

1 **OFFICE OF THE HEARING EXAMINER**  
2 **CITY OF TACOMA**

3 **CR WOODMARK**  
4 **COMMUNITIES, LLC,**  
5 a Delaware limited liability company,

6 **Appellant,**

7 **v.**

8 **THE CITY OF TACOMA,** through  
its Department of Public Utilities,

9 **Respondent.**

**HEX NO. HEX2022-004**  
**(TPU Account Nos.**  
**#101167192 and 101266516)**

**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW,**  
**DECISION AND ORDER**

10 **THIS MATTER** came on for hearing before JEFF H. CAPELL, Hearing Examiner  
11 for the City of Tacoma (the “City”), on June 2, 2022.<sup>1</sup> Appellant CR Woodmark  
12 Communities, LLC (“Appellant” or “CRWC”) appeared *pro se* at the hearing through its  
13 purported representative Justin Parsons, an asset manager affiliated with the Appellant.<sup>2</sup> Rose  
14 Manos, a property manager for the Appellant, was also present. Tacoma Public Utilities  
15 (“TPU”) was represented by May Chin, Customer Accounts Supervisor, and John Hoffman,  
16 Customer Services Assistant Manager. TPU also appeared *pro se*.

17 Parsons and Manos testified on behalf of the Appellant. Chin and Hoffman testified  
18 for Respondent, TPU.<sup>3</sup> All testimony was taken under oath and penalty of perjury. Exhibits  
19 were admitted and reviewed, with the hearing record kept open until June 8, 2022 for the  
20

21 <sup>1</sup> At the parties’ election, and due to continuing pandemic-related restrictions, the hearing was conducted over the internet using Zoom conferencing at no cost, with participation available by both video and telephone.

<sup>2</sup> Parsons testified that he was authorized to represent CRWC, by Dan Gabriel. Gabriel does appear to be an officer for a parent entity of CRWC. The Examiner requested a notarized statement from Gabriel be submitted post hearing confirming that CRWC had appointed Parsons to represent it at the hearing. Nothing was submitted.

<sup>3</sup> After first introduction, parties and witnesses are referred to by last name only.

**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW,**  
**DECISION AND ORDER**

1 parties to submit some additional documentation requested by the Examiner.<sup>4</sup> Based upon the  
2 evidence presented, the Hearing Examiner makes the following:

3 **FINDINGS OF FACT**<sup>5</sup>

4 1. This appeal concerns the provision of water utility services under TPU account  
5 numbers 101167192 and 101266516 (collectively the “Subject Accounts”) to the Woodmark  
6 Apartments, real property the Appellant owns in the city of Tacoma at 2425 96th Street  
7 South, Tacoma, WA 98444-1758 (the “Subject Property”). The Subject Property is a multi-  
8 unit apartment complex that offers tenancies to reduced income tenants. Tenants of the  
9 Subject Property do not pay for their water service separately and do not have individual  
10 service initiated in their names. All utility billing for the Subject Property is supposed to be in  
11 Appellant’s name. *Parsons Testimony, Manos Testimony, Chin Testimony; Exs. R-1~R-5.*

12 2. Pierce County Assessor records show that CRWC became an owner of the  
13 Subject Property on December 9, 2019.<sup>6</sup> According to testimony from both the Appellant and  
14 TPU, TPU failed to change the utility customer information for account number 101266516  
15 after this change of ownership took place, even though TPU was contacted on or around  
16 January 29, 2020, and requested to have all accounts for the Subject Property changed into

17 \_\_\_\_\_  
18 <sup>4</sup> The Examiner requested that TPU submit a policy it referenced during the hearing regarding installment  
19 payments for back billed utilities. TPU submitted (1) the City Council Meeting Minutes from February 8, 2022,  
20 (2) an undated “Payment Assistance” informational update regarding “past due balances and service  
21 disconnections” that arose during the pandemic’s moratorium on disconnections, and (3) TPU’s entire 25 page  
“Customer Service Procedures” document. These are addressed below at Conclusion of Law 10.

The Appellant was asked to submit a notarized appointment of authority, as referenced in footnote 2 above, as well as a proposed repayment plan. Appellant made no responsive submissions.

Both parties were given the opportunity to submit authorities regarding the issue of hearing examiner authority to reduce or waive valid charges that were not billed in the utility’s usual fashion, but are rather back billed after accumulation. Neither party submitted any authority on that issue.

