

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

HARRISON-RAY WATER COMPANY,

Respondent.

DOCKET UW-180885
(*Consolidated*)

ORDER 04

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

HARRISON WATER
COMPANY/KIONA, LLC,

Respondent.

DOCKET UW-190311
(*Consolidated*)

ORDER 04

APPROVING SETTLEMENT
AGREEMENT

BACKGROUND

Procedural History

- 1 On May 1, 2019, the Washington Utilities and Transportation Commission (Commission) entered Order 01, Order of Consolidation, Complaint for Penalties, and Notice of Prehearing Conference (Order 01) in the above-captioned dockets. Order 01 alleged that Harrison-Ray Water Company, Inc., (Harrison-Ray) committed 915 violations of state

laws and Commission rules and that Harrison Water Company/Kiona, LLC, (Harrison/Kiona)¹ committed 571 violations of state laws and Commission rules.

2 The Commission convened a prehearing conference on June 12, 2019, and subsequently entered Order 02 in these consolidated dockets, setting an evidentiary hearing on the alleged violations for July 25, 2019. On June 28, 2019, Commission staff (Staff) filed a settlement agreement (Settlement Agreement) and narrative on behalf of Staff and the Harrison Companies, noting that the Public Counsel Unit of the Washington State Attorney's General's Office (Public Counsel) had not joined the settlement. Staff, the Harrison Companies, and Public Counsel jointly requested the cancellation of the evidentiary hearing in the proceeding and requested that a decision be rendered on the basis of testimony filed. On July 8, 2019, the Commission canceled the July 25, 2019, evidentiary hearing.

3 On July 12, 2019, Public Counsel file the testimony of Carla Colamonici in opposition to the Settlement Agreement. Staff filed Bridgit Feeser's rebuttal testimony to Public Counsel's response on July 25, 2019.

Evidence

4 The Harrison Companies are owned by William "Tom" Harrison and are operated out of Mr. Harrison's Pasco, Washington home. While the Harrison Companies are organized as separate business entities, they are managed as a single business. Harrison-Ray serves 242 customers in Walla Walla County, and Harrison/Kiona serves 213 customers in Benton County.

5 The factual background on the initial complaints against the Harrison Companies and resulting Staff investigation are described in Order 01. In summary, the impetus for the investigation was more than 20 informal complaints concerning the Harrison Companies filed with the Commission between August 3, 2017, and February 20, 2018. Staff met with Mr. Harrison to provide technical assistance in April 2018, and Mr. Harrison subsequently notified Staff that he had temporarily engaged the Harrison Companies' accountant to respond to complaints.

6 The following Harrison-Ray violations are at issue in this proceeding:

1. 19 violations of RCW 80.28.280, published rates to be charged;

¹ Together, the "Harrison Companies."

2. 253 violations of WAC 480-110-315, availability of information;
3. 266 violations of WAC 480-110-325, application for service;
4. 1 violation of WAC 480-110-355(3), required notice prior to disconnecting service;
5. 19 violations of WAC 480-110-375, form of bills; and
6. 357 violations of WAC 480-110-385, complaints and disputes.

7 The following Harrison/Kiona violations are at issue in this proceeding:

1. 8 violations of RCW 80.28.080, published rates to be charged;
2. 221 violations of WAC 480-110-315, availability of information;
3. 1 violation of WAC 480-110-325, application for service;
4. 1 violation of WAC 480-110-355(3), required notice prior to disconnecting service;
5. 14 violations of WAC 480-110-375, form of bills;
6. 325 violations of WAC 480-110-385, complaints and disputes; and
7. 1 violation of WAC 480-110-485, retaining and preserving records and reports.

8 Under RCW 80.04.380, the Commission may penalize a public service company, which includes water companies, up to \$1,000 for each and every offense under Title 80 RCW. In its investigation report, Staff recommended a penalty of up to \$46,100 for Harrison-Ray² and up to \$30,460³ for Harrison/Kiona.

9 The penalties established under the Settlement Agreement are well below those authorized by law or those recommended by Staff in its April 2019 Investigation Report. Under the Settlement Agreement, Harrison-Ray admits to the violations alleged in Order 01 and agrees to pay a penalty of \$11,525 in installments over two years; Harrison-Ray

² Investigation Report, Dockets UW-180885, UW-190311 at 3.

³ *Id.* at 4.

also agrees to be liable for suspended penalties of \$11,525, which are to remain suspended as long as Harrison-Ray complies with certain commitments described in the Settlement Agreement.⁴ The suspended penalties will be mitigated to zero if Harrison-Ray complies with the commitments for two years; however, if Harrison-Ray fails to comply with any of the commitments during the suspension period, the suspended penalties become due and payable immediately.⁵

10 Similarly, under the Settlement Agreement, Harrison/Kiona admits to the violations alleged in Order 01 and agrees to pay a penalty of \$7,615 in installments over two years. Harrison/Kiona also agrees to be liable for suspended penalties of \$7,615, which are to remain suspended as long as Harrison/Kiona complies for two years with the commitments described in the Settlement Agreement. If Harrison/Kiona complies with the commitments for two years, the suspended penalties will be mitigated to zero; however, if Harrison/Kiona fails to comply with any of the commitments during the suspension period, the suspended penalties become due and payable immediately.

