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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)

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Complainant,)

) Docket TV-122004

7

vs.)

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OLYMPIC MOVING & STORAGE,)
INC., d/b/a OLYMPIC MOVERS,)

9

)

Respondent.)

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HEARING ON SETTLEMENT AGREEMENT - VOLUME III

12

Pages 15 - 47

13

ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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2:02 P.M.

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FEBRUARY 11, 2015

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Washington Utilities and Transportation Commission

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1 OLYMPIA, WASHINGTON; FEBRUARY 11, 2015

2 2:02 P.M.

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5 JUDGE KOPTA: Let's be on the record.

6 This is Docket TV-122004. We are here on
7 February 11th, 2015, a little after two o'clock in the
8 afternoon, for a hearing on the settlement agreement
9 that the parties have filed pursuant to notice with
10 some issues that the Bench wanted some additional
11 information on, in conjunction with review of the
12 settlement agreement.

13 So we will start by getting appearances,
14 beginning with Commission Staff.

15 MR. BEATTIE: Thank you, Judge Kopta.
16 My name is Julian Beattie, I am an assistant attorney
17 general with the Utilities and Transportation
18 Division, and I am here today representing Commission
19 Staff.

20 JUDGE KOPTA: Thank you.

21 And for the Company?

22 MR. REHBERGER: Good afternoon, Your
23 Honor. My name is Joseph Rehberger, attorney for
24 Olympic Moving & Storage. With me at the counsel
25 table is Kris O'Bannon, president.

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1 JUDGE KOPTA: All right. Thank you.

2 The next order of business is to -- I notice
3 that each of you has a witness to answer any questions
4 that are more of a factual nature. If I could get
5 each of you to stand and raise your right hand.

6 (Witnesses sworn.)

7 JUDGE KOPTA: All right. Well, without
8 further ado, if you would -- I am assuming each of you
9 has a copy of the notice that was distributed on
10 February 3rd, with a number of issues. Based on the
11 conversation we had before going on the record, I
12 understand that Commission Staff is volunteering to go
13 first, in terms of providing a response to each of
14 these. What I would like to do is go issue by issue,
15 allow Staff to provide a response, any other questions
16 that I might have, and then Mr. Rehberger, if you have
17 anything further, then we can hear from you, and then
18 move on to the next issue.

19 So issue No. 1. I won't necessarily read it
20 because we have already gotten a copy of it.
21 Mr. Beattie, did you want to address this question of
22 how the agreement reflects the settlement of all
23 contested issues?

24 MR. BEATTIE: Certainly, Judge Kopta.
25 Thank you for the opportunity to come before you and

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1 explain our agreement. It was the product of
2 extensive negotiations over several months, and it is
3 a product that we are proud of and believe advances
4 the public interest. We are happy to answer any
5 questions you may have about it today.

6 Your Question No. 1 goes to the issue of the
7 settlement agreement only attaches monetary penalties
8 to 2 out of the 18 causes of action alleged in the
9 complaint. A third cause of action has been withdrawn
10 by Staff. As to the other 18 causes of action, the
11 settlement agreement resolves those causes of action
12 through a combination of technical assistance and
13 ongoing compliance. If I could just elaborate briefly
14 on each of those two items.

15 Technical assistance is another word for
16 education. The parties are in agreement that
17 throughout this matter, through the investigation
18 phase, through the issuance of the complaint, through
19 settlement negotiations, and through the settlement
20 agreement itself and through all the communications in
21 between, the Company has received valuable technical
22 assistance or education regarding each of the causes
23 of actions alleged in the complaint, not just those
24 involving monetary penalties, but each of the causes
25 of action. Education is an important aspect of this

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1 settlement agreement, and one that we think advances
2 the public interest.

3 Now, looking forward, the settlement agreement
4 also calls for a program of ongoing compliance; that
5 is, will involve collaboration between Staff and the
6 Company to the end of ongoing compliance. The Company
7 has agreed to submit a compliance plan to Staff
8 detailing how it intends to address each of the issues
9 discussed in the investigation report and also
10 repeated as causes of action in the complaint.

