



**UTC**  
Washington Utilities  
and Transportation  
Commission

# **Investigation Report**

## **Burton Water Company, Inc.**

**UW-200081**

**Susie Paul**  
**Compliance Investigations**

**September 2020**

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## **PURPOSE, SCOPE, AND AUTHORITY**

### **Purpose**

The purpose of this investigation is to determine whether Burton Water Company, Inc., (Burton Water or Company) is in compliance with Washington Utilities and Transportation Commission (commission) laws and rules outlined in Revised Code of Washington (RCW) 80.28 and Washington Administrative Code (WAC) 480-110, and to determine whether Burton Water is in compliance with its commission-approved tariff.

### **Scope**

The scope of this investigation focuses on Burton Water's business practices related to ready-to-serve charges, multiple customers served by one meter, unreasonable rate preference, rate discrimination, special contracts, applications for service, and form of bills.

### **Authority**

Commission staff (staff) undertook this investigation pursuant to RCW 80.01.040, which grants the commission authority to regulate in the public interest the rates, services, facilities, and practices of all entities operating under public service laws; RCW 80.04.070, which grants the commission authority to inspect the accounts, books, papers, and documents of public service companies; and RCW 80.04.380, which authorizes the commission to penalize public service companies for violations of state law, commission rules, and other requirements.

### **Staff**

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## EXECUTIVE SUMMARY

Staff conducted this investigation to evaluate Burton Water's business practices. This investigation focused on properties served by Burton Water and its practice of billing multiple customers that are served by one meter. This investigation also serves as a follow-up to an informal consumer complaint related to billing of multiple customers service by one meter.

In 2016, a customer of Burton Water submitted an informal complaint related to the Company's billing practices. Staff investigated the complaint and found Burton Water was billing multiple base rates to a single customer. The informal complaint was consumer upheld.

In 2018, the Company filed a request for a rate increase with the commission.<sup>1</sup> While reviewing the proposed tariff revisions, Regulatory Services staff found potential discrepancies when the Company reported multiple base rates for a single meter, and forwarded those findings to Consumer Protection staff.

An investigation into the business practices of Burton Water established that the Company is in violation of commission rules as follows:

- RCW 80.28.090, Unreasonable preference prohibited
- RCW 80.28.100, Rate discrimination prohibited
- WAC 480-80-143, Special contracts for gas, electric, and water companies
- WAC 480-110-325, Application for service
- WAC 480-110-375, Form of bills

### Penalty Recommendation

Staff recommends the commission issue a formal complaint against Burton Water, and assess a penalty of up to \$22,000 for the following violations:

- Up to \$1,000 for each of the three violations of RCW 80.28.090 for engaging in unreasonable preference by granting commercial establishments an advantage by not charging the commercial establishments a base rate and surcharge for water service while charging other residential customers attached to the same meter a base rate and surcharge.
- Up to \$1,000 for one violation of RCW 80.28.100 for engaging in rate discrimination by charging one customer, served by one meter, a total of six base rates for six established households, while concurrently charging a similar customer served by one meter only one base rate, despite the fact that eight households are served by the single meter.
- Up to \$1,000 for one violation of WAC 480-80-143 for entering into a special contract with a customer that contains conditions that do not conform to the Company's existing tariff and without first requesting and receiving commission approval.
- 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.

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<sup>1</sup> See Docket UW-180464.

- Up to \$100 for each of the 50 violations of WAC 480-110-375(1)(c) for failure to identify and show each separate charge as a line item on customer billing statements as required.

Staff also recommends that the commission require Burton Water to file tariff revisions (1) to align the definition of “customer” contained in Rule 16 with the definitions of “customer” in WAC 480-110-245, (2) to clarify the application of its ready-to-serve charge, and (3) to update or remove language contained in Rule 16 regarding an “allowance for the minimum charge” to clarify its intent and applicability.

### **Technical Assistance**

During this investigation staff found that Burton Water advertised electronic billing on its website and provided six of its customers electronic billing statements without all the required elements and without sending a copy of the billing statement through the U.S. postal service. The Company stated it sent electronic billing statements at the request of the customer.<sup>2</sup>

On Jan. 31, 2020, Burton Water filed a revision to the Company’s tariff, Rule 11 regarding electronic billing, which became effective on March 6, 2020. The revision provides:

“If the utility offers the option of electronic statements and at such time as the Commission allows such use, at the option of the customer, bills will be sent by email in lieu of a hard copy by mail.”

As of the date of this report, the advertisement for an electronic billing option has been removed from the Company’s website and the Company reports it is no longer sending electronic billing statements. On July 9, 2020, staff contacted two Burton Water customers who had been receiving email billing statements. One of the customers stated that they receive billing statements by email. The second customer stated that they had previously received billing statements exclusively by email but are now receiving an email and a billing statement through the U.S. mail.

