

1

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) HEARING NO. UW-940662
4 Complainant,)
5 vs.) Volume 1
6 KAYAK POINT WATER COMPANY, INC.,) pages 1 - 16
Respondent,)
7 -----)

8 A hearing in the above matter was held
9 on June 8, 1994, at 1300 South Evergreen Park Drive
10 Southwest, Olympia, Washington, 98504 before
11 Administrative Law Judge ELMER CANFIELD.

12

13 The parties were present as follows:

14 WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION STAFF, by ANNE EGELER, Assistant Attorney
15 General, 1400 South Evergreen Park Drive Southwest,
Olympia, Washington 98504.

16

17

18

19

20

21

22

23

24 Cheryl Macdonald, CSR

25 Court Reporter

1

I N D E X

2 WITNESS: DIRECT CROSS REDIRECT RECROSS EXAM
3 F. OTTAVELLI 5

4	EXHIBIT	MARKED	ADMITTED
1		4	4
5	2	6	13
	3	7	13
6	4	9	13
	5	11	13
7	6	13	13

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

(COLLOQUY)

1 P R O C E E D I N G S

2 JUDGE CANFIELD: This hearing will please
3 come to order. The Utilities and Transportation
4 Commission has set for hearing at this time and place
5 docket No. UW-940662 entitled Washington Utilities and
6 Transportation Commission, complainant, vs. Kayak
7 Point Water Company, Inc., respondent. Today's
8 hearing is being held pursuant to due and proper
9 notice to all interested parties at Olympia,
10 Washington on Wednesday, June 8, 1994. Conducting the
11 hearing is Elmer Canfield, administrative law judge
12 with the Office of Administrative Hearings.

13 On May 19, 1994 the Commission issued a
14 complaint, order and notice of hearing. The complaint
15 alleged that the respondent is subject to the
16 Commission's regulation and that it should have
17 tariffs on file with the Commission. I will note that
18 last night the respondent did fax a copy of a letter
19 indicating that he would not be attending the hearing
20 today, and I will cover that in a moment. I will ask
21 for appearances at the outset. Start with you.

22 MS. EGELER: Anne Egeler, Assistant
23 Attorney General appearing on behalf of the
24 Commission. My business address is 1400 South
25 Evergreen Park Drive Southwest, Olympia, 98504.

(COLLOQUY)

1 JUDGE CANFIELD: Okay. And appearing also
2 with Commission staff, can I get your name for the
3 record, please.

4 MR. OTTAVELLI: Fred Ottavelli.

5 JUDGE CANFIELD: I will note that there is
6 no other individuals in the hearing room, and as
7 indicated in the fax from Owen C. Sawyer, S A W Y E R,
8 manager of Kayak Point Water Company, Inc., this fax
9 is dated yesterday June 7, and it indicates that it
10 was faxed to the Commission yesterday evening,
11 6:28 p.m. I can just go ahead and mark that as an
12 exhibit rather than reading it into the record. It in
13 essence indicates that the respondent is not contesting
14 the issue of jurisdiction and that they're not going to
15 be attending today's hearing. So I will mark that as
16 Exhibit No. 1. Any objections, Ms. Egeler, from that
17 being entered into the record?

18 MS. EGELER: No. No, objection.

19 JUDGE CANFIELD: So entered as Exhibit 1.

20 (Marked and Admitted Exhibit 1.)

21 JUDGE CANFIELD: Are there any other
22 preliminary-type matters, Ms. Egeler, that you have to
23 address at the outset?

24 MS. EGELER: No.

25 JUDGE CANFIELD: Why don't we go ahead and

(COLLOQUY)

1 proceed, then, and I will leave that up to you, Ms.
2 Egeler.

3 MS. EGELER: The Commission's witness is
4 Fred Ottavelli.

5 BY MS. EGELER:

6 Q. Mr. Ottavelli, could you please state your
7 full name spelling your last for the record.

8 A. Fred Ottavelli, O T T A V E L L I.
9 Whereupon,

10 FRED OTTAVELLI,
11 having been first duly sworn, was called as a
12 witness herein and was examined and testified as
13 follows:

14

15 DIRECT EXAMINATION

16 BY MS. EGELER:

17 Q. Could you please state by whom you are
18 employed?

19 A. I am employed by Washington Utilities and
20 Transportation Commission.

21 Q. And what is your current position?

22 A. My current position is consultant assigned
23 to the water section.

24 Q. How long have you been employed by the
25 Commission?

(OTTAVELLI - DIRECT BY EGELER)

1 A. 32 years.

2 Q. Mr. Ottavelli, are you familiar with Kayak
3 Point Water System?

4 A. Yes, I am.

5 Q. Do you know, how did the Commission first
6 become aware that Kayak Point may be subject to the
7 Commission's jurisdiction?