<sup>5</sup> The facts in this appeal are not in dispute. These findings are presented as contextual background to the decision rendered herein.

<sup>6</sup> <https://atip.piercecountywa.gov/app/propertyDetail/0320314088/sales>. Testimony at the hearing was somewhat inconclusive as to when the change in ownership happened.

1 Appellant’s name. As a result, Appellant was not getting billed for water service for the part  
2 of the Subject Property under account number 101266516 for an extended period. *Parsons*  
3 *Testimony, Manos Testimony, Chin Testimony, Hoffman Testimony; Exs. R-1~R-5, Ex. A-1.*

4 3. In July of 2020, a new tenant at the Subject Property mistakenly contacted TPU  
5 to have water service connected to her unit, apparently thinking that she, rather than the  
6 Appellant, was responsible for water service to her apartment. Unfortunately, TPU mistakenly  
7 attempted to oblige this tenant somehow, and that mistake led to account number 101167192  
8 not getting billed to the Appellant and paid on time for over a year (from July 2020 to  
9 December 2021, *Ex. R-3*). *Id.*

10 4. In March of 2022, TPU discovered through an “open balances audit” that the  
11 Subject Accounts had not been paid for extended periods. Upon making this discovery, TPU  
12 contacted Appellant’s representatives and began a conversation regarding the outstanding  
13 balances and back billing therefor. *Ex. A-1, Ex. R-1, Ex. R-2.*

14 5. The outstanding amount for account number 101266516 presently stands at  
15 \$81,177.65. The outstanding amount for account number 101167192 is presently \$12,123.75,  
16 bringing the total back billed amount for water services from TPU to the Appellant to  
17 \$93,301.40 (the “Outstanding Amount”).<sup>7</sup>

18 6. During the conversation between the Appellant and TPU regarding the  
19 Outstanding Amount, TPU conceded that “Both incidents were errors on the part of TPU  
20 staff...” and TPU apologized “for the missteps.” This acknowledgment and the apology were  
21 reiterated at the hearing. *Ex. A-1; Chin Testimony, Hoffman Testimony.*

---

<sup>7</sup> Post hearing these amounts have increased slightly due to the passage of another billing cycle.

1           7.    TPU stated in an email to the Appellant dated May 11, 2022, that “Washington  
2 State Constitution Article VIII, Section 7 [requires TPU] ‘to bill it’s [sic] customers whenever  
3 an under-billing occurs to prevent a gift of public funds from a public utility.’ As a result,  
4 both invoices are due.” TPU maintained this position at the hearing, but stated that the  
5 Outstanding Amount could be paid over a 24 month period. TPU testified that it thought 24  
6 months was as far as it could extend the repayment period due to TPU policy.<sup>8</sup> *Id.*

7           8.    For its part, Appellant does not challenge the Outstanding Amount for accuracy,  
8 but rather requested a “more fair outcome” than being billed all-at-once for a large  
9 accumulated amount that it views as a hardship. Appellant’s requested “fairer outcome”  
10 seemed to indicate that it wants a reduction or waiver applied to the Outstanding Amount due  
11 to TPU’s failure to bill on time for an extended period. *Parsons Testimony.*

12           9.    Appellant testified (a) that there are multiple meters and accounts for water  
13 service at the Subject Property, (b) that keeping track of them all is difficult, and (c) that  
14 Appellant’s not being billed for the Subject Accounts was overlooked in the overall mix of  
15 managing the Subject Property. Appellant conceded that, had TPU been billing for the Subject  
16 Accounts on time, Appellant would have had to pay the amounts that now comprise the  
17 Outstanding Amount on a monthly or bi-monthly basis according to TPU’s normal billing  
18 schedule. TPU agreed that no late charges, interest or other penalties should attach to the  
19 Outstanding Amount due to TPU’s failure to bill on time. *Parsons Testimony, Manos*  
20 *Testimony, Chin Testimony, Hoffman Testimony.*

21           10. Any conclusion of law herein which may be more properly deemed or

---

<sup>8</sup> The Examiner held the record open for TPU to submit the referenced policy. TPU submitted the items set forth in footnote 4.

1 considered a finding of fact is hereby adopted as such.

2 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the  
3 following:

4 **CONCLUSIONS OF LAW**

5 1. The Hearing Examiner has jurisdiction over the parties and the subject matter of this  
6 appeal pursuant to Tacoma Municipal Code (“TMC”) 1.23.050.B.21 as a “[d]ispute[ ] concerning  
7 utility service...”