The Company states it is aware that if it chooses to send electronic billing statements, it must also send a billing statement through the U.S. postal service and include all the elements required in WAC 480-110-375 until such time that electronic billing is authorized by the commission.

## **BACKGROUND**

### **Company Information**

Washington Secretary of State (SOS) records indicate Burton Water is a for profit business that was incorporated on Aug. 15, 1995, and is based in Vashon, Washington. The Company’s SOS records list James Garrison and Evan Simmons as governors of Burton Water.<sup>3</sup>

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<sup>2</sup> The Company had previously requested a tariff revision seeking a five-dollar fee for customers requiring billing statements mailed through U.S. postal service. Staff opposed the revision and the request was withdrawn by Burton Water.

<sup>3</sup> See Attachment A for a screenshot of WA SOS record, captured May 7, 2020.

According to the Company’s 2019 annual report, James Garrison identified himself as President and Evan Simmons as Vice President. Burton Water reported 415 total customers of which 394 are metered, 16 are served by a single meter with a single customer billed, and five are listed as other services, which include ready-to-serve. The Company’s recent annual reports filed with the commission reflect the following annual gross revenue:

Annual Report Year	Date Filed	Gross Operating Revenue
2019	April 30, 2020	\$291,298.00
2018	April 26, 2019	\$278,036.00
2017	April 27, 2018	\$252,783.00

### COMMISSION-REFERRED COMPLAINTS

A review of Burton Water’s complaint history revealed two informal consumer complaints filed against the Company. Both complaints were consumer upheld and are described below.

#### Consumer Complaint CAS-08131-G6M5V7

On Dec. 17, 2015, a consumer filed an informal complaint against Burton Water related to the Company’s billing practices.<sup>4</sup> An investigation found the customer was charged six base charges for a single metered service connection. Eighteen violations were recorded, and the complaint was consumer upheld.

Violation	Number of Violations
RCW 80.28.080(1): Burton Water incorrectly billed a customer six base rates for his one connection.	18

#### Consumer Complaint CAS-06943-M0G24D7

On Feb. 12, 2015, a consumer filed an informal complaint against Burton Water related to the Company’s billing practices. The investigation found the Company attempted to collect a prior tenant’s past due balance from the property owner. The informal complaint was consumer upheld and 16 violations were recorded against the Company.

Violation	No. of Violations
WAC 480-110-385(3)(a): Burton Water Company failed to respond to the complaint in a timely manner. A violation was recorded for each day past the deadline with no response.	4
WAC 480-110-375(1)(d): Burton Water Company included a previous customer’s unpaid balance on the current customer’s bill statement three times.	3

<sup>4</sup> See Attachment B for a partial copy of informal complaint and result CAS-08131-G6M5V7. Full complaint available on request.

WAC 480-110-375(1)(b): Burton Water Company failed to include the applicable rate schedule on the bill statement.	2
WAC 480-110-375(1)(e): Burton Water Company failed to provide enough information in the bill statement that a customer could calculate the bill.	2
WAC 480-110-375(1)(f): Burton Water Company failed to provide the date a bill becomes delinquent on the bill statement.	2
WAC 480-110-375(1)(g): Burton Water Company failed to include the Company's telephone number or emergency telephone number on the bill statement.	3

## DOCKET HISTORY

### Docket UW-161290

On Dec. 15, 2016, Burton Water filed a request for tariff revisions proposing to define a customer as the property owner and clarifying how multiple customers served by one meter would be charged. The proposed revisions also clarified the Company's positions related to interests on deposits, inclement weather, meter readings, and new services offered by the Company.

At an open meeting held on April 28, 2017, staff submitted a memorandum recommending that the commission issue a complaint and order suspending Burton Water's request for tariff revisions.<sup>5</sup> In the memorandum, staff explained that there were unresolved concerns regarding the revisions, including Burton Water's proposal on how it would charge multiple customers served by a single meter. Staff maintained that one meter equals one customer and any billing beyond a single meter would constitute sub-billing.

Staff also expressed concern with Burton Water's proposal to calculate usage for multiple customers served by one meter. Burton Water's proposed tariff revisions included charging two-thirds of the base rate for every accessory dwelling unit or household beyond the meter. Burton Water proposed to have sole discretion to apply and remove base rate charges for multiple customers served by a single meter.

Staff disagreed with Burton Water's proposal to require the property owner to be deemed the customer and responsible for all charges. Staff cited WAC 480-110-245, WAC 480-110-325, and WAC 480-110-345 as contradicting the proposed revision.