11 And so through this combination of education
12 and ongoing compliance, Staff believes each of the
13 causes of action have been addressed appropriately, in
14 a way that advances the public interest. It's our
15 understanding that the Company has the same
16 understanding. And I suppose -- I suppose that
17 answers the question.

18 JUDGE KOPTA: I think so. I mean to put
19 it a little shorter, the other provisions that aren't
20 specifically called out are intended to be addressed
21 by the remainder of the settlement agreement, other
22 than the penalty provisions; is that correct?

23 MR. BEATTIE: That's correct, Judge.

24 JUDGE KOPTA: Mr. Rehberger, is that
25 your understanding of the settlement agreement?

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1 MR. REHBERGER: Yes, I would agree with
2 that. I would respond to say that the settlement
3 agreement resolves all issues holistically. So while
4 there are the penalties attached to Counts 1 and 2, or
5 Causes of Action 1 and 2, the settlement agreement was
6 designed, and by its terms was designed, to be a
7 holistic settlement, resolving all 21 of the causes of
8 action.

9 If you are looking at the terms of the
10 settlement agreement itself, I would note that there
11 are -- the Company has agreed to issue refunds that do
12 go to some of the those remaining causes of action and
13 also enter into a written compliance plan.

14 JUDGE KOPTA: All right. Thank you.

15 Issue No. 2, which addresses which of the
16 violations alleged in the complaint Olympic Movers
17 admits to violating.

18 Did you want to start or should I have
19 Mr. Rehberger, since this is his admission -- or his
20 client's admission?

21 MR. BEATTIE: Judge, I would answer this
22 question by saying that the Company has agreed to
23 admissions of RCW 81.04.070, WAC 480-15, and Tariff
24 15-C, and that the parties settled on this generalized
25 admission after, as I mentioned earlier, extensive

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1 negotiations. The parties do support the agreement as
2 written and believe, as Mr. Rehberger just pointed
3 out, that looking at the agreement as a whole, it
4 advances the public interest.

5 JUDGE KOPTA: So again putting it in my
6 own words -- and maybe I ought to ask Mr. Rehberger,
7 since it's your admission. You are admitting some of
8 the violations that were alleged in the complaint, not
9 necessarily all of them. Is that fair to say?

10 MR. REHBERGER: I would think that that
11 would be a fair way to say it, but I'm not sure that
12 that's exactly the way the settlement agreement says
13 it. But I think that's one way to characterize it. I
14 believe the way the settlement agreement would
15 characterize it is, if we are admitting in the
16 settlement agreement for purposes of settlement and
17 revolving these disputed claims, that generally there
18 were violations of the RCW, the WAC, and the tariff,
19 without going into specific admissions as to which
20 violations those pertain to.

21 But I would say, and this kind of will go to
22 some of the later issues that are raised here, that
23 the Company has agreed to resolve or address in its
24 compliance plan not simply all -- all violations, or I
25 guess all -- all of the ones that they are admitting,

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1 but rather more generally and more holistically to
2 address in their compliance plan all of the violations
3 alleged in Staff's investigation report. So it is
4 designed to address all of the alleged violations, but
5 without making specific admissions as to which ones
6 particularly were admitted here in this case.

7 And that was, as the assistant attorney
8 general stated -- is a -- was language agreed at and
9 sort of in compromise of these dispute claims.

10 JUDGE KOPTA: Okay. Well, that makes
11 sense. I just wanted to make sure I understood.

12 Okay. Issue No. 3, which goes the compliance
13 plan that you were just discussing. Mr. Beattie, did
14 you want to take a shot at giving me an explanation of
15 exactly how that was developed and how Staff is going
16 to work with the Company on whatever compliance plan
17 is filed?