8 A. The Commission became aware of the
9 jurisdictional status of Kayak Point Water Company
10 when it was informed of and became aware of the
11 existence of a water system plan that was submitted by
12 Kayak Point Water Company to the Department of Health.

13 MS. EGELER: The copy of that has been
14 provided to Your Honor. I would like to have that
15 marked as the first -- rather the second -- exhibit
16 and that is the water system plan that Mr. Ottavelli
17 has referred to. You can barely make out the date on
18 the first page. It's October 22, 1993.

19 JUDGE CANFIELD: Okay. I will mark that on
20 the inside sheets since the top page is fairly dark.
21 I will mark that multiple-page document as Exhibit No.
22 2 for identification.

23 (Marked Exhibit 2.)

24 Q. Mr. Ottavelli, what was it about this plan
25 that indicated to you that the company may be

(OTTAVELLI - DIRECT BY EGELER)

1 jurisdictional?

2 A. Referring to page 5 of the plan, under the
3 paragraph headed Authority, last sentence in that
4 paragraph there is the statement, "There are currently
5 111 connections served by the water system," and that
6 is in excess of the basic jurisdictional threshold of
7 100 customers as set forth under statute.

8 Also referring to page 9 at the bottom of
9 the page there is a revenue projection for the next
10 fiscal year and again, there appears 111 connections
11 establishing that this water company has 111
12 connections, again in excess of the 100 connection
13 threshold established by statute.

14 Q. After becoming aware that the company
15 appeared to have 111 customers, what did the
16 Commission do?

17 A. The Commission provided the company with a
18 copy of a proposed tariff asking that the company
19 return the tariff -- complete the tariff, review it,
20 complete it, sign it, put in their title and return the
21 tariff to the Commission.

22 MS. EGELER: I would like to have marked
23 for identification as the next exhibit in order
24 Exhibit No. 3 the letter I provided you dated January
25 27 of 1994 from Steve McLellan to Owen Sawyer.

(OTTAVELLI - DIRECT BY EGELER)

1 JUDGE CANFIELD: That's likewise a
2 multiple-page document and that will be marked as
3 Exhibit No. 3 for identification.

4 (Marked Exhibit 3.)

5 Q. Mr. Ottavelli, is what has been marked as
6 Exhibit 3 the tariff and the cover letter that you
7 were referring to?

8 A. Yes, it is.

9 Q. Did the company return the tariff?

10 A. No. The company did not. The letter asked
11 that the tariff be prepared and returned before
12 February 19, 1994 and the company did not return the
13 tariff.

14 Q. What rates should the company have used in
15 that tariff?

16 A. The rate that was reflected in the tariff
17 -- and it was staff's understanding that this was --
18 this is the appropriate rate -- is the rate of \$25 per
19 month, and that should be the rate in place at the
20 time jurisdictional status was determined.

21 Q. And was the company required to use the
22 tariff exactly as it had been filled out for them?

23 A. No. The cover letter was very clear that
24 the tariff was provided simply as a convenience to the
25 company and that it was to aid them in completing

(OTTAVELLI - DIRECT BY EGELER)

1 their tariff which should specify the current rates
2 and conditions of operation that the company operates
3 under.

4 Q. When the Commission did not receive any
5 response to the cover letter or the tariff that is
6 sent out, did it proceed any further?

7 A. Yes, it did. On April 12, 1994, the
8 Commission sent another letter to the company in
9 effect giving them an opportunity to refute the
10 Commission's finding of jurisdiction. Attached to
11 that letter was a questionnaire to establish
12 jurisdictional questions and facts relating to the
13 operation of that water company.

14 MS. EGELER: I would like to have marked as
15 the next exhibit in order, Exhibit No. 4, a letter
16 dated April 12 of 1994 from Steve McLellan to Mr. Owen
17 Sawyer.