Further, Burton Water requested to add new rate charges for providing a copy of a billing statement to a renter, disconnection fee, separate dwelling, and collection agency fee. The Company also requested a rate increase for account set-up and a water availability letter. Staff reviewed the Company's supporting financial documents, books, and records and found that the revenue generation from the proposed charges and rate increase would be excessive. On May 12, 2017, Burton Water withdrew its tariff filing.

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<sup>5</sup> See Attachment C for a copy of Staff Memorandum, dated April 28, 2017.

## **Docket UW-150499**

On March 30, 2015, Burton Water filed a tariff revision revising language and rates for charges. Burton Water requested to add language that would require a property owner to submit an application for service and be considered the account holder and customer. The revisions required the property owner to be responsible for any tenant's unpaid balance. On May 15, 2015, Burton Water submitted a letter withdrawing the tariff filing.

### **TRAINING AND INDUSTRY GUIDANCE**

Burton Water attended commission-sponsored water industry training on April 28, 2015, and again on March 7, 2017.<sup>6</sup> The training covered multiple topics, including rules related to applications for service and form of bills. At the April 2015 training, the water industry participants asked for clarification on who is deemed a customer.

On June 4, 2015, after seeking advice from legal counsel, staff issued a guidance letter to companies in the water industry, including Burton Water, which clarified staff's interpretation of the term "customer" as used in WAC 480-110.<sup>7</sup> The letter stated that the person receiving the service is the customer. If a property owner rents the home to another party, it is their responsibility to direct the renter to contact the water company to request service and complete an application for service if required.

### **INVESTIGATION**

#### **Data Request**

On Sept. 21, 2018, staff issued a data request requiring Burton Water to produce copies of water service agreements, billing statements, and customer information regarding single properties being charged multiple base rate charges.<sup>8</sup> The Company's response was due Oct. 5, 2018. The Company requested and was granted an extension and provided all requested information on Oct. 17, 2018.

During the review of documents submitted by the Company, staff requested clarifying documentation on five separate occasions from Dec. 18, 2018, through Jan. 6, 2020. Staff used documents and information provided by the Company, results of staff's field visit to Burton Water's facilities, customer interviews, and commission records to conduct this investigation of the Company's business practices.

#### **Unreasonable Rate Preference and Rate Discrimination**

Staff found discrepancies related to Burton Water's billing practices of an apartment and business complex located in Vashon, Washington. The complex is comprised of six residential

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<sup>6</sup> See Attachment D for copies of training verification forms, dated April 28, 2015, and March 7, 2017.

<sup>7</sup> See Attachment E for a copy of letter to water industry, dated June 4, 2015.

<sup>8</sup> See Attachment F for a copy of data request, dated Sept. 21, 2018.



apartments and three commercial businesses. The residential apartments and the businesses are owned by the same person (Customer J) and all are served by one meter.

Staff requested billing statements for Customer J at an address provided by the Company. A discrepancy was found when staff reviewed King County property records for the address and found the address to be associated with another customer of Burton Water. Staff asked the Company for clarification. The Company acknowledged that it had the wrong address for Customer J in its records and noted its records have been corrected.

A review of billing statements for this account showed a usage, minimum rate, and a surcharge. As shown below, there is no line item description of the charges:

<b>Meter</b>	<b>Read Date</b>	<b>Last Read</b>	<b>Prev. Read</b>	<b>Usage</b>	<b>Charge Name</b>	<b>Amount</b>
USED	9/23/2019	27510	24480	3030	USED	\$92.42
					MIN	\$408.00
					SURCHARGE	\$15.60
					Balance Due	\$516.02

When staff asked the Company to explain the billing statement for Customer J, it responded that six apartments are served through a single three-quarter inch meter and Customer J is charged six base rates, water usage, and applicable surcharges. The Company failed to provide staff with a water service agreement or any detailed list of applicable charges for Customer J or any of its tenants.

In a telephone conversation, staff asked the Company if Customer J received a reduction in the six base rates charged if one or more of the apartments were vacant. The Company stated there is no way for the Company to know if there is a vacancy and, to the Company's knowledge, that Customer J has not asked for a reduction.

As part of its investigation, Staff discovered Customer J was not charged base rates or surcharges for the three commercial businesses, yet the businesses have water service and are served by the same single meter as the six apartments. Staff asked the Company to explain why Customer J is not charged base rates and surcharges for the three commercial businesses but is charged six base rates and surcharges for the apartment dwellers.