18 MR. BEATTIE: The parties intended no
19 discrepancies between the investigation report and the
20 complaint. Staff and the parties -- or excuse me, the
21 parties agreed to tie the compliance plan to the
22 investigation report because the investigation report
23 contains far more detail than does the complaint. It
24 is Staff's understanding, and it is the Company's
25 intention, that the compliance plan submitted by the

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1 Company will track the investigation report; that is,
2 use the investigation report as a launching point, so
3 that the Company can ensure that it addresses every
4 single issue raised in that report.

5 JUDGE KOPTA: Okay. That makes sense
6 for A. What about B, in terms of whether there is any
7 Staff review with respect to the sufficiency of the
8 compliance plan?

9 MR. BEATTIE: Yes, Judge Kopta. Staff
10 will review the sufficiency of the compliance plan.
11 That's always been the parties' understanding. But
12 achieving compliance will be a collaborative process.
13 Staff has agreed, through the settlement agreement, to
14 provide reasonable aid in helping the Company come
15 into compliance. Certainly, it is Staff's paramount
16 goal, or one of its primary goals, is to bring the
17 Company into compliance.

18 Staff will help the Company create an end
19 product, in terms of the compliance plan, that
20 advances the public interest, and it will do so by
21 ensuring that the Company made a good faith effort to
22 review the investigation report and to write a
23 compliance plan that is responsive to each of the
24 issues raised in that report.

25 JUDGE KOPTA: And what happens if you

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1 disagree, if the Company says, Here's what we're
2 planning to do, and Staff says, That's not good
3 enough, and the Company says, Well, that's what we're
4 going to do?

5 MR. BEATTIE: Well, Your Honor, I would
6 say that the Company understands that it is going to
7 be undertaking a good faith and diligent compliance
8 effort going forward. And so that obviously doesn't
9 guarantee that there won't be disputes, but I believe
10 because the parties have agreed to collaborate and
11 that -- that there will be -- I don't want to call it
12 a two-way street, but it will be a collaborative
13 process. There won't be -- Staff is not agreeing --
14 or I should say if there are any disputes, Staff will
15 make best efforts to work them out.

16 JUDGE KOPTA: Mr. Rehberger?

17 MR. REHBERGER: I would respond by
18 saying that I believe the way the settlement agreement
19 deals with this is just as Mr. Beattie said, which is
20 that the -- in the agreement, when talking about the
21 compliance plan, that it provides that the Company
22 will make good faith and diligent effort for
23 compliance going forward and to that end will develop
24 this compliance plan.

25 I think that if there was recourse to be had

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1 or there -- if your question is what is Staff's
2 recourse if there is a disagreement over the
3 compliance plan, it would be a dispute as to the
4 Company's fulfillment under the settlement agreement,
5 as to whether it entered into that compliance plan and
6 provided it in good faith and showing diligence to
7 come into compliance.

8 Further, under Paragraph 11 of the settlement
9 agreement, it talks about the Staff's commitment to
10 provide technical assistance during this process.

11 JUDGE KOPTA: I understand that. I am
12 sort of using my lawyer's paranoia, and that is, what
13 happens down the road? Is this going to be an issue a
14 year from now, if Staff comes forward and says, Do you
15 know what, they didn't comply with the agreement, even
16 though they filed a compliance plan, because the
17 compliance plan isn't good enough. And then the
18 Company says, Well, wait a minute, all we have to do
19 under the agreement is file a compliance plan.
20 There's nothing in here about saying that Staff has to
21 approve that plan, so we're in compliance with the
22 agreement.

23 MR. REHBERGER: I guess how I would
24 respond to that, it would not -- if it was to become
25 an issue, my expectation would be it wouldn't become

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1 an issue a year from now, it would become an issue 45
2 days from now, when they submit the compliance plan,
3 and if Staff had an objection as to whether it
4 represented a good faith and diligent effort to come
5 into compliance. I can tell you that the Company is
6 committed to making a good faith and diligent effort.

7 JUDGE KOPTA: Is that your
8 understanding, Mr. Beattie?

9 MR. BEATTIE: That is my understanding.
10 And I also do have Staff witness, Rayne Pearson, who
11 wishes to add something.

