

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

BURTON WATER
COMPANY, INC.,

Respondent.

DOCKET UW-200081

ORDER 01

ORDER INSTITUTING SPECIAL
PROCEEDING; COMPLAINT
SEEKING TO IMPOSE
PENALTIES; NOTICE OF
VIRTUAL BRIEF ADJUDICATIVE
PROCEEDING
**(Set for November 12, 2020,
at 1:30 p.m.)**

1 The Washington Utilities and Transportation Commission (Commission), on its own motion, and through its regulatory staff (Staff), alleges as follows:

I. PARTIES

2 The Commission is an agency of the state of Washington authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including water companies.

3 Burton Water Company, Inc., (Burton Water or Company) is a “public service company” as defined in RCW 80.04.010(23) and a “water company” as defined in RCW 80.04.010(30).

II. BACKGROUND

4 The Commission has information from which it believes and therefore alleges that Burton Water has violated the Commission’s statutes and regulations, namely RCW 80.28.090, RCW 80.28.100, WAC 480-80-143, WAC 480-110-325, and WAC 480-110-375.

5 RCW 80.04.110 authorizes the Commission to file a complaint on its own motion, setting forth any act done or failed to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any rule or order of the Commission. RCW 80.04.380 states that the Commission may impose a penalty of up to \$1,000 against a public service company if the company fails to comply with any provision of Title 80 RCW or any order, rule, direction, demand, or requirement of the

Commission. RCW 80.04.380 further clarifies that every violation by a public service company shall constitute a separate and distinct offense.

- 6 The following facts establish probable cause for the Commission to complain against Burton Water in accordance with applicable law.

III. FACTUAL ALLEGATIONS

- 7 On September 21, 2018, Staff issued a data request to Burton Water requesting that the Company produce copies of water service agreements, billing statements, and customer information regarding single properties being charged multiple base rates. Over the course of Staff's investigation, Staff requested additional documentation from the Company on at least five separate occasions between December 18, 2018, and January 6, 2020. Staff also visited and inspected Burton Water's facilities as part of its investigation on January 22, 2020.
- 8 During Staff's review, Staff identified 50 billing statements from various customers that listed a "Used" cost, a "Min" cost, and a "Surcharge." Burton Water bills its customers in two-month increments. Other than listing the cost associated with each category, the billing statements did not include any information describing the specific charges included in the three billing categories.
- 9 Staff also found nine customer bills that contained more than one minimum charge per month. After further investigation, Staff determined that the nine properties each contained multiple households or dwellings, although each property was served by a single meter. Staff asked the Company to explain the multiple minimum charges, and the Company stated that "Min" charge represented a combination of base rate (applied to the "billing household") and ready to serve charges (applied to the "non-billing household(s)") for each of the nine properties with multiple households or dwellings. Staff further determined that each household at all nine properties is currently receiving water service.
- 10 Staff also reviewed bills related to Customer J, who owns an apartment complex with six apartments and three commercial buildings. All nine of the apartments and commercial buildings receive water service through a single meter. When Staff reviewed the bills for this customer, it found that the bill reflected six monthly base charges and surcharges, rather than nine, in addition to the combined water usage for the nine properties. Burton Water explained that it did not charge the owner a base charge or surcharge for the three commercial businesses due to a verbal agreement made by the Company's previous owner. Consequently, Customer J only pays a base charge and surcharge for the six apartments, plus the combined water usage for the nine properties. Because all of the nine properties are served by a single meter, there does not appear to be a way to individually track usage or separate the commercial and residential usage.