The Company initially told staff that it did not know if the commercial businesses had water service or not. Staff contacted one of the businesses and spoke with an employee who confirmed that the business has water service, including a sink and toilet. Customer J has confirmed with staff that the three commercial businesses in the complex are connected to water service.<sup>9</sup>

Staff had a follow-up telephone conversation with James Garrison and explained that the commercial businesses do have water service. Garrison stated the previous owner of Burton Water made a verbal agreement in the 1950s to not charge the commercial businesses for water service because each of the businesses provided a community service. According to the Company, this verbal agreement resulted in Customer J only being charged base rates,

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<sup>9</sup> See Attachment G for a copy of email from Customer J, dated June 9, 2020.

surcharges, and water usage for the six residential apartments' use of the water service. However, staff has determined that Customer J is also paying for the water usage of the three commercial businesses because the water usage of the commercial businesses and apartments are tracked through a single meter that does not distinguish between which of the two sets of users (commercial or apartment) is using water service. Staff asked for a copy of an agreement, but the Company again stated that the agreement was verbal and there is no written confirmation.

The Quartermaster Marina (Marina), owned by Polaris Development, LLC, shares a property line with Customer J on Vashon. There are three meters between them:

- Customer J's complex has a single master meter that serves six apartments and three commercial businesses,
- Quartermaster Marina has two meters:
  - one meter serves the Marina's business office, and
  - one meter serves the docks, including the liveaboards that are moored at the Marina.

In reviewing the billing statements for the Marina, staff found that the Marina is charged one base rate and water usage per month (and applicable surcharges) for the docks and one base rate and water usage per month (and applicable surcharges) for the business office.

On April 27, 2020, staff had a telephone conversation with Garrison and asked about the discrepancy of charging Customer J six base rates for the six apartments while not charging the Marina a base rate for each liveboard vessel located within the Marina. Garrison responded that there were no liveaboards. Staff told Garrison that the Marina advertises rates for liveaboards on its website. Garrison told staff that he has a contract with the Marina and that the Marina is not supposed to have liveaboards except for the caretaker. Staff asked Garrison for a copy of the contract and he said that he would email it.

On April 28, 2020, Garrison sent staff an email with an attached copy of the agreement. In the email, Garrison said he misspoke concerning liveboard vessels, but that the contract did address laundry and shower facilities and other items concerning limiting water usage.<sup>10</sup> The contract will be further discussed in the Special Contracts section of this report.

Staff contacted the Marina and spoke with the business manager, who stated the Marina has eight liveaboards that have been moored at the Marina for years. The Marina confirmed that the liveaboards have water service, including toilets, sinks, and showers. The Marina has 108 moorage slips and is allowed ten liveaboards based on Department of Natural Resources' regulations.

Burton Water's Tariff WN U-2, Rule 16 – Rates, states in part:

Where two or more families with separate housekeeping establishments occupy the same or separate dwellings, each family using water is considered a separate

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<sup>10</sup> See Attachment H for a copy of email to staff from the Company, dated April 28, 2020.

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.<sup>11</sup>

### **Findings**

Staff finds that Burton Water has demonstrated unreasonable preference by not charging base rates and surcharges for some customers and for not billing similarly situated customers consistently.

Staff finds that Burton Water has violated RCW 80.28.090 on three occasions by charging Customer J a base rate and surcharges for each of the six apartments served by the single meter while declining to charge a base rate and surcharges for the three commercial businesses served by the same meter.

Staff finds that Burton Water has violated RCW 80.28.100 by declining to charge the Marina a base rate and surcharge for each of the liveboards receiving water service, while charging Customer J a base rate and surcharge for each apartment receiving water service.

### **Recommendation**

Staff recommends that Burton Water be assessed a penalty of up to \$1,000 for each of its three violations of RCW 80.28.090 for showing an unreasonable preference by not charging Customer J base rates and surcharges for each of the three commercial business served by Customer J’s meter while charging Customer J base rates and surcharges for each of the apartments served by the same meter.

Staff also recommends that Burton Water be assessed a penalty of up to \$1,000 for one violation of RCW 80.28.100 for rate discrimination based on Burton Water declining to charge the Marina customer a base rate and surcharge for each of the eight liveboards receiving water service, while charging Customer J a base rate and surcharge for each apartment receiving water service.

Further, staff recommends that the commission order Burton Water to revise its tariff, Rule 16, to update its definition of customer to conform to the definitions of customer in WAC 480-110-245. The Company has knowledge of customers receiving water yet does not acknowledge them by issuing them billing statements and does not provide them with important notices such as rate changes.

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<sup>11</sup> Emphasis added.

