

50492

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own
 motion into the operations and practices)
 of DYKE WATER COMPANY, a corporation,)
 DYKE LANSDALE as President of said)
 corporation, L. D. LANSDALE as Vice)
 President of said corporation, and)
 ARLYNE LANSDALE as Secretary-Treasurer)
 of said corporation.)

Case No. 6361

James E. Black, for the City of Westminster;
Moss, Lyon & Dunn, by George C. Lyon, for
 Pacific Water Co.; and William Richards,
 for City of Garden Grove, interested parties.
Franklin G. Campbell, for the Commission staff.

INTERIM OPINION

On October 5, 1959, the Commission issued an order insti-
 tuting an investigation on its own motion into the operations and
 practices of Dyke Water Company, a corporation, (hereinafter referred
 to as the respondent), Dyke Lansdale as president of the corporation,
 L. D. Lansdale as vice president of the corporation, and Arlyne
 Lansdale as secretary-treasurer of the corporation. In the same
 decision the Commission issued an order to show cause directed to
 these respondents.

Order of Investigation and Order to Show Cause

This order of investigation states that it appears that
 the respondent received a certificate of public convenience and
 necessity to operate as a public utility water system in specified
 areas and that the decision granting this certificate contained the
 provision that the respondent was not to extend its water system
 outside of its certificated service area boundaries without further

order of the Commission. The order of investigation further stated that it appears that Tracts Nos. 2639, 2718, 2897, 2898 and 3473, in the City of Westminster, California, are outside of the respondent's certificated service boundaries; that the respondent has not obtained from this Commission any certificate of public convenience and necessity authorizing extension of its water system to, or the furnishing of public utility water service in, any of the aforementioned tracts; and that the respondent may have extended its water system to or be furnishing public utility water service in these tracts. The investigation was instituted for the purpose of determining whether the respondent has extended its system or furnished service in the tracts in question.

Included within this order instituting investigation was an order directed to Dyke Water Company, Dyke Lansdale as its president, L. D. Lansdale as its vice president and Arlyne Lansdale as its secretary-treasurer, wherein they were ordered to appear before Commissioner Fox or Examiner Cole or such other commissioner or examiner as might be designated, in the courtroom of the Public Utilities Commission at Los Angeles at 9:30 o'clock a.m. on November 18, 1959 and show cause why they should not be ordered to cease and desist and refrain from operating or causing to be operated any public utility water system in the aforementioned tracts and from furnishing or causing to be furnished any public utility water service in any of such tracts until an appropriate certificate of public convenience and necessity has been obtained from this Commission.

Public Hearing

A public hearing was held on November 18, 1959, before Commissioner C. Lyn Fox and Examiner William L. Cole in Los Angeles.

The matter was submitted on that date. Dyke Lansdale, L. D. Lansdale, Arlyne Lansdale, and the respondent did not enter appearances at this hearing, notwithstanding that they were each served with a copy of the order instituting investigation and order to show cause.

Findings and Conclusions

Based upon all of the evidence of record in this matter, the Commission hereby makes the following findings and conclusions:

1. The respondent is a California corporation which operates as a public utility water corporation in certain areas located in Orange County, California,

2. Dyke Lansdale is the president of the respondent, L. D. Lansdale is its vice president and Arlyne Lansdale is its secretary-treasurer.

3. The herein order instituting investigation and order to show cause was served upon respondent and Dyke Lansdale as president of Dyke Water Company, L. D. Lansdale as vice president of Dyke Water Company and Arlyne Lansdale as secretary-treasurer of Dyke Water Company in accordance with law on October 6, 1959.

4. The respondent has been issued certificates of public convenience and necessity to operate as a public utility water corporation by various decisions of this Commission, among which is Decision No. 53858 which provided in part "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." This provision of the decision has never been revoked.

5. The Pacific Water Co. is a California corporation which also operates as a public utility water corporation in certain areas located in Orange County, California, and which has been granted certificates of public convenience and necessity to so operate by various decisions of this Commission.

6. Tracts Nos. 2639, 2898, 2897, 3473 and 2718 are all located in the City of Westminster in Orange County. These tracts are all contiguous and are located in a portion of the area bounded by Westminster Avenue, Newland Street, Hazard Avenue and Cannery Avenue.