18 JUDGE CANFIELD: That two-page document
19 will be marked as Exhibit No. 4 for identification.

20 (Marked Exhibit 4.)

21 Q. Mr. Ottavelli, is what's been marked for
22 identification as Exhibit No. 4 the letter that you
23 were referring to?

24 A. Yes, it is.

25 Q. And was there any response that you know

(OTTAVELLI - DIRECT BY EGELER)

1 of, a completion of the questionnaire that was sent?

2 A. No. To my knowledge there was no response.

3 Q. After the sending of that letter, did you
4 have any personal contact with the company?

5 A. Yes. On May 4, I telephoned Mr. Owen
6 Sawyer to discuss with him the status of Kayak Point
7 Water Company. In this conversation with Mr. Sawyer
8 he confirmed that the company is currently providing
9 service to 130 customers, again, in excess of the
10 jurisdictional threshold. He also indicated a concern
11 with filing a tariff because of various costs that he
12 felt would be incurred. Then the requirement that
13 meters be installed and that meters -- he had some
14 indication that meters might be mandated by Department
15 of Health. And I pointed out to him that a tariff
16 should be filed with this Commission, that that was
17 not an issue in this particular matter.

18 Q. Did you leave him with the impression that
19 he would be required to hook all of his customers up
20 to meters before filing a tariff?

21 A. No. I informed him that to my knowledge
22 there were no statutory requirements for 100 percent
23 metering of a water system regardless of the
24 jurisdictional status with this Commission. I further
25 discussed with him the ability to recover the costs of

(OTTAVELLI - DIRECT BY EGELER)

1 installing meters through normal rate making process
2 as meters were installed on a system.

3 Q. So was any meter installation required
4 before filing an initial tariff?

5 A. No. And that was made clear to Mr. Sawyer.

6 Q. However, isn't it true that the Commission
7 may require you to hook up meters at some future time
8 if it sees that that is in the customer's interest?

9 A. Yes. The Commission may require meters for
10 purposes of conservation.

11 MS. EGELER: I would like to have marked as
12 the next exhibit, Exhibit No. 5, a letter dated May 9,
13 1994 from Steve McLellan to Owen Sawyer.

14 JUDGE CANFIELD: That one-page letter will
15 be marked as Exhibit No. 5.

16 (Marked Exhibit 5.)

17 Q. Mr. Ottavelli, are you familiar with what
18 has been marked for identification as Exhibit No. 5?

19 A. Yes, I am.

20 Q. Can you please state what this is.

21 A. This is a letter to Mr. Owen Sawyer of
22 Kayak Point Water Company signed by Steve McLellan,
23 secretary of the Utilities and Transportation
24 Commission, confirming matters discussed in a
25 telephone conversation between myself and Mr. Sawyer

(OTTAVELLI - DIRECT BY EGELER)

1 to include the existence of 130 customers being
2 provided service by Kayak Point Water Company, further
3 specifying that if Mr. Sawyer disagreed with any
4 comments set forth in that letter that he should
5 contact myself or the Commission to discuss it.

6 Q. And this is the telephone call that you
7 were referring to right here?

8 A. Yes. This is a summation of the telephone
9 call that we had on May 5.

10 Q. Did Mr. Sawyer contact you to discuss the
11 matter further or to inform the Commission that he
12 disagreed with anything contained in the letter?

13 A. No, he did not.

14 Q. Was there any response to the letter in
15 written form?

16 A. Yes. On May 24, a letter was received by
17 the Commission from Kayak Point Water Company signed
18 by Owen Sawyer, manager of the company, and the letter
19 affirmed that the company agreed upon jurisdiction on
20 numerous occasions, that there was no question --
21 there is no question that the company does fall under
22 the jurisdiction of this Commission.

23 MS. EGELER: I would like to have marked as
24 Exhibit No. 6 a letter dated May 24, 1994 from Owen
25 Sawyer to the secretary of the Utilities and

(OTTAVELLI - DIRECT BY EGELER)

1 Transportation Commission.

2 JUDGE CANFIELD: That one-page letter is so
3 marked as Exhibit No. 6.

4 (Marked Exhibit 6.)

