

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

HARRISON-RAY WATER COMPANY,

Respondent.

DOCKET UW-180885
(*Consolidated*)

NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

HARRISON WATER COMPANY/KIONA, LLC,

Respondent.

DOCKET UW-190311
(*Consolidated*)

I. INTRODUCTION

1 This Narrative Supporting Settlement Agreement (Narrative) is filed pursuant to WAC 480-07-740(3) on behalf of Harrison-Ray Water Company (Harrison-Ray), Harrison Water Company/Kiona, LLC (Harrison/Kiona), and the Staff of the Washington Utilities and Transportation Commission (Commission) (collectively, “the Parties”). Both parties have signed the settlement agreement (Agreement), which is being filed concurrently with this Narrative. This Narrative summarizes the Agreement. It is not intended to modify any terms of the Agreement.

II. PROPOSALS FOR REVIEW PROCEDURE

2 In accordance with WAC 480-07-740, the Parties propose the following settlement consideration procedure for review of the proposed Agreement. The Parties believe that this matter is a “less complex matter” pursuant to WAC 480-07-740(2)(b). The matter is an enforcement proceeding of a routine nature involving allegations of violations of laws and rules enforced by the Commission and a request for penalties based on the alleged violations. Accordingly, the Parties submit that a hearing on the proposed settlement will not be necessary for the Commission to decide whether to adopt the settlement.

3 In keeping with WAC 480-07-740(3)(b), the Parties are prepared to present one or more witnesses each to testify in support of the proposal and answer questions concerning the Agreement’s details, and its costs and benefits, should such testimony be required. In addition, counsel for Staff is available to respond to any questions regarding legal matters associated with the proposed settlement or any other questions concerning the proposal that the Commission may have.

4 Because this settlement is not an all-party settlement, the Parties recognize that the Public Counsel Unit of the Office of the Attorney General of Washington (Public Counsel) has rights under WAC 480-07-740(c) to challenge the Agreement. It is the understanding of the Parties that Public Counsel disputes only Section III.F. and agrees with the Parties that the dispute may be presented to the Commission on a paper record for resolution. Accordingly, the Parties file this Narrative in support of the Agreement and intend to file a written reply to any filing that Public Counsel may make in response to this Narrative. If the Commission requires supporting documents beyond the proposed filings and the other documents on file in this docket, the Parties commit to providing documentation as directed.

III. SCOPE OF THE UNDERLYING DISPUTE

5 The underlying dispute concerns a complaint for penalties that Commission Staff
(Staff) filed with the Commission against Harrison-Ray and Harrison/Kiona (collectively,
the “Companies”; individually, the “Company”) on May 1, 2019. The complaint alleged 915
violations of state laws and Commission rules by Harrison-Ray and 571 violations of state
laws and Commission rules by Harrison/Kiona.

6 The complaint included allegations that one or both Companies had charged
incorrect tariff rates for the non-sufficient funds check charge; failed to promptly respond to
customer calls and inquiries; failed to timely notify the Commission of changes to the
Company’s contact information; failed to supply an application for service; used improper
disconnect notices; failed to bill customers at proper intervals; failed to include required
information on bills, including accurate meter-read dates; failed to acknowledge and
promptly investigate customer complaints; failed to communicate as required with
Commission Staff regarding Commission-referred complaints; and failed to properly retain
customer records.

7 In the complaint, Staff sought penalties of up to \$1,000 per violation. The allegations
in the complaint are supported by Staff’s investigation report, in which Staff recommended
total penalties of \$46,100 for Harrison-Ray and \$30,460 for Harrison/Kiona. The
investigation, the alleged violations, and the breakdown of the initial penalty
recommendations are all detailed in the investigation report, which is on file in this docket.

8 The Commission held a prehearing conference in this docket on June 12, 2019, and
set a procedural schedule for the case. Subsequently, the parties to the proceeding entered
into settlement discussions, and the Parties reached a full settlement of the dispute. Public

Counsel is not a party to the settlement, which means that, pursuant to WAC 480-07-730, the settlement is a full, multiparty settlement. The terms of the Parties' settlement are fully set forth in the Agreement.

IV. DESCRIPTION OF PROPOSED SETTLEMENT

9 The settlement resolves all of the issues in dispute. The settlement provides for the payment of penalties, for the suspension of penalties, and for mitigation of penalties. Section II.A. The penalties provision is appropriately structured to not only penalize the Companies, but, importantly, to recognize the service improvements the Companies have made and to provide an incentive for ongoing compliance. The Parties have agreed to a two-year payment plan for the penalties, and the Companies have committed to make timely payments. Sections III.A.-B.1.

10 The settlement facilitates and supports ongoing service improvements at the Companies by providing for specific commitments related to customer service. III.B. The most significant commitment is to retain a qualified Office Manager for two years. Under the Agreement, in order to meet the Company Commitment to retain a "Qualified Office Manager," the Companies must hire or contract with someone who will perform the following specific job duties, at a minimum:

- Send customers accurate bills on time.
- Handle regulatory compliance and reporting requirements.
- Coordinate and schedule meter reading.
- Make a record of customer complaints and retain the complaints pursuant to WAC 480-110-385(4).

