

**ORIGINAL**Decision No. 56319

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

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,

Case No. 5666

vs.

DYKE WATER COMPANY, a corporation,

Defendant.

ORDER DENYING REHEARING

Dyke Water Company seeks rehearing of Decision No. 56197, a supplemental order in the above proceedings, issued on February 4, 1958 and effective on the same date. As stated therein, in 1954 petitioner was ordered not to further expand its water system within the boundaries of Orange County Waterworks District No. 3 without further Commission order.

A 1956 decision found that petitioner had deliberately violated the 1954 order, as well as Public Utilities Code section 1001, by extending its system into specified tracts. The 1956

decision directed petitioner to continue service in those tracts pending further order. It also provided that when the County and the District "shall be ready to and will serve" petitioner's consumers in those tracts, and shall file a resolution fixing the exact time "for the establishment of said service", a supplemental order would issue directing petitioner to cease serving in such tracts. (Decision No. 53857.)

During the pendency of a petition for a writ to review the 1956 decision the County Board of Supervisors filed a resolution to the effect that the District would establish service within twenty-four hours after issuance of a supplemental order directing petitioner to cease service. Because of the pendency of the review proceeding the effective date of the 1956 decision was extended until thirty days after final determination of the review proceeding.

After denial of review by the Supreme Court, the Commission issued the supplemental order of February 4, 1958. This order provided that the County and the District shall serve upon petitioner a notice specifying the exact time when they "are ready to and will serve" petitioner's consumers in the specified tracts, and that concurrently with the commencement of service therein by the County and the District, petitioner shall cease and thereafter refrain from serving in those tracts.

Dyke's petition for rehearing of the 1958 supplemental order attempts to raise anew points already adjudicated adversely to petitioner by denial of its petition for review of the 1956 decision. Neither the 1956 decision nor the 1958 supplemental order questions petitioner's ownership of the water system unlawfully

installed by it to serve the specified tracts. Nor do either of those orders purport to vest title to such system in the County or the District, nor direct petitioner to transfer or to "turn over" any property or facilities.<sup>1/</sup>

The 1958 supplemental order merely sets forth the procedure to be followed when the County and the District are "ready to and will serve" the consumers in the specified tracts. Petitioner is ordered to cease service therein "concurrently with the commencement of service" by the County and the District. The latter will not be in a position to serve until acquisition of petitioner's facilities, by voluntary transfer or by eminent domain proceedings, or until construction of necessary separate facilities.

Petitioner also alleges, on information and belief, that the 1958 supplemental order was issued after a hearing at which the County and the District made proof that the District had facilities ready to serve the tracts, and that such hearing was without due process in that petitioner had no notice thereof or opportunity to be heard and to cross-examine. The 1958 supplemental order is procedural in nature, and was issued ex parte without any hearing.

Petitioner alleges further that the County and District have not constructed and are not now constructing parallel mains and services, have not offered to purchase petitioner's facilities, have not instituted eminent domain proceedings, and do not have

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<sup>1/</sup> Ordering paragraph 5 of the 1956 decision provides 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." (Emphasis added.)

petitioner's consent to use its facilities. The order provides that the County and District "shall forthwith serve" upon petitioner a notice specifying the exact time when they are ready to and will serve. We do not know if the County and the District are presently in a position to specify the exact time, and this part of the order will be amended to provide that such notice shall be given upon completion of necessary arrangements for furnishing service.

Good cause appearing, IT IS ORDERED that ordering paragraph 1 of Decision No. 56197 is amended to read as follows:

"1. County of Orange and Orange County Waterworks District No. 3, upon completion of necessary arrangements for furnishing service, shall forthwith serve upon Dyke Water Company a formal notice specifying the exact time when said County and District are ready to and will serve the consumers of Dyke Water Company in Tracts Nos. 2428, 2429, 2179, and 2612 with domestic water service, and shall file with this Commission a true copy of such notice, with proof of service thereof upon Dyke Water Company."

IT IS FURTHER ORDERED that Dyke Water Company's petition for rehearing of Decision No. 56197, as hereinabove amended, is hereby denied.

Dated at Los Angeles, California, this 3<sup>rd</sup> day of MARCH, 1958.

Paul E. Mitchell  
President  
Raymond J. ...  
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...  
Commissioners