12 JUDGE KOPTA: All right.

13 Ms. Pearson.

14 MS. PEARSON: So the compliance plan
15 will be due to Staff within a 45-day period.
16 Typically, what happens is Staff will review the
17 compliance plan. If they see any issues with it, go
18 back to the Company and resolve those issues. The
19 compliance plan is meant to ensure compliance going
20 forward and results in an increase -- an increase
21 showing of compliance when the reinvestigation occurs
22 one year from now. So there would be back-and-forth
23 about that.

24 The Company knows that they are going to be
25 reinvestigated. If they don't follow what Staff is

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1 telling them, and how the compliance plan needs to be,
2 and what their practices need to be, that they are
3 facing imposition of the suspended penalty.

4 JUDGE KOPTA: All right. We are jumping
5 a little bit ahead, but is it your understanding,
6 then, that Staff is going to be investigating the
7 Company's compliance with all of the statute, rule,
8 and tariff requirements that have been listed in the
9 Staff investigation report?

10 MS. PEARSON: Absolutely.

11 JUDGE KOPTA: Mr. Rehberger, is that
12 your client's understanding as well, that the
13 investigation at the end of one year will be looking
14 at not just whether you have complied with the
15 agreement, but whether you have complied with these
16 legal requirements?

17 MR. REHBERGER: I think we are moving on
18 to issue 4A here.

19 JUDGE KOPTA: Well, it is sort of a
20 natural progression.

21 MR. REHBERGER: That's fine.

22 So I believe the way that is dealt with in the
23 settlement agreement is through the compliance plan.
24 Yes, the compliance plan is designed to address all
25 the issues, not just admitted. The way the -- I guess

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1 I mentioned Issue 4A because it talks about
2 admissions. I wanted to tie that back to your
3 Issue 2, where the Company, in the settlement
4 agreement, is not admitting to specific violations,
5 but general violations, but is committing in the
6 compliance plan to addressing all alleged violations.
7 And so all alleged violations will be addressed in the
8 compliance plan. And then I think the Staff's
9 investigation can examine all of those alleged
10 violations that are addressed in the compliance plan,
11 to determine whether the Company has made a good faith
12 and diligent effort to comply with those.

13 JUDGE KOPTA: Okay. And so as a result
14 of Staff's reinvestigation at the end of one year,
15 they can come back and say they have complied with the
16 agreement, but they have not -- there are certain
17 violations of statutes that they have done again, for
18 example. And then obviously the Company can say, no,
19 we haven't, and we can have that dispute. But you are
20 not going to come in and say, no, that's not part of
21 this deal. You can't raise those issues now, all you
22 can raise is whether we have made payments under the
23 agreement and filed a compliance plan.

24 MR. REHBERGER: Well, I think the -- I
25 will let Staff answer some of that.

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1 I think how I would answer it is: Well, first
2 of all, Staff can always raise those issues, right?
3 If there are future violations going forward, the
4 settlement agreement specifically says that those can
5 be subject to their own enforcement procedures. So if
6 there is a violation of any tariff or regulation, then
7 with or without regard to the settlement agreement,
8 Staff can take enforcement action as to those.

9 As to compliance with a settlement agreement
10 for imposition of the penalty, then they can -- I
11 believe the way the settlement agreement is written,
12 they can investigate, yes, all of those. And then if
13 they believe that there has not been a good faith and
14 diligent effort by the Company to comply with those,
15 and seek compliance, then they could come back.

16 JUDGE KOPTA: All right. My concern
17 obviously is, with this agreement and this particular
18 docket -- I understand that Staff can always file
19 another complaint. They certainly are free to do that
20 if they believe that there are future violations. I
21 am just thinking a year ahead from now, if we have
22 this dispute. I want to make sure that we would be
23 talking about whether the Company actually complied
24 with these legal obligations, as opposed to whether
25 they were not obligated to do that under the

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1 settlement agreement and therefore, Staff's only
2 remedy would be to file a separate action.

