

Decision No. 56372

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

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.

ORDER DENYING REHEARING

On February 25, 1958 numerous residents of Tracts Nos. 2428, 2429, 2179 and 2612, in Orange County, filed a petition for rehearing of Decision No. 56197, a supplemental order in the above proceedings, issued on February 4, 1958 and effective on the same date.

Before adverting to the present petition, it should be noted that a 1954 Commission decision provided that Dyke Water Company "shall not further expand or extend its water system within the boundaries of the Orange County Waterworks District No. 3 * * * or enter into any further contracts for water service within such boundaries without further order of the Commission." (Dec. No. 50041, App. No. 35205.)

In 1955 the County and the District filed their complaint in Case No. 5666, alleging that Dyke Water Company had violated the 1954 order, and the latter applied for authority to extend its water system into specified territory, including the four tracts mentioned above. (App. No. 37042.) Such tracts are within the boundaries of the District.

A 1956 decision in these proceedings found that Dyke Water Company had "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", and also found that Dyke Water Company had violated Public Utilities Code section 1001. (Dec. No. 53857.) Although the company's serving of those tracts was unlawful, the company was required to serve therein "until a substitute is provided by the complainants." The order directed Dyke 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" Dyke'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 Dyke to cease serving in such tracts. (Dec. No. 53857.)

During the pendency of a petition by Dyke 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 Dyke 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, as to which the present petitioners seek rehearing, provided that the County and the District shall serve upon Dyke a notice specifying the exact time when they "are ready to and will serve" Dyke's consumers in the specified tracts, and that concurrently with the commencement of service therein by the County and the District, Dyke shall cease and thereafter refrain from serving in those tracts.

A petition for rehearing of the supplemental order of February 4, 1958 was filed by Dyke Water Company and was denied on March 3, 1958. (Dec. No. 56319.) The order denying rehearing noted that neither the 1956 decision nor the 1958 supplemental order questioned Dyke's ownership of the water system unlawfully installed by it, nor purported to vest title to such system in the County or the District, nor directed Dyke to transfer or to "turn over" any property or facilities.

The order denying Dyke Water Company's petition for rehearing also stated in part as follows:

"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 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 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."

Ordering paragraph 1 of the 1958 supplemental order (Dec. No. 56197) was amended to read as follows:

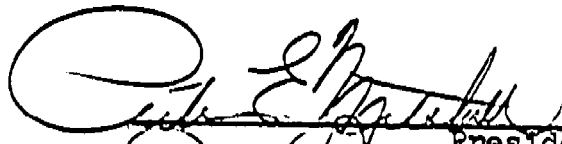
"1. County of Orange and Orange County Waterworks District No. 3, upon completion of necessary arrangements for furnishing service, shall forthwith serve upon Dyke Water Company a formal notice specifying the exact time when said County and District are ready to and will serve the consumers of Dyke Water 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."

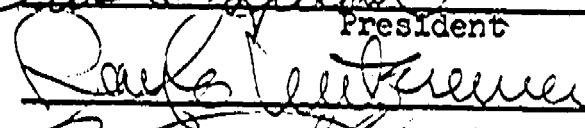
It is clear that the 1958 order was merely procedural in nature, and supplementary to the 1956 decision. Validity of the 1956 decision has been sustained by the Supreme Court. (Dyke Water Company v. Public Utilities Commission, S.F. No. 19657.) Neither order constituted an "abandoning" of a utility and its customers to a district "in an attempt to seize Dyke Water Company's mains and services without payment therefor", as alleged by petitioners. Nor did either order result in forcing the utility "to shut off our water immediately", as petitioners assert. Despite the clearly unlawful operation of the utility, and in order that consumers might continue to receive water service, instead of ordering an immediate cessation of operation, the 1956 decision directed the utility to continue serving in these tracts until the District, whose territory had been unlawfully invaded by the utility, provided its own service. The 1958 supplemental order, as amended, provides that "upon completion of necessary arrangements for furnishing service," the District shall serve upon the

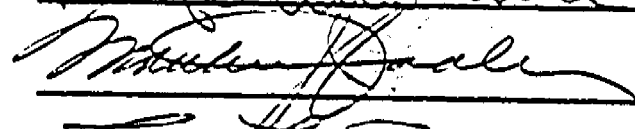
utility a notice specifying the exact time when it is ready to and will serve the consumers in the four tracts. The order also provides that concurrently with the commencement of service by the District the utility shall cease serving therein.

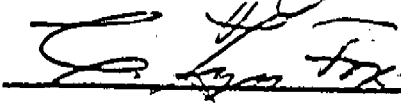
The Commission has given consideration to each of the allegations of the petition for rehearing of the procedural supplemental Decision No. 56197, as amended by Decision No. 56319, and being of the opinion that no good cause has been shown for a rehearing thereof, IT IS ORDERED that the petition for rehearing is hereby denied.

Dated at San Francisco, California, this 17th day of March, 1958.



President






Commissioners