

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment)	DOCKET UW-140616
Against)	
)	ORDER 01
RAINIER VIEW WATER)	
COMPANY, INC.)	INITIAL ORDER MODIFYING
)	PENALTY ASSESSMENT
In the Amount of \$2,600)	
.....)	

BACKGROUND

- 1 On June 17, 2014, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against Rainier View Water Company, Inc. (Rainier View or Company) in the amount of \$2,600, alleging 26 violations of Washington Administrative Code (WAC) 480-110.

- 2 On July 1, 2014, Rainier View filed a request for hearing, disputing all but one violation. The Company cited fundamental disagreements with Commission Staff’s (Staff) interpretation of Commission rules, and included a detailed response to each allegation.

- 3 The Commission conducted a brief adjudicative proceeding on September 17, 2014, before Administrative Law Judge Rayne Pearson. The parties stipulated to the facts, which limited the scope of the hearing to the remaining legal issues. Staff moved to dismiss four of the 19 violations of WAC 480-110-355(5)(b) cited in the penalty assessment and Staff’s investigation report, reducing the violation count to 22 and the recommended penalty to \$2,200. Staff’s motion was granted. Rainier View stipulated to one violation of WAC 480-110-355(3). The parties addressed the remaining 21 violations in turn.

- 4 Julian Beattie, Assistant Attorney General, Olympia, represents Staff. Richard Finnigan, Law Office of Richard Finnigan, Olympia, represents Rainier View.

DISCUSSION AND DECISION

WAC 480-110-335(9)(b)

- 5 Staff alleges two violations of WAC 480-110-335(9)(b) for failure to apply deposits and accrued interest at the time of disconnection to outstanding balances on two customer accounts.¹
- 6 WAC 480-110-335(9) requires a company to refund a deposit when a customer makes 12 consecutive months of satisfactory payments, or when service is terminated. Payments are “satisfactory” when the company has neither begun the disconnection process nor issued more than two delinquency notices.²
- 7 Rainier View distinguishes the disconnection process referenced in WAC 480-110-335(9)(a) from termination of service in WAC 480-110-335(9)(b), arguing that the “termination” clause refers only to permanently disconnected service, while the “disconnection process” clause captures service disconnected for nonpayment and subsequently reconnected. Thus, Rainier View contends that refunds under WAC 480-110-335(9) are only required when service has been permanently disconnected.
- 8 Staff argues that attempting to distinguish between temporary and permanent disconnections is futile; only in hindsight is it possible to determine whether a disconnection was temporary or permanent. For that reason, Staff claims, deposits must be refunded immediately upon discontinuation of service.
- 9 **Decision.** We find Staff’s argument persuasive. Termination, as used in WAC 480-110-335(9)(b), is merely the final outcome of the disconnection process referenced in WAC 480-110-335(9)(a). Hence, if a customer is threatened with disconnection but makes payment before service is terminated, the Company may retain the deposit. If disconnection occurs, however, the deposit must be refunded, less any amount owed

¹ Exh. SP-1 at 10.

² WAC 480-110-335(9)(a).

to the company, and a new deposit may be collected at the time of reconnection. The Company may not hold deposit monies indefinitely following a disconnection.

- 10 The subsections of WAC 480-110-335(9), like the language in WAC 480-110-355(1)(c), use the terms “termination” and “disconnection” interchangeably.³ Both mean that service has been discontinued. The rule does not address the possible reasons for disconnection or whether reconnection may occur because those factors are not relevant. Accordingly, we find two violations of WAC 480-110-335(9)(b) for Rainier View’s failure to apply deposits on file to outstanding balances on two customer accounts when service was disconnected.

WAC 480-110-355(3)(b)(ii) and (c)(iii)

- 11 Staff alleges one violation of WAC 480-110-355(3)(b)(ii) for failure to issue a second disconnection notice prior to discontinuing a customer’s service, and one violation of WAC 480-110-355(3)(c)(iii) for disconnecting the same customer’s service more than ten days after the first day noted for disconnection.⁴ Rainier View concedes that its conduct violated WAC 480-110-355(3)(b)(ii), and we concur.
- 12 With respect to WAC 480-110-355(3)(c)(iii), the Company argues that because the customer’s payment was returned for nonsufficient funds, the customer committed fraud, and therefore no notice was required prior to disconnection. The Company relies on WAC 480-110-355(1)(c), which provides, “A water company may terminate service without notice when it discovers that a customer has obtained service fraudulently.” The rule provides examples of fraud, such as self-connecting or assuming another’s identity to obtain service.