3 So what I am --

4 MR. REHBERGER: If the question there is
5 could Staff, under the settlement agreement, seek to
6 impose the suspended penalties if the Company violated
7 the specific WAC or regulations, I think under the
8 settlement agreement if they -- if they wanted to make
9 an allegation, or if there were grounds to make an
10 allegation that the Company did not make a good faith
11 and diligent effort to comply with those, and that's
12 demonstrated through the compliance plan, then that
13 would be an alternative way of them to seek
14 enforcement, yes --

15 JUDGE KOPTA: All right.

16 MR. REHBERGER: -- as opposed to a new
17 action.

18 JUDGE KOPTA: So the Commission would
19 have the authority to impose some or all of the
20 suspended penalty if the Commission were to find that
21 you once again violated some of these provisions that
22 were in the Staff investigation report?

23 MR. REHBERGER: Yes. Although, I view
24 it in the context of Paragraph 10 of the settlement
25 agreement, which says that the Company will undertake

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1 a good faith and diligent compliance effort going
2 forward and submit a compliance plan.

3 I'm trying to come back to the question you
4 asked, which is in 4A, does it include compliance with
5 those terms to which the Company has specifically
6 admitted. Because there aren't specific admissions,
7 the way it is dealt with in the settlement agreement
8 is through the compliance plan.

9 Yes. If the Staff made a determination during
10 its investigation report, that they discovered a
11 pattern of violations, or, you know, significant
12 violations of these same things that are alleged in
13 the investigation report, detailed in the compliance
14 plan, then yes, they could come back and seek the
15 imposition of suspended penalties.

16 JUDGE KOPTA: Okay. I am going to dig
17 down just a little bit deeper. You keep going back to
18 the good faith. I mean are you saying that even if
19 there may be a violation, that as long as the Company
20 made good faith efforts not to have a violation that
21 they are still in compliance with the settlement
22 agreement and the Commission would not be able to
23 impose the suspended penalty?

24 MR. REHBERGER: That's how the Company
25 interprets the settlement agreement as written. And I

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1 think the reason for that is because some of these
2 violations, or some of the alleged violations, are
3 some that it's possible that there could be a
4 violation in the future that wouldn't be demonstrative
5 of a -- either a lack of good faith or diligence on
6 the Company to seek to prevent that violation, or a
7 pattern of intentional or even negligent misconduct in
8 trying -- in having that violation occur.

9 For example, if Staff was to come back and
10 reinvestigate a year from now and found a lack of a
11 destination and address being completed on a
12 supplemental estimate, then certainly that is not a
13 violation the Company wants to happen, it's going to
14 take compliance efforts to not have that happen. But
15 I would say under the settlement agreement, that they
16 would -- that the standard is that this Company hasn't
17 made a good faith and diligent effort to come into
18 compliance.

19 Certainly, if there are significant compliance
20 issues, even if it is a singular one -- for example, I
21 would say if there was a compliance effort, you know,
22 that showed intentional misconduct or something along
23 the lines, maybe by way of example of what led to our
24 Count 2 in the compliance, then I think Staff could --
25 you know, I don't want to prejudge the facts, but

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1 could allege that that alone would show a lack of good
2 faith and diligence. So I think it depends on the
3 type of violation.

4 JUDGE KOPTA: Mr. Beattie, does that
5 reflect Staff's interpretation of the agreement?

6 MR. BEATTIE: That comports with our
7 understanding. And I think you are correct to clue in
8 that the -- when the settlement agreement talks about
9 compliance with the terms of this agreement, the term
10 that we are all focused on is the Paragraph 10,
11 undertake a good faith and diligent compliance effort.
12 That language is admittedly -- you know, I think
13 necessarily it's -- it's -- it provides some room for
14 interpretation because we don't know exactly what
15 situation we are going to face. But I think it is
16 implicit, and certainly I think explicit through the
17 good faith and diligent compliance language, that the
18 Company -- part of this will be tied to the compliance
19 plan, which is a document that we don't yet have in
20 existence, so it is a little bit hard to address it in
21 this written document that we have now. But I think
22 it is everyone's understanding that part of what good
23 faith and diligent compliance effort means will be
24 tied to what is in the written compliance plan going
25 forward.

