

Decision No. 59212

**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 California.

Application No. 37097  
(Petition of Pacific Water Company for re-opening of Paragraph 1(c) of Dec. 53858)

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 California.

Application No. 37161  
(Petition of Pacific Water Company for re-opening of Paragraph 1(c) of Dec. 53858)

Investigation on the Commission's own motion into the operations, practices and contracts of DYKE WATER COMPANY, a corporation, concerning construction and operation of utility facilities in areas not covered by certificates of public convenience and necessity granted said corporation.

Case No. 6223

Glenn A. Lane and Henry H. Angell, for Dyke Water Company, applicant in Applications Nos. 37097 and 37161, and respondent in Case No. 6223.  
Moss, Lyon & Dunn, by George C. Lyon and William L. Todd, Jr., for Pacific Water Company, petitioner in Applications Nos. 37097 and 37161, interested party in Case No. 6223.  
Milford W. Dahl, for Orange County Water District and Yorba Linda County Water District, interested party in Applications Nos. 37161 and 37097; E. R. Stang, for Southern California Water Company; and Charles R. Handy, for the City of Garden Grove; interested parties.  
William C. Bricca and D. B. Steger, for the Commission staff.

INTERIM OPINION

Public hearings in these matters were held in Los Angeles before Examiner Grant E. Syphers on March 4 and 31, April 1 and 8, June 8, 18 and 25, and July 1, 1959. On these dates evidence was adduced and on the last named date the matter was submitted. It now is ready for decision.

By Decision No. 53858, dated October 1, 1956, in Applications Nos. 37097 and 37161, this Commission, among other things, granted a certificate of public convenience and necessity to the Dyke Water Company authorizing it to conduct operations as a public utility water system in certain designated territory in Orange County. There were various restrictions placed upon this certificate, one of which provided as follows:

"That Dyke Water Company shall not extend its water system outside its certificated service area boundaries as shown on Appendix A without further order of the Commission".

On February 3, 1959, in Case No. 6223, this Commission issued an Order Instituting Investigation to inquire into whether or not the Dyke Water Company had extended its public utility water system in violation of the above prohibition.

On February 24, 1959, this Commission issued an Order Re-opening Proceedings in connection with paragraph 1(c) of Decision No. 53858, supra. That paragraph provided as follows:

"That Dyke Water Company shall submit to the Commission, in writing, within ten days after the effective date hereof, a true and accurate list of the constructions and extensions of its water systems into areas, tracts and subdivisions which are not in any area or areas heretofore or herein certificated to it by the Commission, accompanied

"by a true, accurate and comprehensive map showing in detail the tract numbers (if any), or other legal descriptions, together with a true and accurate statement of the number of consumers and lots in each of such areas, tracts or subdivisions. On receipt of said list, the Commission will issue such further order or orders herein as it may deem appropriate".

The record discloses, and we now find, that prior to the effective date of Decision No. 53858, supra, which effective date was October 21, 1956, the Dyke Water Company had extended service into a number of tracts which are located outside of, and are not contiguous to, its then existing service area. Likewise, after the effective date of this decision, the company extended its water service into a number of other tracts. All of these tracts, which are listed on Appendix "A" attached hereto, are now receiving water service from the Dyke Water Company. None is contiguous to the certificated area of this company.

Decision No. 53858, supra, fixed the boundaries of the service area of the Dyke Water Company and in the vicinity of Garden Grove Boulevard and the Santa Ana River that decision uses as the eastern boundary a street known as Lewis Street. In Appendix "A" attached to that decision, Lewis Street is shown as extending southerly of Garden Grove Boulevard in a straight line. However, the evidence in this matter discloses that Lewis Street makes a jog to the east after it crosses Garden Grove Boulevard. The effect of using a straight line extension of Lewis Street as the eastern boundary of the Dyke Water Company in this area is to include in its certificated area a portion of Tract No. 2518 and exclude another portion of the same tract. As a matter of fact, it would also include a part of a school yard and exclude the rest. Likewise, it excludes Tract

No. 2244 which is between Lewis Street and the Santa Ana River, and creates some confusion as to whether or not Tract No. 2923 is in the certificated area or not. This area is an isolated one so far as any other water service is concerned. It is bounded on the east by the channel of the Santa Ana River and on the west by the territory of the Dyke Water Company. Tracts Nos. 2923, 2518 and 2244 are now being served by the Dyke Water Company, and, in the light of the factual situation, the ensuing order will amend the certificate granted in Decision No. 53858 so as to include these tracts therein.