7. None of the five tracts in question are located in areas certificated to the respondent. All of these tracts are located in areas certificated to the Pacific Water Co.

8. On October 2, 1959, a representative of the Commission staff inspected the five tracts in question and found that with respect to Tract No. 2639, the construction of the houses had been completed, a number of the houses were occupied and water was being served to the tract. With respect to the remaining four tracts, the staff representative found that these tracts were in various stages of construction with the construction of Tract No. 2718 more advanced than the rest. The staff representative found that the water mains had been installed in some of these remaining four tracts and water was being served. The representative returned to the tracts on November 11, 1959, and found that the water mains had been installed in all of the tracts and that water was being served to all of the tracts.

9. The water mains for all five of the tracts in question are interconnected. The mains located within the tracts have all been dedicated to the City of Westminster by the developers. This dedication occurred on April 20, 1959, for Tract No. 2639; May 4, 1959,

for Tract No. 2718; June 15, 1959, for Tract No. 2897, and September 8, 1959, for Tracts Nos. 2898 and 3473.

10. Construction of Tract No. 2639 had commenced in January or February of 1959 by the H. and W. Land Corp., developer of the tract. At the time this construction was commenced, the H. and W. Land Corp. requested the respondent to serve water to the tract. In response to this request, the respondent, at a point on Hazard Avenue immediately south of the tract, connected its water mains to the mains serving the tract and served so-called construction water to this tract. The permanent residents began moving into the tract in May or June of 1959. As these residents moved in the respondent served them with water for domestic purposes. The respondent has been and is at the present time serving water to the residents of this tract.

11. On April 30, 1959, the City of Westminster, not knowing that the respondent was serving water therein, executed a lease of its mains in Tract No. 2639 to the Pacific Water Co., thereby authorizing Pacific Water Co. to use these mains in serving water to the tract.

12. Tract No. 2718 was the next tract to reach the stage of development of installing the water mains. This tract was developed by a developer other than H. and W. Land Corp. It was contemplated that Pacific Water Co. would serve water to this tract. When the mains in this tract were installed, the developer ordered that they be connected with the mains located in Tract No. 2639 on the erroneous assumption that Pacific Water Co. was serving water to Tract No. 2639. Because of this erroneous assumption, the water served to Tract No. 2718 was water from the respondent's system. The respondent was unaware that this connection had been made.

13. After water was served in Tract No. 2718 for a period of time, the main between Tract No. 2639 and Tract No. 2718 was severed by accident. The respondent upon learning of the connection for the first time would not allow this main to be reconnected for a period of approximately one and a half weeks, after which the main was reconnected and the respondent's water was again being served in Tract No. 2718. Since that time the respondent has continuously served water in Tract No. 2718.

14. In August of 1959, the City of Westminster first learned that the respondent was serving water to Tract No. 2639.

15. On September 4, 1959, in a telephone conversation with the City Attorney of the City of Westminster, Mrs. Arlyne Lansdale as an officer of the respondent, threatened to discontinue water service to Tracts Nos. 2639 and 2718. The City Attorney, in this conversation, told Mrs. Lansdale that the respondent would be sued if this were done. Thereafter, on September 10, 1959, the Westminster City Council voted to rescind the lease executed between the City and Pacific Water Co. for the use of the water mains in Tract No. 2639.

16. Sometime in September and October of 1959, the respondent commenced serving water to Tracts Nos. 2897, 2898 and 3473. Since that period of time, the respondent has been continuously serving water to those three tracts.

17. During the period from October 2, 1959, through October 5, 1959, the respondent caused a main to be constructed across Westminster Avenue connecting Tract No. 2718 with other water mains of the respondent which serve areas other than the five tracts in question.

18. The Pacific Water Co. has not served any of its water to any of the five tracts in question up until the present time. At the present time the water system of Pacific Water Co. is such that within a period of three to four hours it could physically connect its existing mains to the water distribution mains serving Tracts Nos. 2639, 2718, 2897, 2898 and 3473. Pacific Water Co. has the capacity in its system to provide adequate water service to these five tracts at the present time; however, an additional source of supply must be developed in order for that company to adequately service the five tracts during the high consumption summer months of the coming year.