- 11 While reviewing Customer J's records, Staff asked Burton Water about Polaris Development, LLC, (Polaris) which operates the Quartermaster Marina (Marina) located adjacent to Customer J. The Marina consists of a business office and docks. The Marina has eight vessels used for habitation (liveaboards) that receive water service. The Marina is served by two meters, one for the business office and one for the docks. The dock meter serves the liveaboards that are moored at the Marina. Staff reviewed customer bills for the Marina and found that Burton Water was charging the Marina a monthly base rate and surcharge for each of the two meters, and charges associated with water usage.
- 12 As part of the investigation into the Marina, Burton Water provided Staff a contract between the Company and Polaris, which stated that the Marina would be required to shut off its water usage if it exceeds a specific cubic foot threshold within a two month period.
- 13 Burton Water also provided 12 applications for water service. The applications for water service did not clearly state the type of service requested, did not include a list of applicable charges, did not include a date by which the customer could expect to receive service, and did not include a signature from a company representative.

IV. JURISDICTION

- 14 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, 80.01.060, RCW 80.28.050, RCW 80.28.080, WAC 480-110-431, and Chapter 480-80 WAC.

V. APPLICABLE LAWS AND REGULATIONS

- 15 RCW 80.28.020 reads in part “[w]henver the commission shall find, after a hearing had upon its own motion, or upon complaint, . . . that the rules, regulations, practices or contracts affecting such rates or charges [of a water company] are unjust, unreasonable, unjustly discriminatory or unduly preferential . . . the commission shall determine the . . . regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.”
- 16 RCW 80.28.090 provides in part that “[n]o . . . water company may make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.”
- 17 RCW 80.28.100 states “[n]o . . . water company may, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity, wastewater company services, or water, or for any service rendered or to be rendered, or

in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.”

- 18 WAC 480-80-143(1) requires a water company to file with the Commission all contracts for the retail sale of regulated utility service (water service) to end-use customers that “(a) State charges or conditions that do not conform to the company’s existing tariff; or (b) provide for utility service not specifically addressed in the [water company’s] existing tariffs.”
- 19 WAC 480-110-245 defines a “ready to serve charge” as “the charge assessed by the water company when: [1] the water company has the ability to provide water service; [2] the water company has committed to provide water service; and [3] there is an installed service connection at the customer’s property.”
- 20 Under WAC 480-110-325(1), a water company’s applications for service must:
- (a) Include both the company's and the applicant's name, address and telephone number;
 - (b) Show the date the person applied for service;
 - (c) Comply with the water company's filed tariffs;
 - (d) Clearly state the type of service requested. (Examples: Residential or commercial, flat-rated or metered service, a letter to provide service, ready-to-serve, etc.);
 - (e) Include a property lot description, street number, or other sufficient description of location for service;
 - (f) Include a complete list and description of all applicable charges. (Examples: Account set-up, service connection, facilities charge, line extension, etc.);
 - (g) Include the date by which a customer can expect service;
 - (h) Include the application expiration date, if any;
 - (i) Include signatures of the potential customer and a company representative.
- 21 WAC 480-110-375(1)(c) requires a water company’s bills to “[i]dentify and show each separate charge as a line item.”
- 22 Rule 3 of Burton Water’s currently effective tariff states:
- Each prospective customer desiring water service will be required to sign the utility’s standard form of application before service is supplied.
- An application for service is notice that the prospective customer desires water service from the utility and represents [an] agreement to comply

with the utility's rules and regulations on file with the Commission and in effect at the time service is furnished. In the absence of a signed application for water service, the delivery of water by the utility through a standard connection and the taking thereof by the customer will constitute an agreement by and between the utility and the customer for the delivery and acceptance of service under the applicable rate schedule(s) and these rules and regulations.

23 Rule 4 of Burton Water's tariff states in part that "[t]he customer will not increase demand or use of service as stated in the application for service without giving prior notice of such increase. In the event of such increase, the customer is required to pay the utility's regularly published rates for the increased service from the date of connection and use of the service."

24 Rule 16 of Burton Water's tariff provides in part:

Rates for water service and supply are those published in the utility's tariff on file with the Commission. Unless otherwise stated in the tariff, the rates apply to a single service, to one customer at one premise. Where two or more families with separate housekeeping establishments occupy the same or separate dwellings, each family using water is considered a separate customer. Each separate housekeeping establishment or business, using water service, will each be considered a customer.