11 Section III.B.2. These duties are designed to resolve specific problems that Staff identified in its investigation and are tailored to conform to the actual operations of the Companies.

12 Currently, the Companies contract with a certified public accountant (CPA), who manages many of the office operations, including the billing and response to customer inquiries. This arrangement appears to have greatly improved customer service. The Parties are satisfied that, if the Companies retain this person and ensure that she fulfills the duties listed in the Agreement for a Qualified Office Manager, the Companies will meet the commitment to retain a Qualified Office Manager. It is the intent of the Parties that fulfillment of the commitment to retain a Qualified Office Manager is not dictated by a particular employment relationship or job title but rather by performance of the enumerated minimum job duties set forth in Section III.D.

13 The Agreement provides that the Companies must report any staffing changes for two years to the Commission. Staffing changes include anyone working regularly in any role at the company, including independent contractors as well as employees. III.B.3. Only three people operate the Companies, so this provision is designed to alert the Commission if any of the core functions of the Companies is no longer staffed or if there is a major personnel change at either Company.

14 To facilitate ongoing compliance, the Agreement provides that Commission Staff will present and both the Qualified Office Manager and Mr. Harrison will attend a one-session training. This training will occur on Tuesday, September 17, which is a date that is mutually agreeable to the Companies and Staff. III.B.4-5.

15 The last commitment will help Commission Staff to track and monitor the quality of customer service at the Companies. Specifically, the Agreement requires the Companies to provide a copy of all of their customer complaint records and any supporting materials to Commission Staff every six months. These records will not be filed but will be submitted directly to Staff. Section III.B.6.

16 If either Company fails to meet the Company Commitments, the suspended penalties will be imposed. This is detailed in Section III.C. of the Agreement.

17 The Agreement addresses the formal complaints that customers of the Companies filed with the Commission. On February 28, 2018, the Commission suspended its decision on whether to adjudicate the formal customer complaints pending completion of the Staff investigation.¹ The investigation is now complete. Because of the service improvements at the Companies subsequent to the engagement of the CPA and because of this Agreement, the Parties believe that the issues in the formal complaints are being addressed and that adjudication of the formal complaints is not necessary at this time. For this reason and also to support ongoing compliance, the Parties agree that the formal complaints should remain in suspended status for up to two years so long as the Companies remain in compliance with the Company Commitments in the Agreement. In this section, the Parties state explicitly that retaining the suspension of the formal complaints is not intended to prevent or discourage any customer from filing any other formal or informal complaint with the Commission.

Section III.E.

18 The Agreement provides an incentive for Mr. Harrison to sell or otherwise transfer control of the Companies to a qualified acquirer. Because Mr. Harrison cannot run the Companies by himself, because he does wish to retire, and because the water systems require a qualified operator, the Agreement encourages Mr. Harrison to pursue succession planning for the operation of the Companies sooner rather than later. Pursuant to Section III.F., if Mr. Harrison transfers ownership of a Company to a qualified operator before the

¹ *Formal Complaints Against Harrison Water Company/Kiona, LLC, and Harrison-Ray Water Company, Inc.*, Dockets UW-180081 and UW-180144 through 180151, Notice of Commission Staff Investigation, Suspension of Commission Decision on Formal Complaints, and Prohibition on Adverse Company Action Against Customers (Feb. 28, 2018).

end of the two-year penalty suspension period, the Parties agree that any outstanding portion of the penalty imposed on the transferred Company, which Mr. Harrison is paying pursuant to the installment plan, will be mitigated to zero. A transfer of control of either Company must be approved by the Commission pursuant to chapter 81.12 RCW, the transfer of property statute. The approval process ensures that under the Agreement only a transfer to a qualified transferee can relieve a Company of outstanding penalties.

19 Finally, the Agreement makes clear that Commission Staff may undertake investigation of or enforcement against the Companies during the two-year penalty suspension period as well as afterwards. The Agreement explains that a Commission investigation or enforcement action could be based on the complaint report that the Companies will make pursuant to Company Commitment 6 (Section III.B.) or based on future informal complaints to the Commission, a Staff audit of a Company, or on other information. Section III.G.

V. STATEMENT OF PARTIES' INTERESTS AND THE PUBLIC INTEREST

20 As stated in the Agreement, the settlement represents a compromise of the positions of the Parties. The Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, it is in the public interest that this dispute conclude without the further expenditure of public resources on litigation expenses.

21 Staff is satisfied with the Agreement because it reflects appropriate penalties and includes provisions that thoughtfully incent the Companies to ongoing compliance with laws and rules that protect customers.

22 The Companies' interests are satisfied because resolution of the dispute will allow
Mr. Harrison to focus on operating the water systems rather than on litigation and because
the Agreement supports transferring ownership of the Companies.

VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT

23 In WAC 480-07-700, the Commission states its support for parties' informal efforts
to resolve disputes without the need for contested hearings when doing so is lawful and
consistent with the public interest. The Parties have resolved all of the issues in dispute
between them, and their resolution complies with Commission rules and, as explained
above, is consistent with the public interest.

VII. CONCLUSION

24 Because the Parties have negotiated a compromise on all of the issues in this dispute
and because the settlement is in the public interest, the Parties request that the Commission
issue an order approving the Agreement in full.

Respectfully submitted this 28th day of June, 2019.

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