Staff also recommends that the commission require Burton Water to update or remove the language concerning “the allowance for the minimum charge” included in Rule 16 of its tariff. Although Rule 16 references an allowance for a minimum charge, Schedule 2 of the Company’s tariff regarding metered service does not appear to provide for an allowance associated with the minimum charge. To prevent consumer confusion, the commission should order Burton Water to either remove the language regarding the “allowance for a minimum charge” or provide revised language that clarifies its intent and application.

### **Special Contract**

On April 28, 2020, Burton Water emailed staff a contract between the Company and Polaris Development, LLC, owner of Quartermaster Marina. WAC 480-80-143(1)(b) provides in part that a public service company (including a water company) must file with the commission all contracts for the retail sale of regulated utility services to end-use customers that contain conditions that do not conform to its existing tariff.

This particular contract, shown below, dated Nov. 1, 2005, and signed March 6, 2008, requires the Marina to shut off the water until the next billing cycle and notify Burton Water if it uses more than 2,500 cubic feet of water in a two-month billing period.

Burton Water’s tariff, Rule 4 states:

The 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 an increase, the customer is required to pay the utility’s regularly published rates for the increased service from the date of connection and the use of service.

After reviewing commission records, staff did not find any commission orders approving the Company’s special contract under circumstances other than those included in commission rules and the Company’s tariff.

This agreement is particularly concerning to staff because of item five (shown on following page) which allows the Company to require the Marina to restrict water usage to its customers without any formal notification.

AGREEMENT

Between

Polaris Development, LLC

and

Burton Water Company, Inc (BWC)

November 1, 2005

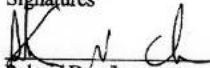
Regarding the Quartermaster Marina at Burton, Washington

Polaris agrees to

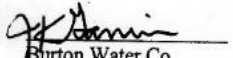
1. No increase in shower facilities.
2. No laundry facilities.
3. Make a salt water pump available for boat washdown.
4. Install a meter on the dock in a visible location for monitoring usage.
5. Water usage will not exceed 2500 cubic feet in a 2-month billing period.  
If usage since the last billing exceeds 2500 cu ft, marina will shut off the water until the next BWC meter reading, and notify BWC.
6. Construct a pump out station with salt water rinse.
7. Allow BWC to make an annual inspection of the above items.

BWC agrees to provide the marina with a water availability letter as required by King County.

Signatures

  
 Polaris Development

President      3/6/08  
 Position      Date

  
 Burton Water Co

President      3/6/08  
 Position      Date

**Findings**

Staff finds that Burton Water has violated WAC 480-80-143(1) by entering into a special contract with a customer that contains conditions that do not conform to its existing tariff and without requesting and receiving commission approval.

**Recommendation**

Staff recommends that Burton Water be assessed a penalty of up to \$1,000 for one violation of WAC 480-80-143(1) for entering into a special contract with a customer that contains conditions that do not conform to its existing tariff and without first requesting and receiving commission approval.

**Application for Service**

Staff requested Burton Water produce all applications for service within the timeframe of this investigation. Burton Water produced 12 "Water Service Application and Agreement" forms. Staff reviewed the applications and found that they lacked even the basic elements of a water service agreement.

WAC 480-110-325 requires a water company to obtain applications for service in writing, on company-supplied forms. WAC 480-110-325 also provides a list of requirements that the application form must contain, including, but not limited to, the type of service requested, a

complete list and description of all applicable charges, the date by which a customer can expect service, and signatures of the potential customer and a company representative.

### Findings

Staff finds that Burton Water violated WAC 480-110-325(1) on 12 occasions by failing to include the required information on each application for service. Specifically, each of the 12 applications for service reviewed by Staff did not contain the following elements:<sup>12</sup>

- Type of service requested, in violation of WAC 480-110-325(1)(d).
- A list of applicable charges, in violation of WAC 480-110-325(1)(f).
- The date the customer can expect to receive service, in violation of WAC 480-110-325(1)(g).
- A company representative’s signature, in violation of WAC 480-110-325(1)(i).

### Recommendation

Staff recommends that Burton Water be assessed up to \$1,000 for each of the 12 violations of WAC 480-110-325 for failing to include all required information on its applications for service.

### Form of Bills

Burton Water provided staff with copies of customer billing statements. Staff reviewed 50 billing statements that Burton Water sent to customers between January 2019 and January 2020. All 50 billing statements failed to identify and show each separate charge as a line item.

As shown below, Customer B’s billing statement for a two-month period simply lists the usage, “min,” and surcharge without any line item separating or describing the charges.

Meter	Read Date	Last Read	Prev. Read	Usage	Charge Name	Amount
USED	9/22/2019	13070	12030	1040	USED	\$31.72
					MIN	\$204.00
					SURCHARGE	\$7.80
					Balance Due	\$243.52

The company’s base rate charge is \$34, yet the minimum charge shown on Customer B’s billing statement is \$204, without a description of the charge. The description of the billing will be discussed further in the Ready-to-Serve section of this report.