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1 JUDGE KOPTA: And I understand that.
2 I'm -- this is a little bit different than settlement
3 agreements I have seen before, which have said any
4 more violations and we are going to impose the
5 suspended penalty. That's kind of the standard
6 provision I have seen in a lot of these kinds of
7 agreements. This is a little different.

8 I just want to make sure that I understand,
9 and when we leave this room, everyone has the same
10 understanding of what the agreement means. That
11 doesn't preclude disputes in the future, but at least
12 it precludes, hopefully, some disputes over how to
13 interpret the settlement agreement, if it ever comes
14 that.

15 So that was No. 4A, wasn't it, to a certain
16 extent anyway. I think that we have covered that one.

17 Under B, that's -- there is a little bit of a
18 disconnect, at least in my reading of the agreement,
19 between the one-year review and the 18-month payment
20 schedule. Would you help me resolve that in my mind?

21 MR. BEATTIE: Of course. I think part
22 of -- to clarify, the parties understand that Staff
23 will commence its reinvestigation within one year. It
24 has never been the parties' agreement that the
25 reinvestigation will be concluded within the one year.

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1 Typically, reinvestigation is a several-months long
2 process, especially in a matter like this, given
3 the -- you know, the nature of this docket.

4 What Staff is agreeing to do is to commence
5 reinvestigation within one year. By the time it
6 completes its reinvestigation and submits its letter
7 of recommendation to the Commission regarding the
8 suspended penalty, we may be at 18 months, we may be
9 nearing the final payment, and those two events may
10 actually coincide nicely. Either way, if
11 reinvestigation does conclude prior to the time that
12 the final payment is made, the parties are in
13 agreement that the Commission may reimpose or may
14 impose the suspended penalty for nonpayment, even if
15 nonpayment occurs after reinvestigation concludes.

16 Another way of saying that is that the final
17 status of the suspended penalty won't fully be known
18 until the final payment is made, even if that occurs
19 several months after, for lack of a better phrase,
20 Staff has recommended a clean bill of health for the
21 Company based on its reinvestigation.

22 JUDGE KOPTA: Mr. Rehberger, is that
23 your understanding?

24 MR. REHBERGER: Yes.

25 JUDGE KOPTA: Okay.

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1 Because you have sort of left open this term,
2 is the Company comfortable with an open-ended period
3 in which the Company needs to comply, or would you
4 want it 18 months because that's when the payments are
5 all finished?

6 MR. REHBERGER: I think we are
7 comfortable with the settlement agreement as it is
8 written, yes. And so the way -- yes, we are
9 comfortable with it, with the reinvestigation
10 occurring within a year, and with the Company -- or
11 the Staff's determination as to whether the Company
12 has complied with all the terms of the settlement
13 agreement, including the payment terms. We understand
14 that that won't be accomplished until the final
15 payment is made.

16 JUDGE KOPTA: Okay. And again playing
17 devil's advocate, if after that initial
18 reinvestigation the Commission were to undertake a
19 subsequent investigation and found that you were not
20 substantially in compliance with the legal
21 requirements under -- that are listed in the
22 investigation report, and it's two years later, would
23 it be your view that the settlement agreement has been
24 complied with and it is over and done and they would
25 have to do something separate, or is there a

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1 continuing obligation to comply with the compliance
2 plan even after a year or a year and a half?

3 MR. REHBERGER: I appreciate you raising
4 the question. I don't want to hypothesize that there
5 will be any significant violations over a year after
6 the settlement agreement is effectuated.

7 If you are asking me in advance what I would
8 foresee my position being, the way I would interpret
9 the settlement agreement is that the suspended penalty
10 amount would only be able to be based on the
11 investigation that takes place within the 12 months,
12 because I believe the settlement agreement says that
13 the reinvestigation -- well, the Company -- the Staff
14 will reinvestigate the Company within 12 months from
15 the date of the agreement and then determine their
16 level of compliance with the agreement. I understand
17 that the payment provision will extend beyond that,
18 but I would not -- we would interpret the settlement
19 agreement to say that the Staff's investigation of the
20 Company must take place within that 12-month period.