19. In serving Tracts Nos. 2639, 2718, 2897, 2898 and 3473, the respondent has violated the order of the Commission in Decision No. 53858 which prohibits the respondent from extending its water system outside of its certificated area.

Discussion

It is apparent from the foregoing findings and conclusions that the respondent has extended its water system into tracts which are not located in its certificated service area in violation and defiance of the Commission's order prohibiting such action. It is likewise apparent from the foregoing findings and conclusions that the water system of Pacific Water Co. is adequate, at the present time, to serve the five tracts in question. It should be noted in this regard that the president of the Pacific Water Co. testified that his company was willing to serve water to these tracts and that it was willing to provide any additional wells that were necessary for satisfactory water service in these tracts.

It is not the purpose of this interim decision to punish the respondent for its violations of the Commission's orders. That

will be reserved for other proceedings and decisions. It is the purpose of this interim decision to correct the abuses which have resulted from these violations by providing a method by which Pacific Water Co. can commence serving these tracts in a manner which will minimize the adverse effects upon the water consumers therein who are in effect the innocent bystanders in this situation.

For this reason, this interim decision will not order the respondent to cease and desist from serving these tracts at the present time. To the contrary, it will order the respondent to continue to serve these tracts until further order of the Commission. However, in order to allow Pacific Water Co. to place itself in a position to serve the five tracts, the respondent will be ordered to sever the connection its main makes with the mains of Tract No. 2639 on Hazard Avenue. As previously indicated this is one of the two water mains of the respondent known to be leading into the five tracts in question, the mains within the five tracts all being interconnected. The respondent will be ordered to sever this connection at Tract No. 2639 in such a manner that the Pacific Water Co. can connect its mains with the mains of that tract located on Hazard Avenue. In so severing this connection, the respondent will be ordered to install whatever temporary valves or other appointments are necessary to insure the least possible period of interruption of service to the tracts in question until such time as the Pacific Water Co. has completed the connection of its mains to the mains of these five tracts. The respondent will be further ordered to continue to serve these five tracts from its main crossing Westminster Avenue near Yockey Street, which connects with the mains of Tract No. 2718, and any other mains it has connected into the mains in these tracts, other than the one hereinabove referred to on Hazard Avenue, until further order of this Commission.

In view of the fact that this is an interim decision and that a further order of the Commission is contemplated, the following order will set aside the submission of this matter and further

hearings will be held at a date to be set in the future. At that time additional evidence will be received relating to the compliance by the respondent with this interim decision together with additional evidence relating to the necessity for further action on the part of the respondent in this matter.

INTERIM ORDER

A public hearing having been held in the above-entitled matter and the Commission being informed therein,

IT IS ORDERED:

1. That the Dyke Water Company shall sever the connection between its main located on Hazard Avenue and the mains of Tract No. 2639 located in the City of Westminster.

2. That Dyke Water Company shall accomplish this severance in such a manner as not to hinder in any way the connection of the main of Pacific Water Co. located on Hazard Avenue with the mains of Tract No. 2639.

3. That Dyke Water Company shall install whatever temporary valves or other appointments are necessary to insure the continued service of water in these tracts from the respondent's water main which crosses Westminster Avenue near Yockey Street.

4. That the severance required by paragraph 1 of this order and the installation of valves or other appointments required by paragraph 3 of this order shall be completed by 5:00 o'clock p.m. on the first Monday following the effective date of this order.

5. That pending further order of this Commission, the Dyke Water Company shall continue to serve water to Tracts Nos. 2639, 2897, 2898, 2718 and 3473 in the City of Westminster from its water main crossing Westminster Avenue near Yockey Street and any other

of its water mains, except the one referred to in paragraph 1 of this order, which are connected to the water mains located in these five tracts.

6. That the submission of Case No. 6361 is hereby set aside and further hearings in this matter shall be held before such commissioner and examiner and at such time and place as may be hereafter designated.

The Secretary of the Commission is ordered to cause a certified copy of this interim order to be personally served on Dyke Water Company, Dyke Lansdale as its president, L. D. Lansdale as its vice president, and Arlyne Lansdale as its secretary-treasurer and this interim order shall become effective twenty days after the service on Dyke Water Company.

Dated at San Francisco, California, this 12th day of January, 1960.

[Signature]
 President

[Signature]

[Signature]

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 Commissioners