### Findings

Staff finds that Burton Water has violated WAC 480-110-375(1)(c) on 50 occasions by issuing billing statements that fail to identify and show each separate charge as a line item.

### Recommendation

Staff recommends that Burton Water be assessed a penalty of up to \$100 for each of the 50

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<sup>12</sup> See Attachment I for redacted copies of water service applications and agreements submitted by the Company.

violations of WAC 480-110-375(1)(c) for failing to identify and show each separate charge as a line item on the customer bills.

### **Technical Assistance**

During this investigation staff found Burton Water advertised electronic billing on its website and provided six of its customers electronic billing statements without all the required elements and without sending a copy of the billing statement through the U.S. postal service. The Company stated it sent electronic billings at the request of the customer.

On Jan. 31, 2020, Burton Water filed a revision to the Company's tariff, Rule 11 regarding electronic billing, which became effective on March 6, 2020. The revision provides:

“If the utility offers the option of electronic statements and at such time as the Commission allows such use, at the option of the customer, bills will be sent by email in lieu of a hard copy by mail.”

As of the date of this report, the advertisement for an electronic billing option has been removed from the Company's website and the Company reports it is no longer sending electronic billing statements. On July 9, 2020, staff contacted two Burton Water customers who had been receiving email billing statements. One of the customers stated that they receive billing statements by email. The second customer stated that they had previously received billing statements exclusively by email but are now receiving an email and a billing statement through the U.S. mail.

The Company states it is aware that if it chooses to send electronic billing statements, it must also send a billing statement through the U.S. postal service and include all the elements required in WAC 480-110-375, until such time that electronic billing is authorized by the commission.

### **Ready-to-Serve Customers**

Staff requested Burton Water provide property maps of its service areas. The Company provided maps that show only one service connection installed on each property.<sup>13</sup> The Company stated that the water lines are of a sufficient size to install a second meter if requested and that most properties are served by a one-inch or larger connection.

Based on the information provided by the Company, and a subsequent staff site visit conducted on Jan. 22, 2020, two of the 11 identified properties with multiple residences on a single meter were found to have a second connection and are not included as part of this report. Nick Simmons, an employee of Burton Water, accompanied staff on the site visit.<sup>14</sup>

Staff requested and reviewed billing statements for the remaining nine properties with multiple residences served by one meter. As part of its review, Staff noted that, based on the Company's tariff rates, each of the bills sent to the nine properties appeared to contain “min” charges that

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<sup>13</sup> Company provided property maps available on request.

<sup>14</sup> Company provided Excel spreadsheet that listed ready-to-serve customers.

corresponded with multiple customers being billed within the same billing period. For example, Customer B’s billing statement for a two-month period contained the following charges:

<b>Meter</b>	<b>Read Date</b>	<b>Last Read</b>	<b>Prev. Read</b>	<b>Usage</b>	<b>Charge Name</b>	<b>Amount</b>
USED	9/22/2019	13070	12030	1040	USED	\$31.72
					MIN	\$204.00
					SURCHARGE	\$7.80
					Balance Due	\$243.52

Staff confirmed that Customer B’s property contains three households, one primary household (household one), which receives the bill from Burton Water, and two additional (non-billing) households (households two and three) located on the same property that also receive water service from Burton Water.

Staff asked the Company to explain the “min” charges shown on the billing statement. The Company stated the charges are a combination of a base rate charges and ready-to-serve charge(s).<sup>15</sup> Based on the Company’s explanation, staff has interpreted Customer B’s bill as follows:

- \$31.72 for water usage;
- \$68 base rate (\$34 per month for household one);
- \$136 ready-to-serve charges (\$34 per month for the non-billing households two and three), and;
- \$7.80 surcharge (\$1.30 per month for well field protection for all three households).

To reiterate, although charges for all three households are included in customer B’s billing statement, only household one receives a bill from Burton Water. The two non-billing households on Customer B’s billing statement are unknown to Burton Water other than the Company charging them ready-to-serve fees and surcharges. The Company does not maintain any record of service with the ready-to-serve customers, including water service agreements. Households two and three are established separate households and have water service.

Staff further determined that the nine bills it reviewed contained the following charges:

<b>Customer</b>	<b>City</b>	<b>Number of Ready-to-Serves (RTS) on a single connection</b>
A	Vashon, WA	1 Connection, 1 RTS
B	Vashon, WA	1 Connection, 2 RTS
C	Vashon, WA	1 Connection, 1 RTS
D	Vashon, WA	1 Connection, 1 RTS
E	Vashon, WA	1 Connection, 1 RTS
F	Vashon, WA	1 Connection, 1 RTS
G	Vashon, WA	1 Connection, 1 RTS

<sup>15</sup> The Company confirmed that this circumstance applies to all nine of the bills reviewed by staff.