³ WAC 480-110-355(1)(c) provides that no notice is required “before termination” if service has been fraudulently obtained. The rule goes on to say that “the company may refuse to reconnect service to a customer who has been disconnected for further fraud.” The terms “termination” and “disconnection” are therefore used interchangeably; the term “termination” is used to describe the first disconnection, which can be corrected and reconnected, and the term “disconnection” is used to describe a permanent denial of service.

⁴ Exh. SP-1 at 11.

13 The Company asserts that while it typically excuses a customer's first two returned payments, multiple dishonored payments are presumptively intentional, and therefore fraudulent. Staff notes that payments returned for insufficient funds are not included in the list of examples set forth in the rule, and points to an analogous Commission rule governing electric companies that expressly excludes dishonored payments from its definition of fraud.⁵ The Company counters that because dishonored payments are not expressly excluded from the water rule, they are impliedly included.

14 **Decision.** We disagree with the Company's analysis, and find one violation of WAC 480-110-355(3)(c)(iii). Unlike tampering with company equipment or misrepresenting one's identity, making a payment that is subsequently returned is not a presumptively fraudulent act. Moreover, we find the express exclusion of returned payments in an analogous portion of the electric rules compelling. There is no logical reason the definition of fraud should be different for a water customer than it is for an electric customer.

15 The Company's recourse for returned payments is to disconnect service for nonpayment with proper notice. Nothing in the rules, however, prohibits the Company from accepting only guaranteed forms of payment from a customer who has more than two dishonored payments in a given time period, provided the Company amends its tariff to include such a provision.

WAC 480-110-355(5)(b)

16 Staff amends its findings and alleges 15 violations of WAC 480-110-355(5)(b) for failing to reconnect two customers – to which this Order refers as Customer A and Customer B – upon payment of all applicable charges as required by the rule. Customer A paid all charges necessary to restore service on April 22, 2013, and was reconnected on May 2. Customer B paid all charges necessary to restore service on April 18, and was reconnected on April 23. Staff alleges ten violations of WAC 480-110-355(5)(b) between April 22 and May 2 with respect to Customer A, and five violations between April 18 and 23 with respect to Customer B.

⁵ WAC 480-100-128(2)(a).

17 Rainier View offers two explanations for failing to timely reconnect these customers. First, the Company claims it reconnected the customers as soon as it became aware they had paid the applicable charges, but that was several days later because the customers submitted payment electronically. The Company represents that it has no way of knowing whether a disconnected customer makes an electronic payment to restore service unless the customer contacts the Company; the Company's system does not trigger any notification when such a payment is made.⁶

18 Second, Rainier View states that following Customer A's initial reconnection on April 24, the water was immediately turned back off at the meter because the meter was spinning, indicating a leak. Because Customer A was out of town, he did not call the Company until a week later on May 2, at which point he insisted service be restored despite the spinning meter. The Company obliged and turned his meter back on the same day.

19 **Decision.** The onus is on the Company, not the customer, to acknowledge payment of all appropriate charges and ensure service is restored promptly. Rainier View's lack of internal notice for electronic payments does not relieve the Company of this obligation. Accordingly, the Company erred in failing to promptly reconnect service for these two customers. We therefore find two violations of WAC 480-110-355(5)(b) for delaying Customer A's reconnection between April 22 and April 24, 2013, and five violations for each day Customer B remained disconnected from April 18 to April 23, 2013.

20 We agree with Rainier View, however, that it acted appropriately when it disconnected Customer A's service immediately upon reconnection on April 24. Because the Company knew Customer A was out of town, Rainier View acted prudently to turn the water off at the meter when the service person suspected a leak. Once Customer A was informed of the consequences of his decision, it was appropriate to restore service, which the Company did. Rainier View did not violate

⁶ Since receiving Staff's investigation report, however, the Company has implemented a new practice of performing manual, daily checks for payments on disconnected accounts. The Company states that it plans to continue this practice going forward, thereby correcting the issue and preventing future violations.

WAC 480-110-355(5)(b) for the eight additional days the water was disconnected from April 24 to May 2.

WAC 480-110-355(5)(c)

21 Staff alleges two violations of WAC 480-110-355(5)(c) for the Company's failure to offer two customers the option of reconnecting service by paying only a deposit and reconnection fee rather than all past due charges.⁷ Rainier View argues that WAC 480-110-355(5)(c), known as the prior obligation rule, provides the Company, not the customer, with a range of options for restoring service following a disconnection for nonpayment. Staff argues that the customer's choice controls the method of reconnection.