8 2. The Hearing Examiner’s review of this matter is *de novo*. *TMC 1.23.060*.

9 3. The Appellant bears the burden of proof to establish, by a preponderance of the  
10 evidence, that its claim is consistent with applicable legal standards, and that the lower  
11 decision should be reversed. *TMC 1.23.070.C*. Here TPU’s back billing for the entirety of the  
12 Outstanding Amount is the lower decision being challenged. As stated above (*FoF 8*),<sup>9</sup>  
13 Appellant does not challenge the accuracy of the Outstanding Amount, but rather seeks relief  
14 from having to pay it in its entirety due to TPU’s failure to bill timely in its usual manner, and  
15 instead back billing for an accumulated sum.

16 4. “Preponderance of the evidence” means that the trier of fact is convinced that it  
17 is more probable than not that the fact(s) at issue is/are true, or that “[t]he proposition on  
18 which that party has the burden of proof is more probably true than not true.”<sup>10</sup> Here, that  
19 proposition is whether the essentially undisputed facts, against the backdrop of applicable  
20 laws, require or even allow the Examiner to waive, reduce or otherwise alter the Outstanding  
21

---

<sup>9</sup> FoF stands for “Finding of Fact.”

<sup>10</sup> *Spivey v. City of Bellevue*, 187 Wn.2d 716, 733, 389 P.3d 504, 511~512 (2017); *State v. Paul*, 64 Wn. App. 801, 807, 828 P.2d 594 (1992).

1 Amount. This question is primarily a legal one, but its determination must be made against  
2 the established facts as they relate to the law.

3 5. The preponderance of the evidence standard is at the low end of the spectrum for  
4 burden-of-proof evidentiary standards in the U.S. legal system, and is not particularly difficult  
5 to meet.<sup>11</sup>

6 6. TPU, as a municipal utility, is generally obligated by law to bill the cost of utility  
7 services provided.<sup>12</sup> The foregoing notwithstanding, “A municipal corporation has inherent  
8 power to enter into a compromise settlement of disputed claims, arising out of a subject  
9 matter concerning which the municipality has the general power to contract.”<sup>13</sup> TPU’s  
10 provision of utilities to its customers is a contractual relationship in which TPU agrees to  
11 provide utility service for specified payment from the named customer. In this appeal,  
12 however, there is no dispute over the accuracy of the Outstanding Amount. Rather, the  
13 Appellant seeks a waiver or adjustment of the Outstanding Amount due to TPU’s late billing.

14 7. In the absence of authority to the contrary,<sup>14</sup> the *Housing Authority* case just  
15 cited appears to control the issue here. In *Housing Authority*, the Housing Authority of King  
16 County had been billed incorrectly low for utilities for four years. The under billing was the

---

18 <sup>11</sup> *In re Custody of C.C.M.*, 149 Wn. App. 184, 202-203, 202 P.3d 971, 980 (2009). Another somewhat recent case  
19 referred to it thusly: “The lowest legal standard of proof [in the U.S. legal system] requires the proponent to prove  
its case by a preponderance of the evidence.” *Mansour v. King County*, 131 Wn. App. 255, 266, 128 P.3d 1241,  
1246-1247 (2006).

20 <sup>12</sup> See, e.g., RCW 35.92.010, RCW 80.28.080; TMC 12.06.110, and .160; *Housing Auth. v. Sewer and Water  
District*, 56 Wn. App. 589, 784 P.2d 1284 (1990).

21 <sup>13</sup> *Warburton v. Tacoma Sch. Dist.*, 55 Wn.2d 746, 752, 350 P.2d 161 (1960), citing *Abrams v. Seattle*, 173 Wash.  
495, 502, 23 P.2d 869 (1933), and *Christie v. Port of Olympia*, 27 Wn.2d 534, 179 P.2d 294 (1947). See also  
*Eugster v. City of Spokane*, 139 Wn. App. 21, 31-32, 156 P.3d 912, 918 (2007) (*A good faith settlement of a  
dispute is sufficient consideration, absent any actual donative intent, to not be a violation of the constitutional  
prohibition on gifting public funds.*).

