

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

BURTON WATER COMPANY, INC.,

Respondent.

DOCKET UW-200081

JOINT NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

I. INTRODUCTION

1 This Joint Narrative Supporting Settlement Agreement (Narrative) is filed with the Utilities and Transportation Commission (Commission) pursuant to Washington Administrative Code (WAC) 480-07-740(3)(a) on behalf of Burton Water Company, Inc. (Burton Water or Company), and Commission Staff (Staff) (collectively, “the Parties”). The Parties have signed the settlement agreement (Agreement), which is being filed concurrently with this Narrative. This Narrative summarizes the Agreement. It is not intended to modify any terms of the Agreement.

II. PROPOSAL FOR REVIEW PROCEDURE

2 In accordance with WAC 480-07-740, the Parties propose the following settlement consideration procedure for review of the proposed Agreement. The Parties believe that this matter is a less complex matter under WAC 480-07-740(2)(b). Accordingly, the Parties submit that conducting a hearing will not assist the Commission to decide whether to approve and adopt the settlement because of the limited scope of the issues and Burton Water’s cooperation with Staff. *See* WAC 480-07-740(2)(e).

3 If the Commission conducts a hearing, however, the Parties will present one or more
witnesses to testify in support of the Agreement and to answer questions concerning the
Agreement’s details, costs, and benefits. *See* WAC 480-07-740(3)(b). In addition, counsel for
each party will be available to address any legal matters associated with the Agreement. If the
Commission requires supporting documents beyond the Agreement and Narrative, and the
other documents on file in this docket, the Parties will provide documentation as needed.

III. APPLICABLE LAW

4 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.

5 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.”

6 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.”

7 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.”

8 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.”

9 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.”

10 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.

11 WAC 480-110-375(1)(c) requires a water company's bills to "[i]dentify and show each separate charge as a line item."

12 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.

13 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."

14 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.

15 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.

IV. SCOPE OF THE UNDERLYING DISPUTE

16 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.

17 On October 14, 2020, the Commission issued a complaint against Burton Water, alleging 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.¹

18 On November 10, 2020, the Parties reached a settlement in principle that resolved all of the issues presented in Staff’s complaint. Staff contacted the presiding officer on behalf of the Parties to request a suspension of the procedural schedule while the Parties worked to finalize the Agreement..

19 On December 17, 2020, the Parties finalized and signed the Agreement. The Agreement contains the complete terms of the Parties’ settlement.

V. DESCRIPTION OF SETTLEMENT AGREEMENT

20 The Agreement resolves all of the issues in dispute. The Parties agree to the following terms set forth in the Agreement:

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

¹ 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.

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 contract² 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
- 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

² According to Burton Water, the contract was never implemented.

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.

VI. STATEMENT OF IMPACT ON THE PUBLIC INTEREST

21 The Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, it is in the public interest that this dispute conclude without the further expenditure of public resources or litigation expenses.

22 In accordance with WAC 480-07-740-750, the Parties believe the Agreement is in the public interest and appropriate for the Commission's acceptance without conditions under WAC 480-07-750(2)(a) for three reasons. First, the compliance and tariff provisions should remedy should prevent several of the violations identified in the Commission's complaint from reoccurring. Second, the suspended penalty component will create an incentive for the Company to avoid repeat violations during the suspension period. Third, a reduced penalty is appropriate and reasonable given the Company's cooperation with Staff in resolving the issues identified in the Commission's complaint.

23 The Commission has formally expressed its support for negotiated resolutions of enforcement actions. The rule states, "The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest" WAC 480-07-700. For the reasons stated above, the Parties contend that their Agreement is lawful and consistent with the public interest.

VII. CONCLUSION

24 The Agreement resolves all of the issues in this docket and the Parties submit that their resolution complies with applicable legal requirements and is consistent with the public interest. The Parties respectfully request that the Commission issue an order approving the Agreement in its entirety.

DATED this 17th day of December 2020.

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