22 **Decision.** WAC 480-110-355(5)(c) provides that water companies "must restore disconnected service when a customer has paid, or the company has agreed to bill, any reconnection charge," and a customer either corrects the cause of the disconnection, pays all proper charges, or pays a deposit. If a water company, by the plain language of the rule, "must" reconnect a customer who pays a deposit and reconnection fee, the choice clearly belongs to the customer. Rainier View is therefore obligated to disclose all options to its disconnected customers at the time of reconnection. We agree with Staff's analysis and find two violations of WAC 480-110-355(5)(c).

WAC 480-110-375(1)

23 Staff alleges one violation of WAC 480-110-375(1) for failure to bill customers in a manner that clearly identifies rates and charges for water service.⁸ Rainier View argues that base and usage rates do not constitute separate charges under the rule, but instead comprise one service. Additionally, the Company argues that it is not required to show each block of usage as a separate line item because its rate schedule appears on the second page of its statement, which allows customers to calculate their bills by rate block. Staff argues that because the Company does not show whether or

⁷ Exh. SP-1 at 12-13.

⁸ *Id.* at 13-14.

how a customer's charges are split over multiple rate blocks, it is difficult to determine how the Company arrives at a total charge.

24 **Decision.** The rule does not require a water company to include a formula on the bill to show how charges are calculated. The bill need only show each separate charge as a line item, which, coupled with the tariff rates, will allow customers to calculate their bills. Rainier View's bill displays a separate line item for water service, a rate code, and all tariff rates for the applicable rate code. The tariff rates are broken out by meter size, base rate, and usage block rates. All of the information necessary for a customer to calculate his or her bill is included on the Company's statement. Accordingly, we find that the current statement format complies with WAC 480-110-375(1).

Penalties

25 The Commission may consider a number of factors when entertaining a request for mitigation, including how serious or harmful the violations are to the public, a company's history of compliance, whether the violations were promptly corrected, and the likelihood the violations will recur.⁹

26 Here, we find a total of 13 violations and impose the recommended penalty of \$100 per violation, for a total penalty of \$1,300. Each category of violation subject to penalties concerns Rainier View's disconnection and reconnection practices, which, if performed incorrectly, are particularly harmful to consumers. We do, however, appreciate the Company's recent commitment to manually check for payments on disconnected accounts, which will decrease the recurrence of violations in that area.

27 Although Rainier View has an overall history of compliance, the Company failed to correct its practices after receiving technical assistance through the informal Commission-referred consumer complaint process, which led to repeat violations. Accordingly, we find penalties of \$100 per violation to be an appropriate means to deter additional violations.

⁹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

FINDINGS AND CONCLUSIONS

- 28 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including water companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 29 (2) Rainier View is a water company subject to Commission regulation.
- 30 (3) At the brief adjudicative proceeding held on September 17, 2014, Staff withdrew four alleged violations of WAC 480-110-355(5)(b).
- 31 (4) Rainier View should be penalized \$200 for two violations of WAC 480-110-335(9)(b) for failure to apply deposits and accrued interest at the time of disconnection to outstanding balances on two customer accounts.
- 32 (5) Rainier View should be penalized \$100 for one violation of WAC 480-110-355(3)(b)(ii) for failure to issue a second disconnection notice prior to discontinuing a customer's service.
- 33 (6) Rainier View should be penalized \$100 for one violation of WAC 480-110-355(3)(c)(iii) for disconnecting a customer's service more than ten days after the first day noted for disconnection.
- 34 (7) Rainier View should be penalized \$700 for seven violations of WAC 480-110-355(5)(b) for failing to reconnect two customers upon payment of all applicable charges. Eight of the original 15 alleged violations are dismissed.
- 35 (8) Rainier View should be penalized \$200 for two violations of WAC 480-110-355(5)(c) for failing to offer two customers the option of reconnecting service by paying only a deposit rather than all past due charges.
- 36 (9) Rainier View's current billing statement does not violate WAC 480-110-375(1).

ORDER

THE COMMISSION ORDERS That

- 37 (1) Rainier View Water Company's Inc.'s request for mitigation is GRANTED, in part, and the penalty is reduced to \$1,300.
- 38 (2) The penalty is due and payable within ten days of the effective date of this order.

DATED at Olympia, Washington, and effective September 24, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250