

Decision No. 59823**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
DYKE WATER COMPANY, a corporation,
for authorization to increase its
rates charged for water service.)

Application No. 39303
Amended

Investigation on the Commission's
own motion into the rates, rules,
regulations, contracts, operations
and practices pertaining to and
involving water main extensions of
DYKE WATER COMPANY, a public util-
ity water corporation.)

Case No. 5841

(Appearances are shown in Appendix A)

O P I N I O N

The above-entitled application of Dyke Water Company, a corporation, was filed August 6, 1957, and amended on October 8, 1957. The applicant sought and seeks authority to increase its rates for general flat rate service from a basic amount of \$3 per service connection per month to \$4.50, a 50 per cent increase, and to increase its general metered service rates from \$2.50 per meter per month for the first 1,000 cubic feet or less to \$3.75, with corresponding increases in the unit quantity rates, also representing an increase of 50 per cent. The estimated increase in gross annual revenues at the proposed rates is approximately \$375,000.

A public hearing on the First Amendment to the application was held before Commissioner Rex Hardy and Examiner Stewart C. Warner on November 1, 1957, at Santa Ana. The purpose of said hearing was to establish a record as to whether or not the applicant should receive interim rate relief. Based upon such record, an interim opinion and order (Decision No. 56003, dated December 17, 1957) authorized the applicant to increase its monthly residential flat

rate from \$3 to \$3.75, with corresponding increases in the rates and charges in the general metered service schedule. Said interim decision found the existence of exigent circumstances, primarily a financial emergency, which justified the authorized increases in rates and charges.

By an order dated October 30, 1956, the above-entitled investigation was instituted.

Public hearings on both of the above matters were held on a consolidated record before Commissioner Hardy and Examiner Warner on December 26, 1957; before Commissioner Matthew J. Dooley and Examiner Warner on January 14 and 15, 1959, and before Examiner Warner on March 18, April 17, 20, 21, 22, 23, 24, 27, 28 and 30, and May 1, 1959, at Santa Ana, and May 5, 6, 7 and 8, 1959, in Los Angeles. Orange County Water District appeared as an interested party to urge that applicant be required to install meters on all customers' premises for water conservation purposes; Pacific Water Co. appeared as an interested party and as a protestant in so far as the proposed increase in rates for water service might affect certain areas where applicant was furnishing water service outside its certificated area and within the certificated area of Pacific; one customer of the applicant appeared to report the results of a survey made of applicant's customers in Midway City regarding their views on flat rate service versus general metered service; 9 letters from customers were received and read into the record by the presiding officer at hearings when so received; and an exhibit was introduced by the applicant as an affidavit that 18,500 post cards had been mailed by the applicant on March 23 and 24, 1959, to its customers seeking their views on the questions of (1) whether they wanted meters installed at their houses, and (2) whether they would

pay 75 cents more a month "to put your water company on a paying basis and sound financial position to preserve the low flat rate basis of water distribution which has been so successful here?"

On May 5, 1959, the applicant filed a Petition for Proposed Report pursuant to Rule 69 of the Commission's Rules of Procedure; on May 8, 1959, applicant's counsel moved for a supplemental hearing to determine how the Commission arrives at its decisions; on May 12, 1959, the Commission granted said petition and directed the presiding Examiner to prepare and file a proposed report, denied said motion for a supplemental hearing on grounds that it was improper, and concluded that, having granted the petition, oral argument before the Commission en banc would be unnecessary and canceled such argument set for May 19, 1959.

The proposed report was prepared and filed in accordance with such directions, pursuant to the Commission's Rule 70, on May 28, 1959. Exceptions thereto were filed, pursuant to Rule 71, by the applicant, by Pacific Water Co., and by the Commission staff, on June 19, 1959; by Orange County Water District on June 22, 1959; and by the City of Garden Grove on June 24, 1959. Replies to said exceptions were filed by Orange County Water District on June 30, 1959, and by the applicant on July 6, 1959. The matters stand submitted and are ready for decision.

