

Decision No. 53857

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 DYKE WATER COMPANY, a corporation, )  
 for authority to extend its water )  
 service to additional territory in )  
 the vicinity of Garden Grove, in )  
 unincorporated territory, County of )  
 Orange, under Section 1001, Public )  
 Utilities Code of the State of )  
 California, )

Application No. 37042  
 Amended

COUNTY OF ORANGE, a body politic )  
 of the State of California, and )  
 ORANGE COUNTY WATERWORKS DISTRICT )  
 No. 3, a body politic of the State )  
 of California, )

Complainants, )

vs. )

Case No. 5666

DYKE WATER COMPANY, a corporation, )  
 Defendant. )

Arlyne Lansdale, attorney, for applicant and defendant;  
George F. Holden, assistant county counsel, Orange  
 County, for complainants and protestants;  
 Moss, Lyon & Dunn, attorneys, by George C. Lyon, for  
 Pacific Water Co.; O'Melveny & Myers, attorneys, by  
Lauren M. Wright and Frederick N. Edwards, for  
 Southern California Water Company; Jack H. Croul,  
Lee T. Hollopeter, secretary-treasurer and general  
 manager, and John Amos Fleming, attorney, for  
 Lakewood Water and Power Company, protestants;  
John K. Colwell, city attorney, for the City of Santa  
 Ana; and John E. Skelton, vice president and attor-  
 ney, for San Gabriel Valley Water Company, interested  
 parties;  
Cyril M. Saroyan, Charles W. Mors, Theodore Stein, and  
Charles W. Drake, for the Commission staff.

O P I N I O N

Dyke Water Company,<sup>1</sup> a corporation, filed the above-entitled application on June 15, 1955, and amended it on September 2, 1955, to include Tract No. 2612 not included in the original application.

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<sup>1</sup> Hereinafter referred to as Dyke, applicant, or defendant.

County of Orange,<sup>2</sup> a body politic, and Orange County Waterworks District No. 3,<sup>3</sup> a body politic, filed the above-entitled complaint on July 28, 1955, alleging that defendant had violated the Commission's order in Decision No. 50041, dated May 11, 1954, in Application No. 35205, by having extended its water system into Tracts Nos. 2182, 2428, 2429, 2179, and 2612, subsequent to the date of such decision, without first having secured approval for such extension from the Commission. Said decision, in paragraph 6 of the order therein, stated as follows:

"That applicant shall not further expand or extend its water system within the boundaries of the Orange County Waterworks District No. 3 as such boundaries are delineated on the map, Exhibit No. 9, filed at the hearing in this matter, or enter into any further contracts for water service within such boundaries without further order of the Commission."

The application covers all of the tracts complained of by the County and, in addition thereto, Tracts Nos. 2146, 2191 (subdivided into Tracts Nos. 2463, 2464 and 2465), and Tracts Nos. 2097 and 2433. The total number of lots in the tracts described in the application is 986, plus approximately 12 unsubdivided acres adjoining Tract No. 2179. All of the properties hereinbefore mentioned are situated in Orange County.

#### Hearings

Public hearings on these matters were held on a consolidated record with Applications Nos. 36592, 37096, 37097, 37161, 37167, 37172 and 37491 before Commissioner Justus F. Craemer and Examiner Stewart C. Warner on September 28, 29 and 30, 1955, and before Examiner Warner on October 18, 19, 20 and 21, November 14, 15, 16, 17 and 18, and December 5, 6, 7 and 8, 1955, at Santa Ana. The record contains 1,815 pages of transcript and 120 exhibits.

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<sup>2</sup> Hereinafter referred to as the County or complainant.

<sup>3</sup> Hereinafter referred to as the District or complainant.

