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ORIGINAL

Decision No. 59622

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 Utili-
ties Code of California.) Application No. 37097

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 Utili-
ties Code of California.) Application No. 37161

In the Matter of the Application of PACIFIC
WATER CO., a California corporation, under
Section 1001, of the Public Utilities Code,
to extend its certificated area in Orange
County.) Application No. 36592

H. O. Van Petten for Dyke Water Company, Dyke Lansdale,
Arlene Lansdale, and L. D. Lansdale, defendants.
Franklin G. Campbell, for the affiants.

OPINION, FINDINGS AND JUDGMENT

On October 5, 1959, the affidavit of R. J. Pajalich and his application for an order to show cause was executed and filed with the Commission. Attached to and made a part of this affidavit and application was the affidavit of Reginald H. Knaggs.

These affidavits allege that Dyke Water Company (hereafter referred to as the Company) and its officers are in contempt of this Commission because of their wilful violation of the Commission's

Decision No. 53858 which ordered the Company not to extend its water system outside its certificated service area boundaries without further order of the Commission.

In response to this application the Commission on October 5, 1959, issued its order directing the Company, Dyke Lansdale as its President, L. D. Lansdale as its Vice President, and Arlyne Lansdale as its Secretary-Treasurer, and each of them, to appear on November 12, 1959 and show cause why each of them should not be adjudged to be in contempt of the Commission and punished therefor in the manner provided by law.

On the return date set forth in the order to show cause, Dyke Water Company, Dyke Lansdale and Arlyne Lansdale, by their attorney, appeared before Commissioner C. Lyn Fox and Examiner William L. Cole. Hearings were held at Los Angeles on November 12 and 13, 1959 at which time the matter was taken under submission subject to the filing of briefs.

Motion

On the return date L. D. Lansdale made a special appearance by his attorney and moved that the order to show cause be dismissed insofar as it pertains to him on the grounds that there has been no showing that he was served with the order to show cause and the affidavits and application for order to show cause. It is the Commission's opinion that the evidence does not show such service and for that reason the motion will be granted.

Findings and Conclusions

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

1. The Company is a California corporation and is a public utility water corporation within the meaning of Section 241 of the Public Utilities Code.

2. Dyke Lansdale is the President of the Company, L. D. Lansdale is its Vice President, and Arlyne Lansdale is its Secretary-Treasurer.

3. Dyke Lansdale has been the president of the Company since its inception except for a period of eighteen months ending in February, 1959, after which time he again became president of the Company and has remained so until the time of the hearings.

4. The Company has been issued certificates of public convenience and necessity by this Commission to operate as a public utility water corporation in Orange County. One of these decisions is Decision No. 53858 in Applications Nos. 37097 and 37161 issued October 1, 1956. The order in that decision states, in part, as follows:

"IT IS HEREBY ORDERED as follows:

1. That Dyke Water Company, a corporation, be and it is granted a certificate of public convenience and necessity to construct, extend and operate its public utility water systems in its spheres of operations in the areas delineated on the map attached hereto as Appendix A, and to exercise the rights and privileges granted by Ordinance No. 765 of Orange County dated September 27, 1955, subject, however, to the following limitations and conditions:

(a) 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."

* * * *

- "2. That failure by Dyke Water Company to strictly comply with and carry out the conditions attached to the granting of the certificate of Public Convenience and Necessity as hereinbefore specified, shall constitute grounds for the institution and prosecution of proceedings as specified by Sections 2101 through 2113 of the Public Utilities Code, as well as for the issuance by the Commission of all orders appropriate in the circumstances." (Section 2113 of the Public Utilities Code provides for the punishment by the Commission for contempt in the same manner and to the same extent as contempt is punished by courts of record.)

A petition for a writ of review of this decision filed by the Company in the Supreme Court of the State of California was denied. (Dyke Water Company v Public Utilities Commission, S.F. No. 19659, review denied August 27, 1957.) The effective date of Decision No. 53858 was November 5, 1956. The quoted provisions have never been revoked but they have been modified by subsequent Commission decisions. These modifications have been such as to affect the Company's certificated service area. The modifications do not affect the subdivision tracts hereinafter referred to, however, so that with respect to such tracts the quoted provisions of Decision No. 53858 are still in full force and effect.

5. On October 3, 1956, a certified copy of Decision No. 53858 was placed in the United States mail, as registered mail with postage prepaid, addressed to Dyke Water Co., 11065 Penn Avenue, Garden Grove, California, Attn: Mrs. A. Lansdale. By

October 10, 1956, Dyke Lansdale and Arlyne Lansdale had personal knowledge of the issuance of Decision No. 53858 and of its contents.

