

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. BURTON WATER COMPANY, INC., Respondent.	DOCKET UW-200081 ORDER 01 APPROVING SETTLEMENT AGREEMENT
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BACKGROUND

- 1 On October 14, 2020, the Washington Utilities and Transportation Commission (Commission), assessed a penalty of \$22,000 (Penalty Assessment) against Burton Water Company, Inc., (Burton Water or Company) for 67 violations of Revised Code of Washington (RCW) 80.28.090, RCW 80.28.100, Washington Administrative Code (WAC) 480-80-143, WAC 480-110-325, and WAC 480-110-375.
- 2 On November 10, 2020, Commission staff (Staff)¹ requested on behalf of the parties that the Commission suspend the procedural schedule in this docket to enable them to negotiate a settlement without the need to file additional testimony. The Commission granted the request on November 12, 2020. On December 17, 2020, Staff filed with the Commission a settlement agreement on behalf of the parties (Settlement Agreement).
- 3 As part of the Settlement Agreement, the Company admits to each of the 67 violations of RCW 80.28.090, RCW 80.28.100, WAC 480-80-143, WAC 480-110-325, and WAC 480-110-375 cited in the Penalty Assessment. The parties agree that the Commission

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 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.

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

should assess a total penalty of \$11,000 for these violations. Staff is satisfied that Burton Water has revised its business practices to correct the violations documented in Staff's compliance review, as evidenced by the terms of the Settlement Agreement.

4 Harry Fukano, Assistant Attorney General, Lacey, Washington, represents Staff. Richard Finnigan, attorney at law, Olympia, Washington, represents Burton Water.

SETTLEMENT

5 On December 17, 2020, Staff filed a Settlement Agreement resolving all the issues in this Docket. The Settlement Agreement includes provisions related to practices of preferential treatment, fairness in rates, filing, and billing practices. A copy of the Settlement Agreement is attached to this Order as Appendix A and incorporated by reference.

6 The parties filed a Joint Narrative Supporting Settlement Agreement (Joint Narrative) with the Settlement Agreement. The Joint Narrative addresses each of Staff's concerns with the Company's activities, as follows: (1) engaging in unreasonable preference in violation of RCW 80.28.090 on three occasions, (2) engaging in rate discrimination in violation of RCW 80.28.100 on one occasion, (3) failing to file a special contract as required by WAC 480-80-143(1) on one occasion, (4) using incomplete water service applications in violation of WAC 480-110-325 on 12 occasions, and (5) sending incomplete customer bills in violation of WAC 480-110-375 on 50 occasions.

7 *Tariff Revisions.* To address Staff's concerns related to the first three items, Burton Water will file three tariff revisions within 45 days of the effective date of this Order. First, Burton Water will revise its tariff Rule 16 related to billing multiple customers served by one meter and an allowance for the minimum charge by striking the existing provisions of Rule 16. The parties agree the Company will revise Rule 16 with language that demonstrates the Company's intent 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.²

8 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.

² Pages 7-8 Joint Narrative Supporting Settlement Agreement.

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

10 *Compliance Items.* The parties agree that Burton Water will file with the Commission its revisions to Burton Water’s customer bills and applications for service within 60 days of the effective date of this Order. Burton Water will also cancel its special contract with Polaris Development, LLC, and file a letter in this Docket confirming the cancellation within 45 days of the effective date of this Order.

11 Additionally, Burton Water will revise its applications for service to ensure they comply with WAC 480-110-325(1)(d),(f),(g), and (i). Burton Water will also revise its customer bills to ensure they comply with WAC 480-110-375(1)(c). The Settlement Agreement provides that Burton Water may request technical assistance from Staff regarding the above revisions if needed.

12 *Penalty.* Staff and Burton Water agree that the Commission should assess an \$11,000 penalty. The parties further agree that the Commission should suspend a \$6,000 portion of the penalty for two years, and then waive it, subject to the condition that the Company does not commit any repeat violations of RCW 80.28.090, RCW 80.28.100, WAC 480-80-143, WAC 480-110-325, and WAC 480-110-375 during the two-year suspension period. If the Commission determines that Burton Water has committed a repeat violation within two years of the Settlement effective date, the \$6,000 suspended penalty will become immediately due and payable. Finally, the parties agree that the Company should pay the \$5,000 portion of the penalty that is not suspended according to the terms of a mutually acceptable payment plan. If the parties are unable to reach an agreement, they agree to jointly file a petition requesting the Commission set reasonable terms for repayment.

DISCUSSION AND DECISION

13 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:

- 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.

14 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. Burton Water admits that its conduct violated RCW 80.28, WAC 480-80, and WAC 480-110. The \$11,000 penalty, \$6,000 of which is suspended, is reasonable, both in terms of the \$5,000 penalty the Company must pay now and the suspended amount it must pay if it fails to comply with this Order.

15 In addition, the Company has since corrected the business practices that gave rise to the violations and will submit the agreed upon tariff revisions and filings as stated in the Settlement Agreement. The Settlement Agreement permits the Company to pay a reduced penalty while allowing Staff to achieve its goal of bringing the Company into compliance by ensuring the Company has implemented measures designed to prevent recurring violations.

16 The terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Given these factors, we find the Settlement Agreement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS:

- 17 (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.
- 18 (2) Burton Water Company, Inc., is assessed a penalty of \$11,000, a \$6,000 portion of which is suspended for a period of two (2) years from the effective date of this Order subject to the condition that Burton Water Company, Inc., complies with the terms of this Order. Burton Water, Inc., must either (1) pay the \$5,000 portion of the penalty that is not suspended, (2) file jointly with Staff an agreed payment plan, or (3) petition jointly with Staff for the Commission to establish a payment plan within ten (10) days of the effective date of this Order.
- 19 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Lacey, Washington, and effective January 5, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Samantha Doyle
SAMANTHA DOYLE
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 (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters 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 with due diligence at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

WAC 480-07-825(1) 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.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5).

**Exhibit A
Settlement Agreement**