Customer	City	Number of Ready-to-Serves (RTS) on a single connection
H	Vashon, WA	1 Connection, 1 RTS
I	Vashon, WA	1 Connection, 1 RTS

The Company does not have water service agreements with the ready-to-serve customers associated with Customers A – I. The Company also told staff that it does not know who the ready-to-serve customers are, whether the ready-to-serve customers receive water service, or whether the ready-to-serve customers occupy the households that are being charged ready-to-serve charges. The Company also has no way to determine the water usage for each separate household, because Customers A – I are each served through a single meter that cannot track the individual water usage of each household connected to the meter.

Burton Water’s Tariff, WN U-2 Schedule 3 Ready to Serve Service provides:

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.*<sup>16</sup>

As shown above, Burton Water’s tariff requires the Company to transfer a ready-to-serve customer to Schedule 2, Metered Service, when water service begins. All ten of the known ready-to-serve households have water service. Therefore, the ready-to-serve households should be considered individual customers under the definition of “customer” in Rule 16 of the Company’s tariff.<sup>17</sup>

Customer H told staff that he had installed a meter with the Company’s permission, but was told by the company it would not bill this “ready-to-serve” customer and that Customer H would be responsible for billing the customer for service and water usage, and collecting the fees. The customer is not currently monitoring the meter.

**Findings**

Staff finds that Burton Water improperly charged Customers A – I ready-to-serve charges relating to the non-billing households on their properties. Specifically, Burton Water has imposed a ready-to-serve charge without requiring a signed and approved water service

<sup>16</sup> Emphasis added.

<sup>17</sup> Rule 16 of Burton Water’s tariff states in relevant part “[e]ach separate housekeeping establishment or business, using water service, will each be considered a customer”

agreement contrary to the Company's tariff, and has charged ready-to-serve charges for non-billing households that are receiving water service contrary to the Company's tariff.

### **Recommendation**

Although staff finds that the Company has improperly charged customers ready-to-serve charges as described above, staff also notes that the minimum charge associated with ready-to-serve is identical to the minimum base charge associated with metered service under Schedule 2. That is, had Burton Water properly treated the ready-to-serve households as metered service customers, the customers' minimum charges would remain the same. Therefore, no refund is appropriate.

However, Staff finds that Burton Water's tariff has conflicting and confusing rules related to ready-to-serve customers. Rule 3 – Application and Agreement for Service, states that the customer's receipt of water service will be considered an agreement between the Company and the customer for water service. At the same time, Schedule 3 of the Company's tariff states that ready-to-serve charge is applicable "To any property owner who has completed (sic) 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." When read together, Rule 3 and Schedule 3 create potential confusion as to whether the Company may assess a ready-to-serve charge in the absence of a written and signed application for service.

Furthermore, 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.

Staff believes that these different tariff rules create confusion for customers as to whether Burton Water may assess a ready-to-serve charge against a customer in the absence of a written and signed application, and how a ready-to-serve charge should be applied in circumstances where 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 because non-billing customers may not have immediate access to specific information regarding the specific 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.

## **SUMMARY OF RECOMMENDATIONS**

### **Penalty**

Per the Enforcement Policy of the Washington Utilities and Transportation Commission, (Docket A-120061), staff considered the following factors in determining the appropriate recommended penalty amount for these violations:

- 1. How serious or harmful the violations are to the public.**

The violations are both serious and harmful to the public. Burton Water has failed to properly apply rates set by the Company and approved by the commission.

Burton Water reported to staff that it currently has 415 connections on its system, which includes the ready-to-serve connections and multiple customers served by one meter. These connections, which are not currently connected to the Company's system, are preventing new connections from being made. Burton Water employee, Nick Simmons, admitted there is currently a waiting list of applicants who have requested a service connection but cannot be served due to the system's capacity.

The Company has demonstrated an unreasonable rate preference and engaged in rate discrimination by not charging some established households or businesses for water service in the same manner that it charges similar households or businesses. Staff considers these violations very serious. Burton Water states the discrepancies are due to verbal agreements made by the Company's previous owner. The Company filed articles of incorporation in 1995 and has had ample time to adjust any unfair billing practices.

Customers are improperly billed for services such as ready-to-serve charges when all of the households on the customer's property are receiving water service. Once an established household is connected to water service, the Company is to charge rates listed in Schedule 2 of its tariff. These are silent customers and basically unknown to the Company. The Company could not produce an application for service, a water service agreement, or billing statement for these ready-to-serve households. The charges are placed on another customer's billing statement without separating the individual charges. These households do not know their rights and responsibilities as it relates to water service.