When conditions require that more than one customer be supplied through one meter, (Accessory Dwelling Units) each customer will be charged the minimum charge as provided by the schedule of rates. If the consumption as shown by the meter exceeds the allowance for the minimum charge multiplied by the number of customers, the excess consumption charge will be computed at the regular rates for one customer and the amount prorated equally to the multiple customers, or otherwise as may be agreed among themselves.

25 Schedule 3 of Burton Water's tariff regarding "Ready to Serve Service" states:

Applicable

To any property owner who has completed and signed a Water Service Application, paid all applicable fees required for meter service connection, and had Water Service Application accepted in writing by the utility; and for whom the utility has installed the direct connection from the water system to the applicant property line. Applicable to domestic residential customers, where meters have not yet been installed.

Conditions

The charge for this service is not subject to cancellation or reduction for seasonal or temporary periods, unless seasonal rates apply per this tariff. This charge will be the monthly minimum bill for this class of service. At the time water service begins, the customer shall be transferred to Schedule 2, Metered service.

- 26 RCW 80.04.380 provides in part that “[a]ny public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense.”

VI. FIRST CAUSE OF ACTION (UNREASONABLE PREFERENCE – 3 VIOLATION OF RCW 80.28.090)

- 27 The Commission, through its Staff, realleges the allegations contained in paragraphs 7 through 13 above.
- 28 Under RCW 80.28.090, a water company may not make or grant any unreasonable preference or advantage to any person, corporation, or locality.
- 29 Burton Water violated RCW 80.28.090 on three occasions by declining to collect a base charge and surcharge from three commercial businesses owned by Customer J while collecting a base charge and surcharge from each of the six apartments owned by Customer J.

VII. SECOND CAUSE OF ACTION (RATE DISCRIMINATION - 1 VIOLATION OF RCW 80.28.100)

- 30 The Commission, through its Staff, realleges the allegations contained in paragraphs 7 through 13 above.
- 31 RCW 80.28.100 prohibits a water company from charging or receiving different compensation for service from a person than it charges or receives from any other person for doing a like or contemporaneous service with respect thereto under substantially similar circumstances.
- 32 Burton Water violated RCW 80.28.100 on one occasion by charging Customer J a base rate for each apartment receiving water service while not charging the Marina a base rate

for each of the liveboard vessels, which, to the extent they are living quarters with water service, are substantially similar to apartments.¹

VIII. THIRD CAUSE OF ACTION (FAILURE TO FILE SPECIAL CONTRACT – 1 VIOLATION OF WAC 480-80-143(1))

- 33 The Commission, through its Staff, realleges the allegations contained in paragraphs 7 through 13 above.
- 34 WAC 480-80-143(1) requires a water company to file with the Commission all contracts for retail sale of regulated service to end users that state charges or conditions that do not conform to the company's existing tariff or provide for service not specifically addressed in the company's existing tariff.
- 35 Burton Water violated WAC 480-80-143(1) on one occasion by failing to file with the Commission a contract with a customer that contains conditions that do not conform to its existing tariff and failing to obtain Commission approval of the same contract. Specifically, the contract directs Polaris and the Marina to shut off the Marina's water if its water usage exceeds a specific threshold, while Rule 4 of the Company's tariff states that a customer will be required to pay the utility's published rates for increased services without prior notice from the customer.

IX. FOURTH CAUSE OF ACTION (IMPROPER WATER SERVICE APPLICATION – 12 VIOLATIONS OF WAC 480-110-325)

- 36 The Commission, through its Staff, realleges the allegations contained in paragraphs 7 through 13 above.
- 37 WAC 480-110-325 requires a water company's application for service to contain several specific items, including the type of service requested, a list of applicable charges, a date by which the customer could expect to receive service, and a signature from a company representative.
- 38 Burton Water violated WAC 480-110-325 on 12 occasions by failing to include all the required information in its application for service.