11 Under Staff and the Harrison Companies' joint proposed payment plan, the Harrison Companies must pay their penalties in equal monthly installments for two years, starting on the first of the month following 10 days after this initial order becomes final by operation of law.⁶

12 The Settlement Agreement requires both Harrison Companies to comply with the six commitments summarized below:⁷

1. Make timely payments on the two-year payment plan.
2. Retain a Qualified Office Manager for two years following approval of the Settlement Agreement.
3. Promptly report to the Commission any staffing changes, including of an independent contractor, for two years following approval of the Settlement Agreement.

⁴ Settlement Agreement at ¶¶ 11-12.

⁵ *Id.* at ¶¶ 13-14.

⁶ BR-1.

⁷ *See* Settlement Agreement at 4-5.

4. Ensure that the Harrison Companies' "Qualified Office Manager"⁸ attends a one-session training provided by Staff on Tuesday, September 17, 2019.
5. Ensure that Mr. Harrison attends a one-session training provided by Staff on Tuesday, September 17, 2019.
6. Provide a copy of customer complaint records retained for the Harrison Companies, as well as any supporting materials, to Staff every six months.

13 Staff and the Harrison Companies agree that the following four acts violate the Settlement Agreement and would cause the suspended penalties to become due immediately:

1. Failure to make a penalty payment on the appropriate date;
2. Failure to retain a Qualified Office Manager;
3. Failure to immediately inform the Commission of a staffing change at the Harrison Companies; and
4. Failure by the Qualified Office Manager or by Tom Harrison to attend the training session.

14 The Settlement Agreement includes a term stating that the Commission will retain the suspended status of the formal complaints in Dockets UW-180081 and UW-180144 - 180151 filed by the customers of Harrison-Ray and Harrison/Kiona, respectively, for up to two years following the approval of the Settlement Agreement. Also, Staff and the Harrison Companies agree that the Settlement Agreement does not preclude any investigation or enforcement that Staff might undertake during or after the suspension period.

15 Finally, the Settlement Agreement contains a sale term, which is the primary basis of Public Counsel's opposition to the Settlement Agreement. The parties note in the preliminary recitals of the Settlement Agreement that Mr. Harrison intends to sell each of the Harrison Companies; he would like to secure a buyer for Harrison-Ray as soon as possible, and he would like to sell Harrison/Kiona after construction of the development

⁸ The Settlement Agreement details the minimum job duties of the Qualified Office Manager in paragraph 21: (1) send customers accurate bills, on time; (2) handle regulatory compliance and reporting requirements; (3) coordinate and schedule meter reading; (4) make a record of customer complaints and retain the complaints.

it serves has been completed, which he estimates will occur in approximately two years. Thus, the sale term provides that, if the Commission approves a sale or other transfer of control by Mr. Harrison, and if the transfer is consummated before the end of the two-year suspension period, the outstanding portion of the penalty imposed on the transferred company will be mitigated in full. Ms. Feeser confirms in her rebuttal testimony that the penalty mitigation would only occur “once ownership of a company had been fully and legally transferred,”⁹ that is, after Commission approval of the transfer.

- 16 Public Counsel agrees with all but two terms of the Settlement Agreement. First, Public Counsel supports reporting customer complaints to Staff every six months, but states that a report should be provided to Public Counsel as well as Staff.
- 17 Second—and of greater concern—Public Counsel does not agree with the inclusion of the sale term in the Settlement Agreement. In arguing against the sale term, Public Counsel notes the high number of violations at issue in this case, as well as Staff’s initial—much higher—penalty recommendation. Stating that the violations “resulted in customer harm, substandard customer service, and infringement of vital consumer protections,”¹⁰ Public Counsel asserts that the Harrison Companies “should be held accountable even in the event of sale or transfer.”¹¹

DISCUSSION

- 18 The Commission reviews settlement agreements “to determine whether they comply with applicable legal requirements and whether approval of the agreements is consistent with the public interest,”¹² and approves a settlement “if it is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission.”¹³ We find that the Settlement Agreement complies with the Commission’s requirements for settlement agreements, is supported by an adequate record in the proceeding, and is in the public interest. Accordingly, we approve the Settlement Agreement without condition.
- 19 We agree with all of the parties that the Settlement Agreement’s penalties are appropriate. While less than the maximum penalties authorized by statute, the total

⁹ BF-1T at 5:2.

¹⁰ CAC-1T at 11:1-2.

¹¹ *Id.* at 12:6-7.

¹² WAC 480-07-740.

¹³ WAC 480-07-750

penalty amount relative to the size of the Harrison Companies is sufficiently punitive to discourage future violations of the Commission's regulations.