Basis of Application

Dyke's application is based on testimony and evidence that it had, at least with respect to the tracts complained of, executed contracts prior to May 11, 1954, with subdividers covering said tracts. The application further alleged that Dyke had been ready, willing and able to serve said tracts; that its water supply from wells made available to it were ample; that its transmission and distribution pipelines and storage facilities were adequate; and that it planned to add to its sources of water supply by effecting a connection with the Metropolitan Water District.

The testimony and evidence of record as they pertain to Dyke's Applications Nos. 37097 and 37161, supra, and the staff report on Dyke's operations, Exhibit No. 110 herein, apply to the instant application as well. However the preponderance of such testimony and evidence is more pertinent and relevant to Applications Nos. 37097 and 37161 than to the application being considered herein which, as noted, relates to specific tracts and water service extensions.

Answer of Defendant

In its answer filed August 18, 1955, defendant denied that it had entered into any further contracts subsequent to May 11, 1954, and by way of affirmative defense alleged that the District had, subsequent to May 11, 1954, annexed territory which included some areas already certificated to defendant by prior decisions of the Commission.

General Information

Dyke was granted a certificate of public convenience and necessity to construct and operate a public utility water system in Tract No. 1345 at the corner of Chapman and Euclid Avenues by Decision No. 46758, dated February 13, 1952, in Application No. 32634. By five additional decisions in 1952, 1953, 1954 and 1955,

Dyke was authorized to construct and operate its water system in other areas, but no authority was ever sought from or granted by this Commission to construct and/or operate a water system in any of the tracts complained of by complainants.

Dyke's presently certificated areas as alleged by it are shown (shaded red) on the map, Exhibit No. 23, filed herein. Areas, either contiguous or noncontiguous to its certificated areas in which it was furnishing water service as of June 30, 1955, are also shown (red crosshatching) on said exhibit.

As of August 31, 1955, applicant was furnishing water service to 5,930 consumers and had installed a total of approximately 13,800 service connections throughout its water system. All consumers, except some 50 in number, were served on a flat rate basis.

Evidence with Respect  
to Tracts Complained of

The evidence with respect to each tract complained of was as follows:

1. Tract No. 2182. Exhibit No. 55 shows that only about one quarter of this tract was within complainants' boundaries on May 11, 1954, but that subsequent thereto and by Resolution No. 109917 of the County Board of Supervisors, dated December 20, 1954, the remainder of Tract No. 2182 was annexed to the District. Defendant submitted as Exhibit No. 28 a copy of a contract between Ajax Palos Verdes Corp. and defendant dated April 18, 1955, for the extension and construction of a water system to serve Tract No. 2182. Said tract is adjacent and contiguous on the southeast thereof to Tract No. 1861 authority to serve which was certificated to defendant by Decision No. 50041 heretofore referred to.

2. Tracts Nos. 2428 and 2429. Defendant attempted to introduce, as Exhibit No. 30, a contract made with Henry C. Cox, dated March 1, 1953, which purportedly covered an exchange of subdivisions

and finally resulted in defendant furnishing service to Tracts Nos. 2428 and 2429 subsequent to May 11, 1954. Exhibit No. 30 was not received in evidence. It was ruled to be immaterial since it contained no specific reference to Tracts Nos. 2428 or 2429. Defendant has, however, been serving or is ready to serve a total of 63 lots as shown on the maps, Exhibits Nos. 50 and 51. These tracts are clearly within complainants' boundaries as they existed on May 11, 1954, and as shown on Exhibit No. 55.

3. Tract No. 2179. Exhibits Nos. 35, 36 and 37 are copies of contracts dated December 29, 1954, made by Dyke with corporations interested in Tract No. 2179, covering a total of 177 lots. Exhibit No. 38, a letter from defendant to H. D. Tobin, dated December 9, 1953, and the letter of acceptance from Tobin Company by Herbert D. Tobin to defendant, dated December 9, 1953, Exhibit No. 39, were introduced by defendant purporting to show the existence of a master contract with three Tobin companies covering subdivisions in the Garden Grove area. Tract No. 2179 was subdivided by the Tobin companies and contracts for water service were signed in December, 1954, as noted, and defendant is serving said tract, which is clearly within complainants' boundaries as they existed on May 11, 1954, and as shown on Exhibit No. 55.