<sup>14</sup> Again, the Examiner gave both parties the opportunity to submit authorities on this point, but none were  
received.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION AND ORDER**

1 result of the utility's failure to change the rate classification of an apartment building owned  
2 by the housing authority after construction of the apartment building was completed. When  
3 the deficit was discovered, it was back billed and the back billing was upheld. The court  
4 concluded that the utility was obligated to collect moneys owed it, and that the back billing  
5 could not be estopped from collection even if the utility had been negligent in under billing  
6 the customer.<sup>15</sup> The foregoing authority is directly on point here. The Appellant submitted no  
7 contrary authority.

8 8. Given the foregoing legal authority, Appellant's plea for a fairer outcome than  
9 having to pay the entire Outstanding Amount becomes essentially a request in equity. Equity  
10 is based on a set of common law principles established over time that allow judges to apply a  
11 level of fairness and equality to a given case if the facts support doing so. The most applicable  
12 equitable principle here might be estoppel, and would be applied to rule that TPU was  
13 estopped, or prevented from collecting the entirety of the Outstanding Amount because of its  
14 error and late billing. Washington case law has indicated, however, that hearing examiners do  
15 not have the authority to engage equitable principles in their decisions.<sup>16</sup>

16 9. As a result, the Examiner concludes that the Outstanding Amount is due and  
17 owing from CRWC to TPU in accordance with the *Housing Authority* case and without  
18 modification because the Examiner has no authority to modify the Outstanding Amount based  
19 on equity. No interest, late fees or other penalties should attach to the Outstanding Amount  
20 due to TPU's error in billing, however, and TPU does not seek these in any event.

21  

---

<sup>15</sup> 56 Wn. App. at 595.

<sup>16</sup> *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 638-640, 689 P.2d 1084 (1984)(*hearing examiner had no authority to consider equitable issues and equitable estoppel in particular*).

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION AND ORDER**

1           10. In regard to a repayment period for the Outstanding Amount, the Examiner  
2 asked for authority from TPU for its prehearing offer (and limitation) to allow Appellant 24  
3 months to repay the Outstanding Amount. Much of what TPU submitted had more to do with  
4 catch up utility payments arising from the COVID-19 pandemic and the City Council's  
5 moratorium on utility disconnections than it did the facts of this case. Nonetheless, Appellant  
6 did not submit any alternative payment plan, and then by email dated June 8, 2022, stated that  
7 "CR Woodmark accepts TPU's original payment plan offering for both accounts." As a result,  
8 the timing of paying the Outstanding Amount is no longer at issue.

9           11. Any finding of fact herein which may be more properly deemed or considered a  
10 conclusion of law is hereby adopted as such.

11           Based upon the foregoing Findings of Fact and Conclusions of Law the Hearing  
12 Examiner makes the following:

13   **DECISION AND ORDER**

14           The Appellant's appeal is DENIED. TPU is required by law, in the absence of a valid  
15 dispute as to amount, to collect the money owed, and the Examiner is without any authority to  
16 waive or reduce the same.

17           The Outstanding Amount shall be paid over 24 months' time starting 30 days from the  
18 date of this Decision and shall be payable without interest, late fees or other penalty.

19           **DATED** this 14th day of June, 2022.

20  
21     
  \_\_\_\_\_ **JEFF H. CAPELL, Hearing Examiner**



1 **NOTICE**

2 **RECONSIDERATION/APPEAL OF EXAMINER'S DECISION**

3 **RECONSIDERATION:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter, or  
5 as otherwise provided by law, may file a motion with the Office of the Hearing Examiner  
6 requesting reconsideration of a decision or recommendation entered by the Examiner. A  
7 motion for reconsideration must be in writing and must set forth the alleged errors of  
8 procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14  
9 calendar days of the issuance of the Examiner's decision/recommendation, not counting the  
10 day of issuance of the decision/recommendation. If the last day for filing the motion for  
11 reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next  
12 working day. The requirements set forth herein regarding the time limits for filing of motions  
13 for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for  
14 reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set  
15 forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole  
16 discretion of the Examiner to determine whether an opportunity shall be given to other parties  
17 for response to a motion for reconsideration. The Examiner, after a review of the matter, shall  
18 take such further action as he/she deems appropriate, which may include the issuance of a  
19 revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

11 **APPEAL OF EXAMINER'S DECISION TO MUNICIPAL COURT:**

12 **NOTICE**

13 Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing  
14 Examiner's decision may be appealable to Tacoma Municipal Court. Any court action to set  
15 aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner likely will  
16 need to be commenced within 21 days of the entering of the decision by the Examiner, unless  
17 otherwise provided by statute.

18  
19  
20  
21  
**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION AND ORDER**