- 20 The commitments required under the Settlement Agreement appear to be necessary, given the Harrison Companies' poor compliance history. The commitments are also sufficient: an adequately trained Qualified Office Manager, and Mr. Harrison's additional training, should provide the Harrison Companies with adequate resources to provide responsive, lawful, and accurate service, given the Harrison Companies' relatively small size. Moreover, the provision of customer complaint records to Staff allows for efficient oversight of compliance.
- 21 Regarding Public Counsel's request that the Harrison Companies provide it with a copy of the biannual customer complaint reports that Staff will receive, Staff states that it does not object to making the complaint records available to Public Counsel.¹⁴ We therefore do not find it necessary to modify the Settlement Agreement in order to satisfy Public Counsel's request. Making these documents available to Public Counsel, as Staff agrees to do, does not alter the terms of the settlement, because once the Harrison Companies provide these documents to Staff, they are accessible to the public, in redacted form, through a public records request.¹⁵ Because Mr. Harrison is not being deprived of a right granted under the Settlement Agreement or otherwise under law by making these records available to Public Counsel, no modification of the Settlement Agreement is necessary to satisfy Public Counsel's request for access to the customer complaint reports.¹⁶
- 22 We find that continued suspension of the formal complaints against the Harrison Companies, individually, in Dockets UW-180081 and UW-180144 through 180151 is appropriate in the context of the resolution of these consolidated proceedings. The terms of the Settlement Agreement, if adhered to, will remedy each of the issues identified in the formal complaints.
- 23 We find that the sale term, providing for mitigation of relevant penalties upon transfer of one of the Harrison Companies, is in the public interest. The Settlement Agreement notes Mr. Harrison's desire to exit the water business, and the public interest is best served when public service companies are managed by individuals motivated to provide

¹⁴ BF-1T at 9:9-10.

¹⁵ See generally RCW 42.56, Public Records Act.

¹⁶ Public Counsel's request is substantially satisfied because there is little difference between being provided the documents from the Harrison Companies directly or having them made available by Staff.

responsive customer service and maintain accurate records. We acknowledge that there are a high number of violations, especially relative to the size of the Harrison Companies, and, as Public Counsel notes, customers were harmed by the mismanagement of the customer-service side of the Harrison Companies. This provides all the more reason to encourage the transfer of the Harrison Companies to a less “overwhelmed,”¹⁷ and more motivated and customer service-oriented owner. This penalty mitigation term provides such encouragement. Sale of a company is more viable when the company is unsaddled by penalties incurred due to previous violations.

24 Certainly, though, accountability for previous wrongs is an important aspect of the Commission’s enforcement policy. We find that the penalty mitigation term adequately provides for accountability, particularly in light of Staff’s and the Harrison Companies’ proposed payment plan, which we approve. The proposed payment plan requires the Harrison Companies to make “equal monthly installments for two years, starting on the first of the month following 10 days after entry of a final order or 10 days after an initial order becomes final by operation of law.”¹⁸ The sale term, meanwhile, provides for mitigation of penalties applicable to Harrison-Ray or Harrison/Kiona only upon the consummation of a transfer of the relevant company. Thus, the record, including the payment plan, support the adequacy of the sale term in making the Harrison Companies accountable for previous violations. We would not, for example, have approved the Settlement Agreement had the payment plan allowed Mr. Harrison to forgo payments in the first year of the two-year penalty suspension period, which would have allowed for the possibility of an inexpedient transfer of a company before any penalties were paid.¹⁹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 25 (1) The Commission is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including water companies, under Title 80 of the Revised Code of Washington (RCW).
- 26 (2) Harrison-Ray is a water company subject to regulation by the Commission under Title 80 RCW.

¹⁷ See Investigation Report at 8.

¹⁸ BR-1.

¹⁹ As of the date of this order, Mr. Harrison has yet to pay a \$5,000 penalty that was due on July 30, 2019, in Docket UW-180886, in regard to another water company owned by Mr. Harrison, Sunrise Acres Water Services, LLC.

- 27 (3) Harrison/Kiona is a water company subject to regulation by the Commission under Title 80 RCW.
- 28 (4) The Settlement Agreement filed by Staff and Harrison-Ray and Harrison/Kiona is lawful, supported by an appropriate record, consistent with the public interest, and should be approved without condition.
- 29 (5) The payment plan proposed by Commission Staff and Harrison-Ray Water Company, Inc., and Harrison Water Company/Kiona, LLC, should be approved.

ORDER

THE COMMISSION ORDERS THAT:

- 30 (1) The Settlement Agreement is approved without conditions, 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.
- 31 (2) Harrison-Ray Water Company, Inc., is assessed a penalty of \$11,525. An additional penalty of \$11,525 is suspended for a period of two years from the effective date of this Order, and is waived thereafter, provided that Harrison-Ray Water Company, Inc., does not violate the terms of the Settlement Agreement.
- 32 (3) Harrison Water Company/Kiona, LLC, is assessed a penalty of \$7,615. An additional \$7,615 penalty is suspended for a period of two years from the effective date of this Order, and is waived thereafter, provided that Harrison Water Company/Kiona, LLC, does not violate the terms of the Settlement Agreement.
- 33 (4) The payment plan proposed by Commission Staff and Harrison-Ray Water Company, Inc., and Harrison Water Company/Kiona, LLC, is approved.

- 34 (5) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Lacey, Washington, and effective August 26, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Nelli Doroshkin

NELLI DOROSHKIN

Administrative Law Judge

NOTICE TO THE 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).