5 Q. Do you know as of this morning, has a
6 tariff been received from Kayak Point Water System?

7 A. To my knowledge a tariff has not been
8 received from Kayak Point Water System by this
9 Commission.

10 Q. When was the last time that you checked?

11 A. The last time would have been about a half
12 an hour ago this morning.

13 Q. Do you have anything further you would like
14 to add?

15 A. No, there is not.

16 MS. EGELER: I would like to move for the
17 admission of Exhibits 2 through 6.

18 JUDGE CANFIELD: Exhibits 2 through 6 are
19 so entered into the record. We've already entered
20 Exhibit No. 1. So we have Exhibits 1 through 6 having
21 been entered into the record.

22 (Admitted Exhibits 2 - 6.)

23 MS. EGELER: I have no further direct.

24 JUDGE CANFIELD: I guess I've got no
25 questions either. I think the exhibits have been

(OTTAVELLI - DIRECT BY EGELER)

1 identified and explained by Mr. Ottavelli and the
2 situation has been outlined pretty clearly in the
3 questioning. Ms. Egeler, had you discussed the
4 hearing with the respondent as far as his
5 non-appearance at today's hearing?

6 MS. EGELER: Yes. I discussed it with him
7 twice. I discussed it with him, I would guess,
8 approximately two weeks ago, and that's a rough guess,
9 and informed him that per his letter of May 24, if he
10 felt that he was jurisdictional and he wasn't
11 contesting that that there would be no need for a
12 hearing if he mailed in a tariff. I called again on
13 Monday, I believe it was, did not receive any answer at
14 his home or business number, so I left a message on his
15 answering machine telling him that we had not received
16 a tariff and I assume that the hearing would go forward
17 on the 8th. Is today the 8th?

18 JUDGE CANFIELD: Right.

19 MS. EGELER: And that if we did not receive
20 a tariff before then that the hearing would go
21 forward. He returned my call yesterday and told me
22 that he didn't think that the hearing was necessary
23 because he admitted that he was subject to the
24 Commission's jurisdiction and it was going to take him
25 a few more days to file a tariff, perhaps a few days

(OTTAVELLI - DIRECT BY EGELER)

1 or as much as a week. I told him that if we did not
2 receive a tariff that my intent was to go forward
3 with the hearing just to clear the matter up and that
4 he may want to fax a letter to the administrative law
5 judge and inform him that he did not plan to attend
6 and that he was not contesting the jurisdictional
7 issue.

8 JUDGE CANFIELD: You had advised our office
9 by phone on June 1 that the staff had been in contact
10 with the respondent and at that time was attempting to
11 work things out and that you would be going through
12 with the hearing, and it was the understanding that
13 that would be the case unless a tariff is filed and
14 that you would advise us if anything changed and as of
15 yesterday there had been no change. It was still to
16 go to hearing. I don't know that under the
17 circumstances you're requesting any sanctions or
18 requests for sanctions against the respondent. Is
19 that a correct understanding?

20 MS. EGELER: I am not requesting sanctions,
21 and I think that the primary reason for that is that
22 Mr. Sawyer was willing to send in a letter to you,
23 Your Honor, and explain that he did not plan on
24 appearing rather than just leaving the proceedings in
25 a lurch and not informing people of his plans.

(OTTAVELLI - DIRECT BY EGELER)

1 JUDGE CANFIELD: So noted. I just wanted
2 to clarify that for the record, then. So it was the
3 understanding that the hearing would go forward and
4 that we would take testimony from Commission staff and
5 that an initial order would be issued followed by a
6 Commission final order on this and it was Mr. Sawyer's
7 intent, at least at the last you talked to him, to
8 follow through and file a tariff with the Commission.

9 MS. EGELER: That's correct.

10 JUDGE CANFIELD: Okay. Anything further,
11 Ms. Egeler?

12 MS. EGELER: I have nothing further.

13 JUDGE CANFIELD: I thank you, then, and I
14 will adjourn the hearing and as indicated I will
15 prepare an initial order to be sent to all parties
16 including the respondent and we'll get that out
17 hopefully within the next two weeks.

18 MS. EGELER: Great.

19 JUDGE CANFIELD: Thank you. This hearing
20 is closed.

21 (Hearing adjourned at 9:48 a.m.)

22

23

24

25