6. On October 5, 1959, there was filed with the Commission the Affidavit and Application for an Order to Show Cause of R. J. Pajalich to which was attached the affidavit of Reginald H. Knaggs, in which affidavits it was alleged, in substance, that the Company together with Dyke Lansdale, Arlyne Lansdale and L. D. Lansdale, notwithstanding the order contained in Decision No. 53858 and with full knowledge of the contents thereof and subsequent to its effective date, extended and caused to be extended, the Company's water system into areas not included within any certificate of public convenience and necessity issued to the Company.

7. On October 5, 1959, the Commission issued an Order to Show Cause wherein the Company, Dyke Lansdale as its President, L. D. Lansdale as its Vice President, and Arlyne Lansdale as its Secretary-Treasurer, and each of them, were ordered to appear before Commissioner Fox or Examiner Cole, or such other Commissioner or Examiner as may be designated, on November 12, 1959, in the Courtroom of the Commission in Los Angeles, and then and there show cause why they should not be adjudged to be in contempt of the Commission and punished therefor in the manner provided by law, for the alleged contempt set forth in the aforementioned Affidavits and Application for Order to Show Cause.

8. On October 7, 1959, certified copies of the order to show cause and the affidavits and application for an order to show cause were personally served on the Company, Dyke Lansdale and Arlyne Lansdale.

9. There are located in the City of Westminster in Orange County certain subdivision tracts identified as being Tracts Nos. 2639, 2898, 2897, 3473, and 2718. These tracts are contiguous with one another and are all located in a portion of the area bounded by Westminster Avenue, Newland Street, Hazard Avenue, and Cannery Avenue. None of these tracts are located in any area included within any certificate of public convenience and necessity granted to the Company, rather all of these tracts are located in areas certificated to another public utility water corporation, the Pacific Water Co.

10. 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.

11. The water mains for all five of the tracts in question are interconnected. The mains located within the tracts themselves 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.

12. 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 Company to serve water to the tract. In response to this request, the Company, 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. Prior to this time, on December 3, 1958, the Company wrote a letter to the California Division of Real Estate informing them that all financial arrangements between the subdivider and the Company had been made and that the Company was in a position to serve Tract No. 2639 with ample quantities of domestic water and pressure without lowering the quantity of domestic water or pressure to other present users in this vicinity. The permanent residents began moving into the tract in May or June of 1959. As these residents moved in the Company served them with water for domestic purposes. The Company has been and is at the present time serving water to the residents of this tract.

13. On April 30, 1959, the City of Westminster, not knowing that the Company 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.

14. 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 Company's system. The Company was unaware that this connection had been made.

15. After water was served in Tract No. 2718 for a period of time, the main between Tract No. 2639 and 2718 was severed by accident. The Company 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 Company's water was again being served in Tract No. 2718. Since that time the Company has continuously served water in Tract No. 2718.

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

17. 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 Company, threatened to discontinue water service to Tracts Nos. 2639 and 2718. The City Attorney, in this conversation, told Mrs. Lansdale that the Company would be sued if this was 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.

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

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

20. The Pacific Water Co. has not served any of its water to any of the five tracts in question.

21. Subsequent to the effective date of Decision No. 53858, the Company has intentionally and deliberately extended its water system and served water to Tracts Nos. 2639, 2718, 2898, 2897 and 3473 without first obtaining from the Commission authority or an order to do so and with its officers having full knowledge and notice of the order contained in Decision No. 53858 and of the contents thereof; that in so extending its water system and serving water to the tracts in question, the Company was and is in violation and disobedience of Decision No. 53858; that this violation was intentional and deliberate; that the Company has been able to comply with the terms of Decision No. 53858 since its effective date; and that the failure and refusal of the Company to comply with the terms of Decision No. 53858 is in contempt of the Commission and of its decision and order.

22. That Dyke Lansdale intentionally and deliberately caused the Company's water system to be extended to serve water to Tracts Nos. 2639, 2718, 2898, 2897, and 3473 without first obtaining from the Commission authority or an order to do so and with full

knowledge and notice of the order contained in Decision No. 53858 and of the contents thereof; that in causing the Company's water system to be so extended Dyke Lansdale was and is in violation and disobedience of Decision No. 53858; that this violation was intentional and deliberate; that Dyke Lansdale as the Company's president has been able to cause it to comply with the terms of Decision No. 53858; and that the failure and refusal of Dyke Lansdale to comply with the terms of Decision No. 53858 is in contempt of the Commission and of its decision and order.

Discussion

At the time of the hearing and in the defendants' brief, various defenses were raised which the defendants contend preclude the Commission from finding the defendants in contempt or at least constitute such strong mitigating circumstances that the Commission should find that only a technical contempt was committed and should assess only a nominal penalty.