No material exception to evidentiary facts outlined in the proposed report was taken by any party, and such facts and review of the evidence in the proceeding need not be repeated herein. The Commission hereby finds that those sections of the proposed report dealing with factual and evidentiary matters constitute true

statements of the evidence and of the facts and as such they are hereby adopted by the Commission.¹

Table 14-A of Exhibit No. 19 includes a Summary of Earnings for the years 1957, 1958 Estimated, and 1959 Estimated at prior interim and proposed rates at present operations, as follows:

Account	Year	Year	Year 1959 Estimated		
	1957	1958	Prior	Interim	Proposed
	Recorded	Estimated	Rates	Rates	Rates
(Using Straight-Line Income Tax Depreciation)					
Operating Revenues	\$657,025	\$875,000	\$ 751,000	\$ 938,700	\$1,126,200
Operating Expenses					
Oper. & Maintenance	219,575	232,900	249,800	249,800	249,800
Adm. & Gen., Misc. Exp.	135,020	70,000	72,200	72,200	72,200
Taxes other than Income	120,102	36,500	39,800	39,800	39,800
Depreciation	122,507	97,200	102,500	102,500	102,500
Taxes on Income	13,220	193,000	106,100	207,300	308,400
Total Expenses	610,424	629,600	570,400	671,600	772,700
Net Revenue	46,601	245,400	180,600	267,100	353,500
Depr. Rate Base	-	929,000	1,123,000	1,123,000	1,123,000
Rate of Return	-	26.42%	16.08%	23.78%	31.48%

The record shows that since 1954 the applicant has computed and paid income taxes using accelerated income tax depreciation as a deductible expense, and no testimony was adduced by the applicant that it intended to claim income tax depreciation on any other basis for the year 1959 or for any future period.

The question of what rate treatment should be given to reduce federal income tax payments resulting from the use of accelerated depreciation as permitted by Section 167 of the Internal Revenue Code, is under consideration by the Commission, and pending determination of the problem by the Commission we have considered

¹ The sections to which reference is here made are headed General Information; Accounting Procedures; Earnings; Financial Condition; Meters; Main Extension Practices; Metropolitan Water District Water; Staff Recommendations; and Pacific Water Co. Evidence.

straight-line depreciation for income tax purposes in this matter. When decision is made by the Commission as to the use of accelerated depreciation, then such necessary adjustments, if any, will be made by the Commission in respect to income tax payments made by the utility.

Based upon the entire record and being fully cognizant of the views of the various parties, the Commission makes the following findings and conclusions. In viewing such findings and conclusions it should be kept clearly in mind that the basic matters of concern in these proceedings are two: namely, applicant's request for increased revenues and the Commission's investigation of applicant's main extension practices. All other issues, although of some importance, are ancillary.

In the basic matter of revenues, the Commission finds that the revenues produced by the rates authorized in the interim order herein (Decision No. 56003) have fully met the needs of the financial emergency then existing and foreseen. The Commission finds as a fact that there is not presently such an emergency situation as would necessitate or otherwise justify a continuance of the increased rates and charges authorized by such interim order. It is fair and reasonable and in the public interest, therefore, to terminate the rates and charges authorized on the interim basis.

One ancillary issue directly affecting revenues and the earning position of applicant is that concerning the needs for metering of service connections. The evidence on this subject is substantial and convincing that the public interest requires that applicant's system be fully metered at the earliest practicable date. The record indicates, from the testimony of applicant's president, that the financing of a metering program would be feasible.² It appears reasonable, therefore, to require that applicant immediately undertake

² Testimony of Dyke Lansdale, TR 1974-1977.

the installation of meters on existing service connections at a rate of no fewer than 400 meters each month until all have been metered. All new service connections, of course, shall be metered as they are placed in service.

The Commission finds that applicant's estimates of revenues, expenses and rate base for the year 1959 are unrealistic, unreliable and unreasonable. The estimates of the Commission staff,³ however, are found to be fair and reasonable and are hereby adopted for the rate-making purposes of the proceeding. Such will be used in testing the reasonableness of applicant's earning position at the rates and charges in effect prior to the interim order herein. After making appropriate modifications to the staff-derived figures so as to recognize reasonable increased revenues, greater expenses and a higher rate base for a properly metered system and giving due cognizance of the trend of rate of return as occasioned by the refunding of advances for construction during the year 1960 and subsequent years, the Commission concludes that applicant would earn a rate of return of somewhat more than 7 per cent on a depreciated rate base of approximately \$2,269,000. The Commission finds such a rate of return on such a rate base to be within the zone of reasonableness and concludes, therefore, that the pre-interim rates and charges for water service will, during the foreseeable future, enable applicant to fully meter its system, provide sufficient and properly qualified personnel function efficiently, conform to all the requirements of law and to earn a fair and reasonable return on its investment in plant devoted to public utility water service. The pre-interim rates will be reinstated.

