

**ORIGINAL**Decision No. 54008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )	
PACIFIC WATER CO., a California )	
corporation, to issue its Class B )	
and Class C Preferred Shares, under )	
provisions of Section 818 of the )	Application No. 37096
Public Utilities Code, to Bowles )	Amended
and Co., Inc., and to Builders )	
Mortgage Company. )	

Moss, Lyon & Dunn, attorneys, by George C. Lyon,  
 for applicant;  
Cyril M. Sarovan, Charles W. Mors, Theodore Stein,  
 and Charles W. Drake, for the Commission staff.

O P I N I O N

Pacific Water Co. by the above-entitled application filed July 2, 1955, as amended July 14, 1955, seeks authority to issue 1,234 shares of Class B preferred stock of a total par value of \$12,340 and 1,232 shares of Class C preferred stock of a total par value of \$12,320.

This matter was consolidated for hearing with Application No. 36592 of Pacific Water Co.; Applications Nos. 37042, 37097 and 37161 of Dyke Water Company; Case No. 5666 of Orange County and Orange County Waterworks District No. 3 vs. Dyke; Application No. 37167 of Park Lane Water Company and Southern California Water Company; Application No. 37172 of Southern California Water Company; and Application No. 37491 of Lakewood Water and Power Company. Public hearings on these matters were held 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 consolidated matters were all submitted on the last

named hearing date, except Application No. 37491 of Lakewood Water and Power Company which was continued to a date to be set. All of such matters have now been decided except Lakewood's application and the instant matter, which latter is now ready for decision.

Applicant herein seeks authority to issue 989 shares of 5 per cent Class B preferred stock of the par value of \$9,890, and 988 shares of 3 per cent Class C preferred stock of the par value of \$9,880, to Bowles and Co., Inc., for cash to pay for the installation of a water system in Tract No. 2469 comprising 172 lots. Applicant requested like authority to issue 245 shares of 5 per cent Class B preferred stock of the par value of \$2,450, and 244 shares of 3 per cent Class C preferred stock of the par value of \$2,440, to Builders Mortgage Company, for cash to pay for the installation of a water system to serve 42 lots comprising Tract No. 2438.

Each of the subdividers' agreements for water service, Exhibits Nos. 6 and 7, provides that the subdividers would purchase shares of stock from applicant, the total par value of which was agreed to be paid by applicant in payment of the estimated cost of the respective water system installations.

In support of its application, applicant's witnesses, in substance, testified that the agreements as finally negotiated were the result of considerable bargaining and that the subdividers declined any other type of contract; that the issuance of the preferred stock as applied for would improve applicant's capital structure and broaden its base to support a further issuance of long-term debt; that the expected growth of the company would necessitate additional debt financing; that the cash disbursements by applicant for the annual refunds under the main extension rule were presently a burden; and that the installations of the water systems had been made by applicant, and that payment therefor had been made by

applicant, in whole or in part, from funds derived from Bowles and Co., Inc., and Builders Mortgage Company, although the respective shares of stock had not as yet been issued.

The record shows that the water system installed in Tract No. 2469 (supra), was not installed pursuant to any certificate granted by this Commission, nor was it installed in a territory contiguous to a water system theretofore served by applicant, and the record is plain and definite that in the installation of the water system in Tract No. 2469 applicant violated the provisions of Section 1001 of the Public Utilities Code of the State of California.

As to Tract No. 2438 (supra), the record shows that this tract is contiguous to a water system served by applicant in what is known as its Sun Gardens system.

The records of the Commission show that applicant, in its present corporate form, has been operating as a public utility water corporation since 1953, and the records of the Commission demonstrate that applicant had filed with the Commission its rule governing water main extensions in its several tariff books applicable to the areas served by it, in compliance with Decision No. 50580, issued September 28, 1954, in Case No. 5501, and that applicant was and is fully advised as to the main extension rule promulgated by said decision. The plan for the sale and issuance of applicant's preferred shares of stock, as shown by Exhibit No. 7, is a violation of said main extension rule.

Each of the agreements involved recite that it is subject to the approval of this Commission. In neither the application nor the amendment thereto, filed as aforesaid, does the applicant seek the approval of this Commission of either agreement, nor, as to Tract No. 2438 has applicant asked for authority to deviate from its main extension rule.

The Commission cannot countenance violations of the laws of the State of California or of the rules of the Commission, as demonstrated by the actions and activities of applicant herein. The agreements were executed and, to all extents and purposes except as to the issuance of the stock, were completely complied with at the time of the hearings on the instant captioned application.

The application should, and in the order which follows hereinafter will, be denied.

O R D E R

Application as amended as above entitled having been filed, public hearings having been held, the matter having been submitted and now being ready for decision,

IT IS HEREBY ORDERED that the above-entitled application be and it is hereby denied.

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

Dated at San Francisco, California, this 30<sup>th</sup> day of OCTOBER, 1956.

*W. E. Mitchell*  
 President

*Paul J. Suberiner*

*Mark A. ...*

*R. Hardy*

Commissioners

Commissioner JUSTUS F. CRAEMER, being necessarily absent, did not participate in the disposition of this proceeding.