Additionally, charges on customer billing statements are not identified by line items and, therefore, customers are not provided enough information on their billing statements to be able to calculate the charges and would not be able to determine if the charges are, in fact, correct.

**2. Whether the violations were intentional.**

Staff believes the violations are intentional. The Company was provided technical assistance in 2015 regarding the billing of multiple units. The Company disagreed with the findings of the complaint at the time and failed to change its practices.

**3. Whether the Company self-reported the violations.**

The Company did not self-report any violations.

**4. Whether the Company was cooperative and responsive.**

Staff believes the Company was responsive to staff's requests for information.

**5. Whether the Company promptly corrected the violations and remedied the impacts.**

The Company received violations regarding billing practices, disagreed with the violations, and willfully ignored them. The Company has not corrected or remedied the violations.

6. **The number of violations and number of customers affected.**

Staff is not able to determine the full extent of the Company's irregular business practices. Many of the customers are "silent," meaning they are receiving water service but the Company has no record of them. There are no water service applications for these customers.

Staff reported violations that were found in the requested and reviewed documents related to this investigation. All of the Company's customers will have the same type of violations relating to the form of bills, which have likely been ongoing for a long period of time based on the Company's billing practices.

7. **The likelihood of recurrence.**

The likelihood of recurrence is certain. Staff has provided the Company with technical assistance, training, and guidance related to multiple customers receiving service from one meter, yet has failed to make the required changes. The Company is not in compliance with commission laws and rules nor is it in compliance with its own tariff.

8. **The Company's past performance regarding compliance, violations, and penalties.**

As noted above, the Company has received technical assistance, training, and guidance from commission staff yet has failed to make the required changes. The Company is not in compliance with commission laws and rules nor is it in compliance with its own tariff.

9. **The Company's existing compliance program.**

Staff is unaware of a compliance program in place at Burton Water.

10. **The size of the Company.**

Burton Water is a Class B regulated water company and reports serving 415 customers in Vashon, Washington. The Company reported a gross operating revenue of \$291,298 in 2019.

**Penalty Recommendation**

Staff recommends the commission issue a formal complaint against Burton Water and assess a penalty of up to \$22,000 for the following violations:

- Up to \$1,000 for each of the three violations of RCW 80.28.090 for engaging in unreasonable preference by granting commercial establishments an advantage by not charging the commercial establishments a base rate and surcharge for water service while charging other residential customers attached to the same meter a base rate and surcharge.
- Up to \$1,000 for one violation of RCW 80.28.100 for engaging in rate discrimination by charging one customer, served by one meter, a total of six base rates for six established households, while concurrently charging a similar customer served by one meter only one base rate despite the fact that eight households are served by the single meter.
- Up to \$1,000 for one violation of WAC 480-80-143 for entering into a special contract with a customer that contains conditions that do not conform to its existing tariff and without requesting and receiving commission approval.

- 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(1)(c) for failure to identify and show each separate charge as a line item on customer billing statements as required.

Staff also recommends that the commission require Burton Water to file tariff revisions (1) to align the definition of “customer” contained in Rule 16 with the definitions of “customer” in WAC 480-110-245, (2) to clarify the application of its ready-to-serve charge, and (3) to update or remove language contained in Rule 16 regarding an “allowance for the minimum charge” to clarify its intent and applicability.

### **Technical Assistance**

During this investigation staff found Burton Water advertised electronic billing on its website and provided six of its customers electronic billing statements without all the required elements and without sending a copy of the billing statement through the U.S. postal service. The Company stated it sent electronic billings at the customers’ request.

On Jan. 31, 2020, Burton Water filed a revision to the Company’s tariff, Rule 11 regarding electronic billing, which became effective on March 6, 2020. The revision provides:

“If the utility offers the option of electronic statements and at such time as the Commission allows such use, at the option of the customer, bills will be sent by email in lieu of a hard copy by mail.”

As of the date of this report, the advertisement for an electronic billing option has been removed from the Company’s website and the Company reports it is no longer sending electronic billing statements. On July 9, 2020, staff contacted two Burton Water customers who had been receiving email billing statements. One of the customers stated that they receive billing statements by email. The second customer stated that they had previously received billing statements exclusively by email but are now receiving an email and a billing statement through the U.S. mail.

The Company states it is aware that if it chooses to send electronic billing statements, it must also send a billing statement through the U.S. postal service and include all the elements required in WAC 480-110-375, until such time that electronic billing is authorized by the commission.