21 JUDGE KOPTA: Or they must only
22 investigate within the 12-month period, even if it
23 takes longer than that to complete the investigation.
24 Is that fair?

25 MR. REHBERGER: Well, I think then we

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1 are maybe parsing the word "investigation" in a way
2 that I haven't thought. Maybe I need to give it --
3 maybe I would ask Staff to answer that.

4 I would think that their review of the
5 Company's files must -- or the Company's practices
6 should be for within the calendar year from the
7 effective date of the agreement from -- to 12 months
8 at the end. Whether it takes them longer to bring the
9 matter back before the Commission, I -- I don't see
10 that as part of the investigation necessarily. I see
11 that as concluding the settlement process. Maybe I
12 would like to hear from Staff.

13 JUDGE KOPTA: Yes. Well, that's a
14 little different than what my understanding is from
15 Mr. Beattie's description, that Staff may initiate the
16 reinvestigation within one year, but not necessarily
17 complete it within that period of time. That's why I
18 am asking whether the applicable period in which Staff
19 will review the Company's compliance will be that
20 one-year period or whether it can linger on beyond
21 that, since there is no cutoff date in the settlement
22 agreement itself.

23 MR. REHBERGER: Sure. And the -- I
24 guess the way I understood it was that the
25 investigation would take place within a year, but that

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1 the settlement agreement might not be concluded, and
2 that Staff might not be in a position to bring it back
3 before either yourself or the Commission to seek
4 imposition or release of the suspended penalties
5 within that 12-month period.

6 Again, I would like to hear from Staff on
7 this.

8 JUDGE KOPTA: Mr. Beattie, do you have
9 some clarification for Mr. Rehberger and myself?

10 MR. BEATTIE: Yes, Judge Kopta. I think
11 this question is best answered by Staff witness, Rayne
12 Pearson.

13 JUDGE KOPTA: Ms. Pearson, up to you.

14 MS. PEARSON: So the way that the
15 reinvestigation will work is, you are correct, that we
16 will be looking at the one-year period from the date
17 that the settlement is effective. When we say
18 initiate the investigation, that means the data
19 request will go out to the Company, requesting
20 documents from a certain time period that would be
21 within that one year, and then the time that it takes
22 to review those documents and prepare an investigation
23 report. There wouldn't be additional -- there might
24 be follow-up questions from the original documents
25 that were provided, but there would not be requests

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1 for documents beyond that time period.

2 JUDGE KOPTA: And is it your
3 anticipation that you would file something with the
4 Commission, in terms of relieving the Company of their
5 obligation to pay the suspended penalty after the
6 18-month period, when they will have either paid or
7 not paid the last installment?

8 MS. PEARSON: Yes.

9 JUDGE KOPTA: Is that acceptable to you,
10 Mr. Rehberger?

11 MR. REHBERGER: Yes, that comports with
12 our understanding.

13 JUDGE KOPTA: Okay. Then let's move to
14 Issue No. 5. There is a reference in the settlement
15 agreement to payment instructions provided by Staff.
16 Can you illuminate me as to exactly what you mean by
17 "payment instructions provided by Staff"?

18 MR. BEATTIE: Staff is merely offering
19 to provide logistical support to the Company. For
20 example, if the Company had a question, where we do
21 mail the check, Staff would be happy to provide that
22 information.

23 JUDGE KOPTA: Okay. So it's not
24 intended to be anything substantive with respect to
25 timing or amount or anything like that. It's just

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1 purely ministerial, here's where you send the check,
2 or here's the number --

3 MR. BEATTIE: It's an administrative
4 term. It is not intended to modify or affect any of
5 the other payment terms.

6 JUDGE KOPTA: Okay.

7 What about the date? The first payment is due
8 the tenth of the month, but it doesn't specify which
9 day of the month. For our financial folks, I want to
10 make sure that we know when we are going to expect
11 this. Is the tenth of the month going to be the date
12 every month?