4. Tract No. 2612. Exhibit No. 54 is a copy of a contract made by Dyke with Walco Homes, Inc., dated July 8, 1955, for the construction of a water system to serve some 35 lots in Tract No. 2612, and defendant is serving said tract. Defendant based its defense on alleged prior contractual relations with the principals of Walco Homes, Inc., and introduced as Exhibit No. 46 a copy of a letter from defendant to Mr. Arthur F. Wall, dated March 18, 1954, agreeing to supply domestic water to the Wall properties "in the vicinity of Garden Grove." Tract No. 2612 is clearly within

complainants' boundaries as they existed on May 11, 1954, and as shown on Exhibit No. 55.

District contended that it was and had been at all times ready, willing and able to furnish water service to the tracts complained of within its boundaries, and that it had been bonded heavily, through an election, to finance the rehabilitation, construction and expansion of its water system. Its witness testified that in one or two instances its representatives had negotiated with subdividers of the tracts described in the complaint for water system installation contracts, but that the subdividers had later contracted with Dyke on other terms.<sup>4</sup>

Findings and Conclusions  
with Respect to the Complaint

The Commission finds and concludes that, inasmuch as at least three quarters of Tract No. 2182 was outside the District's boundaries as of May 11, 1954 (see Note 4, supra), defendant was not in violation of the Commission's order in extending its water system from Tract No. 1861, southerly into said three quarters of Tract No. 2182. As hereinbefore noted Tract No. 1861 is contiguous to Tract No. 2182 on the northwest thereof, and was previously certificated to defendant. The extension of the water system into the remaining one quarter of the tract was in violation of the Commission's order. However, it appears that it would not be practicable nor reasonable to require defendant to split up the tract for water service purposes, nor would it be in the public interest to do so. The complaint will be dismissed as to said Tract No. 2182.

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<sup>4</sup> The record is not clear that complainants stood ready, able and willing to serve Tract No. 2182 either on May 11, 1954, the date of the Commission's order, or on December 20, 1954, the date of its annexation to the District.

The Commission further finds and concludes that defendant has deliberately violated the intent and express wording of the Commission's order in Decision No. 50041 by extending its water system into Tracts Nos. 2428, 2429, 2179 and 2612 without authority of the Commission. Defendant's contention that it had, prior to May 11, 1954, executed contracts with subdividers of said tracts for the installation of water systems therein is rejected as not binding on this Commission, nor is it any valid excuse for the violation of the Commission's order. Also, it is evident that Tracts Nos. 2179 and 2612 are not contiguous to any area in which Dyke was furnishing a water service or in which it had an established water system. As to the extensions into such tracts, Dyke therefore violated the plain provisions of the first paragraph of Section 1001 of the Public Utilities Code.

The record shows that Tracts Nos. 2428, 2429, 2179 and 2612 contain in the aggregate 275 lots to which domestic water service is being furnished by defendant. Obviously, these domestic water services must be continued, and the order which follows will be tempered by the realities of the situation. This Commission has no jurisdiction over the complainants and is powerless to make any order requiring them to furnish the present consumers in said tracts with water service, but this Commission does have, and will exercise the power to require Dyke to continue to furnish such water service at its present rates until a substitute is provided by the complainants, even though Dyke's present servicing of said tracts is in violation of the authority of the Commission, and to that extent unlawful.

Therefore, the order which follows, in recognition of the realities involved, will order Dyke to continue to furnish its present services in Tracts Nos. 2428, 2429, 2179 and 2612 until such time as complainants shall certify to the Commission, by formal resolution of

the Board of Supervisors of Orange County, that they are ready to and will serve domestic water to all consumers in said tracts then being served by Dyke. Upon the receipt by the Commission not earlier, however, than the effective date of the order herein, of such a resolution, properly certified, this Commission will issue its supplemental order herein ordering and directing defendant to cease and desist from furnishing water service to said consumers.