Giving consideration to all of the evidence adduced herein, we now find that the Dyke Water Company is providing service to each of the 54 tracts listed in Appendix "A" attached hereto, without first having secured authority from this Commission. We further find that the service to these tracts is being performed without any legal authorization therefor. None of these tracts are contiguous to the existing service area of the Dyke Water Company, and, therefore, service cannot be performed under Section 1001 of the Public Utilities Code. Thirty-eight of these tracts are within the certificated areas of other public utility water companies. The services furnished after October 21, 1956, are in specific violation of the provisions of Decision No. 53858, supra.

It was the contention of the Dyke Water Company that it is in the public interest for that company to provide water service to these tracts since it allegedly can provide this service more efficiently and more economically than can other companies. It further contended that there is serious doubt as to whether the other existing companies are able to provide this service at all.

Inasmuch as the Dyke Water Company is now providing service in all of the tracts listed in Appendix "A" and inasmuch as this service is hereby found to be unauthorized and illegal, we are faced

with the problem as to how best to effectuate a transfer of this service to authorized utilities. The ensuing order will be interim in nature and further hearings will be held to determine this question.

The matter raised by the Order Reopening Proceedings in Applications Nos. 37097 and 37161 will likewise be the subject of further inquiry by this Commission.

INTERIM ORDER

An Order Instituting Investigation as above entitled having been issued, an Order Reopening Proceedings in Applications Nos. 37097 and 37161 having been issued, public hearings having been held thereon, the Commission having made the foregoing findings and being fully advised in the premises,

IT IS ORDERED:

1. That the water service now being provided by the Dyke Water Company in each of the tracts listed in Appendix "A" attached hereto, be, and it hereby is, declared to be unauthorized and illegal.

2. That further proceedings be held in these matters to inquire into the best method of transferring to authorized utilities the operations now being performed by the Dyke Water Company and which are herein declared to be unauthorized and illegal.

IT IS FURTHER ORDERED that the certificate of public convenience and necessity granted to the Dyke Water Company by Decision No. 53858, dated October 1, 1956, in Applications Nos. 37097 and

A. 37097, 37161, C. 6223 - CT

37161, be and it hereby is extended to include all of Tracts Nos. 2923, 2518 and 2244, in Township 5 South, Range 10 West, San Bernardino Base and Meridian.

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

Dated at San Francisco, California, this 27th day of October, 1959.

Ernest A. Rango  
President  
W. E. Mitchell  
Matthew D. Cook  
S. J. Fox  
Theodore Jenner  
Commissioners

APPENDIX "A"

Tracts in Orange County in which the Dyke Water Company has commenced service without authority from the Public Utilities Commission, and which tracts are located within the certificated area of other water companies:

Service commenced prior to October 21, 1956

<u>Tract No.</u>	<u>Location</u>
316	Certificated area of Pacific Water Company
582	"
739	"
1040	"
1656	"
1830	"
1947	"
2042	"
2097	"
2131	"
2191	"
2219	"
2420	"
2463	"
2464	"
2465	"
2535	"
2661	"
2969	"
1820	Certificated area of Southern California Water Company
2228	"
2400	"
2611	"
2655	"
2705	"
2766	"
2794	"
2849	"
2875	"
3016	"

Service Commenced after October 21, 1956

<u>Tract No.</u>	<u>Location</u>
2036	Certificated area of Pacific Water Company
2522	"
2524	"
2851	"
2880	"
3010	"
3043	"
3265	"

APPENDIX "A"

Tracts in Orange County in which the Dyke Water Company has commenced service without authority from the Public Utilities Commission, and which tracts are located within the boundaries of two county water works districts:

<u>Tract No.</u>	<u>Location</u>
1787	Orange County Water Works
2083	District No. 3
2166	"
2179	"
2428	"
2429	"
2298	Orange County Water Works
3038	District No. 5
3114	"
3243	"

Tracts in Orange County in which the Dyke Water Company has commenced service without authority from the Public Utilities Commission, and which tracts are not located within the service area of any other water company:

<u>Tract No.</u>
2417
2447
2536
3071
3105
3165