13 MR. REHBERGER: The tenth of each month.

14 JUDGE KOPTA: All right. Well, that
15 makes sense, but I just want to make sure.

16 And then there is an acceleration provision,
17 of which we probably all have in our mortgages. In
18 this case it doesn't specify how that impacts the
19 installments. The question is, is it paid from the
20 last -- I mean are you paying -- essentially prepaying
21 the last installment forward, or are you paying the
22 next installment?

23 MR. REHBERGER: I think the intention
24 would be that, absent express instructions, it would
25 pay down the last installment.

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1 JUDGE KOPTA: Okay.

2 MR. REHBERGER: However, if there was a
3 situation where the Company wanted to make a
4 successive month payment, it could do so with express
5 instructions.

6 JUDGE KOPTA: Again, I am keeping an eye
7 out for our financial folks because they are the ones
8 that have to track these payments and record them and
9 make sure that everything is done according to Hoyle,
10 so we want to set up Hoyle.

11 One of the standard provisions that we have in
12 any payment plan is that if any installment is missed,
13 then the entire remaining balance becomes immediately
14 due and payable. Again, this is for benefit of our
15 financial folks. That is missing from the settlement
16 agreement. Is that something that you all would
17 object to if it were a condition of this approval?

18 MR. REHBERGER: We would not object to
19 that condition.

20 JUDGE KOPTA: Okay. Good.

21 MR. BEATTIE: Nor would we.

22 JUDGE KOPTA: I would think you
23 wouldn't.

24 All right. Well, I appreciate you all coming
25 here and providing this additional information. It is

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1 very helpful for me to understand what your agreement
2 is. I anticipate that in my order, which I fully
3 anticipate approving the agreement, that there will be
4 some additional detail, based on what was discussed
5 here, just so that both the parties and the Commission
6 are fully aware of what the intent of the settlement
7 agreement is and how it is to be implemented and
8 interpreted over the next 18 months. And then with
9 probably the one condition about a missed payment,
10 there will be an acceleration provision.

11 Does anyone have anything further?

12 MR. REHBERGER: Your Honor, on the
13 acceleration provision, do you have a standard
14 language that you typically propose, or that is
15 typically included?

16 JUDGE KOPTA: Yes, we have language that
17 is used.

18 MR. REHBERGER: Is there an any notice
19 provision or opportunity to cure?

20 JUDGE KOPTA: No. It is if you miss it,
21 then without further action, the remainder becomes
22 immediately due. And in this case, the suspended
23 portion of the penalty, since you are in breach of the
24 settlement agreement, would also be due. It is a
25 sizable hammer.

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1 MR. REHBERGER: Is there any way to
2 include a notice provision, an opportunity to cure?

3 JUDGE KOPTA: That is something that I
4 would ask you to work out with Staff. I mean I am not
5 in a position to negotiate that language. I am just
6 saying what we ordinarily do in these kinds of
7 situations. I would expect that that's the same thing
8 we would do here, absent some agreement from Staff
9 that we do something a little differently.

10 MR. REHBERGER: Is this something we
11 could very briefly discuss with Staff off the record?

12 JUDGE KOPTA: Absolutely. Let's go off
13 the record.

14 (A brief recess.)

15 JUDGE KOPTA: Let's be back on the
16 record. We are back after taking a brief recess for
17 the parties to confer.

18 Mr. Beattie, would you let me know what you
19 all have discussed and decided?

20 MR. BEATTIE: The parties agree to the
21 language that you proposed, although we haven't heard
22 the exact language, at least to the substance of what
23 you proposed before we went on a break.

24 JUDGE KOPTA: All right. Good. That's
25 our standard language that we have been using. It is

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1 always nice if we can use the same one.

2 All right. Well, I think that covers the
3 issues that I had. Is there anything else that we
4 need to discuss while we are here?

5 MR. REHBERGER: No.

6 JUDGE KOPTA: Thank you very much. We
7 are off the record.

8 (Hearing concluded 2:49 p.m.)

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