

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

ROCHE HARBOR WATER SYSTEM,

Respondent.

DOCKET NO. UW-042132

SETTLEMENT AGREEMENT

I. PARTIES

1.1 This Settlement Agreement is entered into by the Staff of the Washington Utilities and Transportation Commission (Staff) and Roche Harbor Water System (Roche Harbor) (collectively “Parties”) to resolve the contested issues in this proceeding.

II. BACKGROUND

2.1 On December 6, 2004, Roche Harbor filed a new Tariff Sheet to implement a new graduated improvement charge. Under the Washington Utilities

and Transportation Commission's (Commission) rules, the requested improvement charge is a facilities charge and will hereafter be referred to as a "facilities charge" consistent with WAC 480-110-245 and WAC 480-110-455(3).

2.2 As filed, the proposed facilities charge would apply to new customers connecting to Roche Harbor's water system after the effective date of the Tariff Sheet. The charge would be \$3,000 for a standard ¾-inch connection and would increase with larger connections. The new \$3,000 facilities charge would apply in addition to the existing \$1,500 service connection charge and \$3,500 facilities charge. Thus, a new customer would pay a total of \$8,000 before connecting to the water system with a standard connection.

2.3 The Commission entered a Complaint and Order Suspending Tariff Revision on December 29, 2004. A prehearing conference was held before Administrative Law Judge Theo Mace on May 2, 2005, and a procedural schedule was set. Under the procedural schedule, Roche Harbor's testimony and exhibits were due on June 7, 2005. Staff's testimony and exhibits were due on July 6, 2005. Roche Harbor's rebuttal testimony and exhibits were due on July 22, 2005. Hearings were to be held on July 26 and 27, 2005. The procedural schedule was suspended by Notice dated July 5, 2005, and again by Notice dated July 18, 2005.

2.4 Roche Harbor filed its testimony and exhibits on June 7, 2005. The Parties stipulate that the testimony and exhibits filed on June 7, 2005, should be admitted into the record.

2.5 Roche Harbor testified that its owner, Roche Harbor Resort (Resort), would pay 80 to 90 percent of the proposed facilities charge because 80 or 90 percent of the water system's growth would result from the Resort's growth. Exhibit No. ___ (DWG-1T) at 2:19-21 and 5:7-13; Exhibit No. ___ (BS-1T).

III. AGREEMENT TERMS

3.1 The Parties agree that the proposed \$3,000 facilities charge should become effective, but that Roche Harbor should file an amended Tariff Sheet for Schedule 4 reflecting the conditions agreed upon in Paragraphs 3.2 through 3.10 below. The effective date of the Tariff Sheet shall be **August 22, 2005**.

3.2 The Parties agree that the \$3,000 proposed facilities charge should not be a separate charge in addition to the existing \$1,500 service connection charge and \$3,500 facilities charges. The Parties agree that Roche Harbor will amend its filing to request that its current \$3,500 facilities charge for the standard 3/4-inch connection be increased by \$3,000. The new facilities charge level will be \$6,500 for the standard 3/4-inch connection. The new facilities charge for additional connection sizes will be

graduated, as shown in Attachment A to this Settlement Agreement, which is hereby incorporated by this reference.

3.3 The Parties agree that “the Resort” is defined as the area depicted in the map attached as Attachment B to this Settlement Agreement as the Roche Harbor Master Plan Area and the property owned by the new RH LLC d/b/a Roche Harbor Resort. The map in Attachment B is an excerpt of the Comprehensive Plan Land Use and Shoreline Master Program for San Juan County and is hereby incorporated by this reference.

3.4 The Parties agree that the Resort will pay both the \$6,500 facilities charge and the \$1,500 service connection charge for all connections within the Resort or related to the Resort’s expansion after the effective date of the Tariff Sheet. With respect to the property within the Resort or related to the Resort’s expansion, the Resort will pay the facilities charge and service connection charge whether the Resort retains ownership of the property to be connected to the water system or whether the Resort sells the property. For a standard ¾-inch connection, the Resort will pay a total of \$8,000. Roche Harbor currently projects that there are 527 new connections possible within the Resort in Roche Harbor’s existing service area. Exhibit No. ____ (BS-1T) at 3:9-10.