The Commission further finds and concludes that in any future rate proceeding involving Dyke's system, no consideration should be given nor allowance be made for any of Dyke's investment in properties associated with or attributable to its unauthorized extensions into Tracts Nos. 2428, 2429, 2179 and 2612, nor should consideration be given nor allowance be made to Dyke for its expenses and costs incurred in the defense of the complaint herein. The order which follows will direct Dyke to segregate in its books of account its investment in properties to show separately that investment associated with the aforesaid unauthorized extensions, and to segregate in its books of account all of its expenses and costs incurred in the defense of the complaint, all of which are and will be disallowed in any future rate proceeding.

Conclusions with Respect  
to the Application

As hereinbefore stated, Dyke's application seeks a certificate of public convenience and necessity permitting it to "begin the extension and construction of an interconnecting water production and distribution system" into Tracts Nos. 2146, 2191 (subdivided into Tracts Nos. 2463, 2464 and 2465), and Tracts Nos. 2097 and 2433. By Applications Nos. 37097 and 37161, filed by Dyke on July 5, 1955 and July 26, 1955, respectively, Dyke seeks a like certificate of public convenience and necessity to serve in areas in southwestern Orange County which include all of the tracts described in the instant



application and in the complaint. The Commission will, coincidentally, with its decision in the instant captioned matters, issue its decision in Applications Nos. 37097 and 37161 which will determine all issues not determined by the order herein including the right to furnish water service to Tract No. 2182. The application herein will therefore be dismissed.

O R D E R

Application as amended, and complaint having been filed, public hearings having been held, the matters having been submitted, the Commission having made its findings and conclusions, and the matters now being ready for decision,

IT IS HEREBY ORDERED as follows:

1. That pending further order of the Commission, Dyke Water Company shall continue to furnish its water service in Tracts Nos. 2428, 2429, 2179 and 2612 at its present rates.

2. That when (a) the County of Orange, and Orange County Water Works District No. 3, complainants herein, shall be ready to and will serve the consumers of Dyke Water Company, defendant herein, in Tracts Nos. 2428, 2429, 2179 and 2612, with domestic water service, and (b) the Board of Supervisors of said Orange County shall by its formal resolution fix the exact time for the establishment of said service, and (c) the Commission is in receipt of such resolution, properly certified, a supplemental order will be issued by the Commission which will order and direct Dyke Water Company to cease and desist from furnishing water service to its consumers in said tracts.

3. That Dyke Water Company shall segregate in its books of account its investment in properties to show separately that investment associated with its unauthorized extensions into the tracts described in paragraph 1, and shall segregate in its books of account all of its expenses and costs incurred in the defense of the complaint, all of which are and will be disallowed in any future rate proceeding.

4. That within ten days after the effective date of this order Dyke Water Company shall report in writing to the Commission, with detail as to dates, names and amounts, the monies and properties it has heretofore received or refunded as customers' advances for construction in the tracts described in paragraph 1. In its supplemental order the Commission will order appropriate disposition of said advances.

5. That within ten days after Dyke Water Company may have agreed to transfer any portion of its water system properties and services in the tracts described in paragraph 1, it shall make formal application for the necessary authorization, which application shall include full information in relation to any compensation received or to be received by it because of any such transfer.

6. That pending further order of the Commission Dyke Water Company shall not extend its water system in the tracts described in paragraph 1.

7. That as to Tract No. 2182 the complaint be, and it is, dismissed.

8. That all orders in respect to the areas covered by the application are now consolidated with and shall be a part of the decision issued in Applications Nos. 37097 and 37161.

9. That the application be, and it is, dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 1st day of October, 1956.

[Signature]  
President  
Justus J. Casner  
Raul Luterovic  
Walter J. Cole  
[Signature]  
Commissioners