X. FIFTH CAUSE OF ACTION (IMPROPER FORM OF BILLS – 50 VIOLATIONS OF WAC 480-110-375)

- 39 The Commission, through its Staff, realleges the allegations contained in paragraphs 7 through 13 above.

¹ In the alternative, Staff argues that these circumstances support a fourth violation of RCW 80.28.090, in addition to the three violations alleged in the first cause of action.

- 40 WAC 480-110-375 requires a water company to show each separate charge as a line item.
- 41 Burton Water violated WAC 480-110-375 on 50 occasions by failing to show each separate charge as a line item on customer bills.

XI. REQUEST FOR RELIEF

- 42 Staff requests that the Commission find that Burton Water violated Commission rules and regulations and recommends the Commission assess a penalty of up to \$22,000 as follows:

- Up to \$1,000 for each of the three violations of RCW 80.28.090 for granting unreasonable preference by not charging Customer J's commercial business in the same manner that it charges Customer J's apartment units.
- Up to \$,1000 for one violation of RCW 80.28.100 for engaging in rate discrimination by not charging the Marina's liveboards in the same manner that it charges Customer J's apartment units.
- Up to \$1,000 for one violation of WAC 480-80-143 for entering into a special contract without filing the contract with the Commission and receiving Commission approval of the contract.
- Up to \$1,000 for each of the 12 violations of WAC 480-110-325 for failing to include all required information on a completed water service application.
- Up to \$100 for each of the 50 violations of WAC 480-110-375 for failing to identify and show each separate charge as a line item on customer billing statements.

- 43 Staff further requests that the Commission require Burton Water to file a tariff revision to update the definition of "customer" contained in its tariff at Rule 16 pursuant to its authority under RCW 80.28.020. First, the definition of "customer" contained in the Company's tariff does not align with the Commission's definitions of "customer" contained in WAC 480-110-245. Second, Staff's investigation has shown that Company has applied the definition of "customer" in Rule 16 inconsistently and unreasonably. For example, despite all of the apartments and businesses being connected to a single meter, Customer J's bill includes minimum charges for each of the apartment "customers," but does not include minimum charges for the commercial businesses also owned by Customer J. Additionally, Burton Water does not charge Polaris, which is adjacent to Customer J, minimum charges associated with the liveboards moored at the Marina despite the fact that the liveboards receive water service and are functionally similar to Customer J's apartments. Third, although Burton Water purports to consider additional housekeeping establishments or businesses receiving water service through a single meter

as separate customers, the Company does not retain any information on the additional customers and does not send each customer an individual bill. That is, Burton Water only sends one bill to a single customer (billing customer) every two months, even if the bill reflects minimum charges associated with several customers receiving water service. Staff is concerned that, if Burton Water does not have information on the non-billing customers and the non-billing customers do not receive individual bills, then those customers may not be fully informed of their rights and obligations under the Company's tariff and the Commission's rules. As such, the Commission should order Burton Water to update its tariff definition of "customer" to be consistent with how the Commission defines that term.

- 44 Staff also recommends that the Commission order Burton Water to file tariff revisions clarifying its application of the ready-to-serve charge contained in its tariff. Staff has identified at least two ways in which the current language in Schedule 3 of Burton Water's tariff is potentially confusing and unclear to consumers. First, while Rule 3 of Burton Water's tariff states that a customer's receipt of water service will be considered an agreement between the Company and the customer for water service, Schedule 3 of the Company's tariff states that a ready-to-serve charge is applicable to a property owner that "had [a] Water Service Application accepted in writing by the utility." When read together, Rule 3 and Schedule 3 create ambiguity as to whether Burton Water may assess a ready-to-serve charge to a customer in the absence of a written and signed application for service. Second, although Schedule 3 states that a ready-to-serve charge is "applicable to domestic residential customers, where meters have not yet been installed," Schedule 3 also states that when a customer begins receiving water service, "the customer shall be transferred to Schedule 2, Metered Service.
- 45 During its investigation, Staff determined that Burton Water assessed ready-to-serve charges to at least ten different customers who were receiving water service through shared meters, and that Burton did not have a written, signed application for service for any of the ten customers. Staff believes that the different tariff provisions discussed above create confusion for a customer regarding when a ready-to-serve charge is warranted and how the ready-to-serve charge should be applied when multiple customers are served by a single meter. Staff is further concerned that the lack of individual customer billing and line item billing may exacerbate customer confusion, insofar as non-billing customers may not have immediate access to specific information regarding the individual components included in a given bill. Therefore, the Commission should order Burton Water to revise its tariff to clarify under what circumstances the Company may assess a ready-to-serve charge.
- 46 Staff further recommends that the Commission require Burton Water to update its tariff language regarding the allowance for the minimum charge. Rule 16 of Burton Water's tariff references circumstances where "the consumption as shown by the meter exceeds the allowance for the minimum charge multiplied by the number of customers[.]"