The defendants' first contention is that on September 4, 1959, the City of Westminster, through its city attorney, made a demand upon Dyke Water Company to serve the tracts in question because of an emergency situation which the city attorney thought existed at that time and that whether or not the City had the power to compel the Company to temporarily serve water in contravention of the Commission's order is such a close question of law, that it, together with the City's undoubted power to harass the Company, justified it to accede to the City's demand and renders the defendants' acts free of contempt. An examination of the record shows that the validity of this contention need not be passed upon by the Commission since the record shows that the Company was serving

Tracts Nos. 2639 and 2718 prior to the time of the alleged "demand" by the City and further that the alleged "demand" did not include the other three tracts, to wit, 2898, 2897, and 3473.

The second contention of the defendants is that the defendants acted in good faith because they acted upon erroneous advice of counsel relative to the City's authority to make its alleged demand. This contention likewise has no merit for the reasons discussed above and for the further reason that the record does not show that the Company asked for or obtained any legal advice on this matter from its counsel or what that advice was or would be.

The next contention is that the defendants acted under changed conditions and that such changed conditions constitute a defense to the charge of contempt. The defendants maintain that the demand of the City itself constituted a change of conditions. For the same reasons previously recited, this contention is likewise not sound.

Further, it is the Commission's opinion that the various other contentions raised by the defendants are without merit. The record shows that the extensions of its water system in question constituted deliberate and intentional violations of the Commission's decision by the Company and its president, Dyke Lansdale.

It will be noticed that there has been no finding made with respect to Arlyne Lansdale except the finding of knowledge of the existence and contents of Decision No. 53858 and service of the order to show cause and affidavits and application for order to show cause. The evidence in the record is not sufficient to indicate that she personally caused the extension of the Company's water system into the tracts in question or that, being in control, she permitted such extension.

J U D G M E N T

Dyke Water Company and Dyke Lansdale as its President, having appeared by counsel and having been given full opportunity to answer the Order to Show Cause of October 5, 1959, and to purge themselves of their alleged contempt; now, therefore

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Dyke Water Company is guilty of contempt of the Public Utilities Commission of the State of California in disobeying the Commission's order made on October 1, 1956, in Decision No. 53858, by extending the water system of the company to areas outside of its certificated service area boundaries without first obtaining an order of the Commission authorizing such extension.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for such contempt of the Public Utilities Commission and its order as shown in the findings hereinabove set forth, Dyke Water Company shall be punished by a fine of FIVE HUNDRED DOLLARS (\$500.00), which fine shall be paid to the Secretary of the Public Utilities Commission of the State of California within ten (10) days after the effective date of this opinion, findings and judgment.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Dyke Lansdale as President of Dyke Water Company is guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made on October 1, 1956 in its Decision No. 53858, by causing Dyke Water Company to extend its water system to areas outside of its certificated service area boundaries without first obtaining an order of the Commission authorizing such extension.

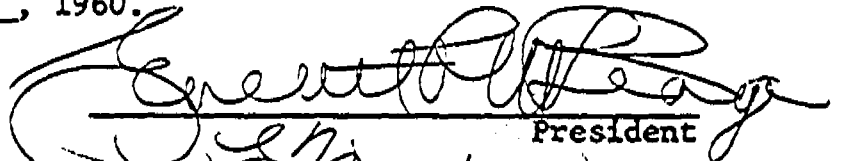

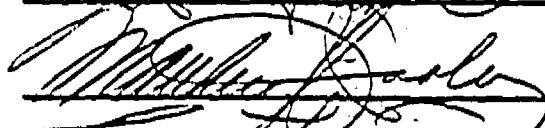

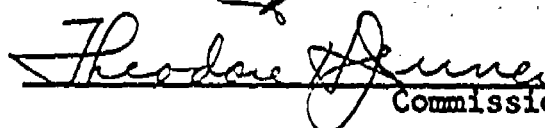
IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for such contempt of the Public Utilities Commission and its order as shown in the findings hereinabove set forth, Dyke Lansdale as President of Dyke Water Company shall be punished by a fine of FIVE HUNDRED DOLLARS (\$500.00), which fine shall be paid to the Secretary of the Public Utilities Commission of the State of California within ten (10) days after the effective date of this opinion, findings and judgment.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that in default of the payment of the fine assessed against Dyke Lansdale, he shall be committed to the County Jail of Orange County, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each Twenty-five Dollars (\$25.00) of such fine that shall so remain unpaid; and if such fine or any part thereof shall not be paid within the time specified above, the Secretary of the Commission is hereby ordered and directed to prepare an appropriate order or orders of arrest and commitment in the name of the Public Utilities Commission of the State of California, directed to the Sheriff of Orange County, to which shall be

attached and made a part thereof a certified copy of this opinion, findings and judgment.

IT IS HEREBY FURTHER ORDERED that this opinion, findings and judgment shall become effective twenty days after personal service of certified copies thereof upon Dyke Water Company and Dyke Lansdale.

Dated at San Francisco, California, this 2nd
day of February, 1960.


President




Commissioners