressed herein.

14 Counterparts: The Parties may execute this Settlement in counterparts and as executed shall constitute one agreement. A signed signature page sent by facsimile or email is as effective as an original document.

15 Authorized representatives: Each person signing this Settlement warrants that he or she has authority to bind the party that he or she represents.

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DATED this 17th day of December, 2020.

BURTON WATER COMPANY, INC.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

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DATED this 17th day of December, 2020.

BURTON WATER COMPANY, INC.



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