However, Schedule 2 of Burton Water's tariff regarding metered rate service does not appear to include an allowance for the minimum charge, it only contains a base rate and rates for different usage blocks. To prevent consumer confusion, the Commission should direct Burton Water either to remove the language pertaining to the "allowance for the minimum charge," or to provide revised language that clarifies its intent and application.

47 Staff additionally requests that the Commission order such other relief as is appropriate under the circumstances.

XII. PROBABLE CAUSE

48 Based on a review of the factual allegations above, and consistent with RCW 80.01.060, RCW 81.01.010, and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

XIII. NOTICE OF VIRTUAL BRIEF ADJUDICATIVE PROCEEDING

49 Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determines that a brief adjudicative proceeding is appropriate to determine whether the Commission should assess penalties for violations of the Commission's rule and regulations.

50 The Commission will hear this matter under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission will also follow its procedural rules in WAC 480-07 in this proceeding.

51 **THE COMMISSION GIVES NOTICE That it will hold a virtual brief adjudicative proceeding in this matter at 1:30 p.m. on November 12, 2020. To participate by phone, call (253) 372-2181 and enter the Conference ID 440 621 438#. To participate via Microsoft Teams, please use the following link: [Join Microsoft Teams Meeting](#).**

52 **THE COMMISSION ORDERS** Burton Water, to appear before the Commission in this proceeding on November 12, 2020, either by phone or via Microsoft Teams, to give testimony and evidence under oath.

53 The record in this case will consist of any documents regarding the matters that are considered by or prepared for the presiding officer for the brief adjudicative proceeding and a transcript of any oral statements given at the hearing, which statements will be given under oath.

54 Written notice of any other stage in the proceeding or other formal proceedings that the Commission may deem appropriate will be given during the course of this case. The

Commission will provide at its offices in Lacey, Washington copies of documents in the current record for use by the parties or others who may want to review them.

55 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the brief adjudicative proceeding set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

56 The names and mailing addresses of all known parties and their known representatives are as follows:

Complainant: Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Harry Fukano
Assistant Attorney General
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1225
harry.fukano@utc.wa.gov

Respondent: James Garrison
P.O. Box 1938
Vashon, WA 98070
jgburtonwater@gmail.com

Representative: Unknown

57 Administrative Law Judge Samantha Doyle, from the Commission's Administrative Law Division, will preside during this proceeding.²

58 The Commission will give parties notice of any other procedural phase of the proceeding in writing or on the record, as appropriate during this proceeding.

DATED at Lacey, Washington, and effective October 14, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

² Judge Doyle can be reached at 360-742-4451 or samantha.doyle@utc.wa.gov.

Inquiries may be addressed to:

Mark L. Johnson
Executive Director and Secretary
621 Woodland Square Loop S.E.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

Hearing facilities are accessible to persons with disabilities. Smoking is prohibited. If limited English-speaking, hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please fill out and return this form to:

Washington Utilities and Transportation Commission
Attention: Mark L. Johnson
P.O. Box 47250
Olympia, WA 98504-7250

(PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter:

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone (_____) _____