

Agenda Date: July 31, 2003

Item Number: **A5**

Docket Number: UW-021603

Company Names: Kayak Point Water Co., Inc., and
Kayak Estates Water, LLC

Staff: Jim Ward, Regulatory Analyst

Recommendation:

Take no action on the joint application for a sale and transfer of assets from Kayak Point Water Co., Inc., to Kayak Estates Water, LLC, in Docket UW-021603.

Discussion:

On December 5, 2002, Kayak Point Water Co., Inc., (Kayak Point) and Kayak Estates Water, LLC, (Kayak Estates) filed a joint application pursuant to the provisions of Chapter 80.12 RCW for a sale and transfer of assets (dated November 9, 1999) of Kayak Point. Kayak Point water system serves approximately 334 customers and is located south of Stanwood in Snohomish County.

Kayak Estates is a Washington corporation formed to act as a utility company. The joint application for sale and transfer states the acquiring company is owned and managed by people with experience in the water business. Some owners of this new company are part of the company, Iliad Inc., that originally engineered and constructed phases I and II of the Kayak Point development. Iliad, Inc., has been operating the water system for Kayak Point for several years. Under the application, Iliad Inc., will continue operation of the water system.

The customers of Kayak Point were notified of this proposed sale and transfer of assets of Kayak Point water system. Several comments were received relating to liens placed by Iliad, Inc., on the properties of customers of the Kayak Point water system. Currently, there are outstanding liens placed on approximately 78 of the customers' properties by Iliad, Inc., because of unpaid liabilities owed by Kayak Point Water Company to Iliad, Inc.

The Commission received four comments opposed to the sale and transfer. However, during the recent request for metered rates at the open meeting (June 27, 2003) other customers stated concerns about the sale and transfer of Kayak Point water system. Customers are concerned about water quality, quantity, leaking pipes, liens placed upon customers' properties, lack of maintenance of the water system, water outages, water restrictions, and

Company responsiveness. Consumer Affairs has received nine inquiries regarding water quality and water quantity, and one billing complaint. Water quantity and quality issues are being addressed by Department of Health (DOH). The billing complaint has been resolved.

In the application filed December 5, 2002, the attorney filing the joint application states that based upon the 2001 annual report the utility plant in service is \$1,739,365 with accumulated depreciation of \$1,011,964 and using Commission Staff's 2000 analysis, net CIAC is \$158,128. This produces a rate base of approximately \$569,273. Kayak Estates will acquire all operations and property of Kayak Point for \$457,000, by paying \$250,000 cash at closing and issuing a 15-year note payable of \$207,000.

Commission Staff has informed the new owners that based on their application information, an acquisition adjustment for \$192,905 will need to be recorded for future reference.

The applicants state that the benefits of this sale include expanded financial resources and water staff experienced in water system repairs and operations.

Kayak Point water system rates will not change in conjunction with this sale and any future rate changes will be reviewed by this Commission.

Commission Staff has several outstanding issues. The issues are summarized below:

1. Staff believes Iliad, Inc., should release all liens against customers' properties for non-payment by Kayak Point Water Company to Iliad, Inc., prior to approval of the transfer.
2. Kayak Point Water Company should send notice (previously approved by Staff) to all customers affected of the opportunity to recover reasonable costs associated with liens.
3. The current owner of Kayak Point Water Company should set aside funds for a period of three months. These funds (held by attorney) will be used to reimburse any customer who paid to have the liens filed by Iliad, Inc., removed, or dealt with since the liens were filed. The expense incurred by the customer to address liens against the customer's property should be supported by receipt or other means to verify the amount and purpose of the expense.

4. At the June 27, 2003, Open Meeting, customers opposed the proposed metered rates and made extensive comments to the Commissioners about long-standing problems with water quality (iron and manganese?), quantity (low pressure, high pressure, water outages, leaks in the system, mandatory water restrictions, etc.), and the Company being out of compliance with (DOH) requirements.
5. At the same June 27, 2003, Open Meeting, customers asked the Commissioners to postpone any action until the Company fixes the problems and comes into compliance with DOH requirements. Staff also has concerns about the lack of plans to bring the water system into compliance with DOH requirements, and to fix the problems identified by customers. Staff understands that DOH and the Company have reached, or are near, an agreement. The Commission / DOH Memorandum of Understanding designates DOH as having primary jurisdiction over water quality and quantity matters. Staff will support DOH in this matter.

Conclusion

Staff recommends that the Commission take no action on the sale and transfer of assets from Kayak Point Water Co., Inc., to Kayak Estates Water, LLC, in Docket UW-021603, until the above customers' and Staff's issues are resolved.