3.5 The Parties agree that new customers will pay both the facilities charge and the service connection charge for connections located outside of the Resort on property not related to the Resort's expansion after the effective date of the Tariff Sheet. For a standard ¾-inch connection, non-Resort customers will pay a total of \$8,000. Roche Harbor currently projects that there are 55 new connections possible outside of the Resort in Roche Harbor's existing service area. Exhibit No. ____ (BS-1T) at 3:7-9.

3.6 The Parties agree that Roche Harbor will file an amended Tariff Sheet for Schedule 4 of Roche Harbor's Tariff containing the new Facilities Charge amounts found in Attachment A and containing the following language:

- Item 6: The Service Connection Charge and the Facilities Charge will be paid by Roche Harbor Resort for all new connections within the Resort or related to the Resort's expansion whether the Resort retains ownership of the property to be connected to the water system or whether the Resort sells the property. If the Resort sells the property, the Resort will pay the Service Connection Charge and the Facilities Charge when the subsequent owner applies to Roche Harbor Water System for connection.

- Item 7: The Service Connection Charge and the Facilities Charge will be paid by all applicants to the water system for all new connections located outside of Roche Harbor Resort and not related to the Resort's expansion.

3.7 The Parties agree that Item 5 of Roche Harbor's Tariff Sheet for Schedule 4 shall be amended to read:

- "Facilities Charge" and "Service Connection Charge" are applicable to all new connections to the water system after the effective date of this sheet. The Facilities Charge and Service Connection Charge must be paid prior to the company connecting the applicant to the water system.

3.8 The amended Tariff Sheet for Schedule 4 of Roche Harbor's Tariff shall be filed by **August 8, 2005**, to allow for Staff review. The amended Tariff Sheet is attached to this Settlement Agreement as Attachment C and is hereby incorporated by this reference.

3.9 The Parties agree that Roche Harbor will maintain the facilities charge funds collected as a result of this Settlement Agreement in a separate account and will use the funds for future capital projects described in Roche Harbor's filing in this docket (Docket No. UW-042132 – Exhibit No. ___ (DWG-2)) or other projects

approved by Commission order, and not for general operating expenses, pursuant to WAC 480-110-455(3).

3.10 The Parties agree that Roche Harbor will submit quarterly reports for the facilities charge collected under this Settlement Agreement as required by WAC 480-110-455(4)(c). The quarterly reports must show the beginning balance, amounts received (detailed by source), amounts spent (detailed by project or expense), ending balance, and reconciliation of bank balance to general ledger. The first report under this Settlement Agreement will be for the quarter ending September 30, 2005.

IV. GENERAL TERMS

4.1 The Parties agree that this Settlement Agreement fully resolves the contested issues between them in this proceeding. The Parties understand that the Agreement Terms contained in Paragraphs 3.1 through 3.10 are not binding on the Commission unless the Commission adopts them.

4.2 The Parties have entered into this Agreement voluntarily to lessen the expense, inconvenience, uncertainty, and delay of litigation.

4.3 The Parties agree to cooperate in submitting this Agreement promptly to the Commission for adoption. The Parties agree to support adoption of this Agreement in proceedings before the Commission through testimony or briefing. No

party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

4.4 The Parties recognize that this Agreement represents a compromise of the positions the Parties may otherwise assert in this proceeding. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement.

4.5 This Agreement shall not be construed against either party because it was a drafter of the Agreement.

4.6 The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein.

4.7 The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile are effective as original documents.

4.8 The Parties shall take all actions necessary and appropriate to carry out this Agreement.

4.9 In the event that the Commission rejects all or any portion of this Agreement, each party reserves the right to withdraw from this Agreement by

written notice to the other party and the Commission. Written notice must be served within 10 days. In such event, neither party will be bound or prejudiced by the terms of this Agreement, and either party shall be entitled to seek reconsideration of the Order rejecting all or part of the Agreement.

This SETTLEMENT AGREEMENT is entered into by the undersigned parties.

ROB MCKENNA
Attorney General

LAW OFFICE OF
RICHARD A. FINNIGAN

LISA WATSON GAFKEN
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff
(360) 664 – 1186
Dated: _____

RICHARD A. FINNIGAN
Counsel for Roche Harbor
Water System
(360) 956 – 7001
Dated: _____