

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment)	DOCKET UW-144112
Against)	
)	
NEWAUKUM WATER SYSTEM,)	ORDER 01
INC.)	
)	
In the Amount of \$1,000)	
)	
.....)	
In the Matter of the Penalty Assessment)	DOCKET UW-150045
Against)	
)	
NEWAUKUM WATER SYSTEM,)	ORDER 01
INC.)	
)	
In the Amount of \$2,200)	INITIAL ORDER APPROVING
)	SETTLEMENT AGREEMENT
.....)	

BACKGROUND

- 1 On December 19, 2014, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment in Docket UW-144112 in the amount of \$1,000 against Newaukum Water System, Inc. (Newaukum or Company) alleging that the Company improperly charged customers a rate higher than the rate published in its tariff in violation of RCW 80.28.080. On January 5, 2015, Newaukum filed a request for hearing. On January 9, the Commission issued a notice of a brief adjudicative proceeding set for February 11, 2015.

- 2 On January 13, 2015, the Commission issued a Penalty Assessment in Docket UW-150045 against Newaukum in the amount of \$2,200, alleging additional and continuing violations of RCW 80.28.080. On January 27, 2015, Newaukum filed a request for hearing. On January 28, the Commission issued a notice of brief adjudicative proceeding, also set for February 11, 2015.

- 3 On February 6, 2015, the Commission’s regulatory staff (Staff)¹ notified the Commission that the parties had reached a settlement in principle and requested the Commission cancel the hearing. On February 13, 2015, Staff filed a settlement agreement on behalf of the parties (Settlement Agreement). In the Settlement Agreement, Newaukum admits that it billed each of its 22 customers more than its published tariff rate on two separate occasions, for a total of 44 violations of RCW 80.28.080.
- 4 Newaukum agrees to credit its customers a total of \$880 in overcharges. Newaukum agrees to credit each customer in \$10 increments for four consecutive months, for a total credit of \$40 per customer. Newaukum agrees to commence issuing credits in the first billing cycle immediately following the effective date of the Settlement Agreement.
- 5 The parties agree that the Commission should assess a penalty of \$100 for each violation alleged in the Penalty Assessments, for a total penalty of \$3,200, and should suspend the entire amount of the penalty for a period of twelve months, to commence on the first day of the month following the effective date of this Order, on the condition that Newaukum incurs no repeat violations of RCW 80.28.080 and credits its customers as required. Should Newaukum fail to issue any credits, the full penalty of \$3,200 will immediately become due and payable.
- 6 Brett Shearer, Assistant Attorney General, Olympia, Washington, represents the Staff. Maurice Kurtz, Chairman, Auburn, Washington, represents Newaukum.

DISCUSSION AND DECISION

- 7 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

- 8 We approve the Settlement Agreement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Newaukum admits that its conduct violated RCW 80.28.080, and agrees to issue credits to each customer to remedy the overcharges that resulted from these violations. The penalty the Company agrees to pay is reasonable, and suspending the penalty on the condition of future compliance is appropriate.
- 9 The terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. The Settlement Agreement supports the Commission's goal of compliance by requiring the Company to take specific actions to remedy the violations, and permits the Company to pay a reduced penalty that will be suspended, then waived, provided the Company does not incur repeat violations of RCW 80.28.080, and complies with the terms of the Settlement Agreement. Given these factors, we find the Settlement Agreement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS:

- 10 (1) The Settlement Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.
- 11 (2) Newaukum Water System, Inc. must refund each of its customers by crediting each customer's bill in the amount of \$10 for four consecutive months, for a

total edit of \$40. Newaukum Water System, Inc. will commence issuing credits in the first billing cycle immediately following the effective date of the Settlement Agreement.

- 12 (3) Newaukum Water System, Inc. is assessed a penalty of \$3,200, which is suspended for a period of twelve months, to commence on the first day of the month following the effective date of this Order, conditioned on Newaukum Water System, Inc. complying with the terms of this Order.
- 13 (4) If Newaukum Water System, Inc. fails to issue customer credits in any of the four consecutive months in which credits are due, the suspended \$3,200 penalty will become immediately due and payable. After twelve months, if Newaukum Water System, Inc. has complied with RCW 80.28.080 and the terms of the Settlement Agreement, the Commission will waive the penalty.
- 14 (5) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective February 18, 2015.

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

**Exhibit A
Settlement Agreement**