In the basic matter of main-extension practices, the Commission finds that applicant has extended its water system into

³ As contained in Exhibit No. 19.

territory into which it had no right to extend, and pursuant to agreements which are unlawful.⁴ Such extensions have been imprudent and the resulting involvement in making repayment of large sums of money out of revenues to defray the cost of capital additions to applicant's plant, both within and without applicant's certificated area, made by persons as advances for construction, clearly constitutes unlawful conduct; reveals a failure to recognize the minimum responsibility incumbent on the part of applicant's management; and indicates a failure to apply prudent management principles in the conduct of applicant's public-utility water business. Further, it appears that applicant may have contracted for long-term debt⁵ without having obtained this Commission's authority therefor as required by law. The Commission would be derelict in its duty of protecting the public interest if it were to countenance any continuation of these unlawful and imprudent practices or permit the burdening of utility customers with added costs attributable to such improper practices. The Commission concludes that applicant must immediately cease and desist from any extension practice which does not comply strictly with the lawfully effective Rule No. 15 concerning main extensions.

The Commission finds as a fact that the public interest and standard accounting practices require that applicant should be directed to adjust its books of account to conform to the balance sheet as of December 31, 1957, after adjustments, as shown on Table 4-B of Exhibit No. 19; that applicant should be directed to continue to carry out and place into effect the staff recommendations contained in Chapter 16 of Exhibit No. 19; and that applicant should be directed to immediately dispose of its recorded contributions pursuant to the classification and itemization in Appendix C

⁴ See Exhibit No. 44.

⁵ In the sum of \$376,078 as shown in Exhibit No. 57.

of Exhibit No. 44 in accordance with the staff recommendations contained in Chapter 4 of said exhibit.

The Commission finds as a fact that the rates and charges for water service hereinafter ordered to be reinstated are for the future fair and reasonable rates and are justified by the record in this proceeding. Further, it is found as a fact that in so far as existing rates and charges differ from those hereinafter proscribed, such existing rates and charges are for the future unjust and unreasonable.

O R D E R

Application as above entitled, as amended, having been filed, and an investigation on the Commission's own motion into the rates, rules, regulations, contracts, operations and practices pertaining to and involving water main extensions of Dyke Water Company, a corporation, having been instituted, public hearings having been held, an Examiner's Proposed Report and Exceptions and Replies to said Report having been filed and having been fully considered, and based on the record and the findings of fact and conclusions hereinbefore set forth,

IT IS HEREBY ORDERED as follows:

1. The rates and charges established by Decision No. 56003, issued December 17, 1957, and set forth therein as Appendix A, are hereby terminated as of the seventh day following the effective date of this order.
2. Coincidental with the termination of said rates and charges there are hereby reinstated, as the regularly filed and effective rates and charges of the Dyke Water Company, tariff "Schedule No. 1, General Metered Service, Cal. P.U.C. Sheet No. 69-W" and tariff

"Schedule No. 2, General Flat Rate Service, Cal. P.U.C. Sheets Nos. 116-W and 117-W."

3. Dyke Water Company is hereby directed to adjust its books of account to conform to the balance sheet as of December 31, 1957, after adjustments, as shown on Table 4-B of Exhibit No. 19 in this proceeding.

4.a. Dyke Water Company shall install meters on all new service connections installed on and after the effective date of this order; and

b. Dyke Water Company shall immediately institute a metering program and shall install, so as to permanently convert from flat rate to metered service, not less than 400 meters per month, in addition to metering all new service connections, until all residential and other general service connections shall have been metered; and

c. Shall, within ninety days after the effective date of this order and every one hundred eighty days thereafter, report to this Commission in writing the total number of meters installed, together with the net number of meters installed during the period covered in each such report, until all of its service connections have been metered.

5. Dyke Water Company is directed to continue to carry out and place into effect the staff recommendations contained in Chapter 16 of Exhibit No. 19.

6.a. Dyke Water Company is directed to immediately dispose of its recorded contributions pursuant to the classification and itemization in Appendix C of Exhibit No. 44 in accordance with the staff recommendations contained in Chapter 4 of said exhibit; and

b. Within ninety days after the effective date of the order herein, certify to the Commission in writing, over the signature of a responsible officer, that it has complied herewith.

7. Dyke Water Company shall immediately cease and desist from entering into any contract for an extension of its water system or any part thereof except such as shall strictly comply with its Rule No. 15 or upon specific order of this Commission.

8. Case No. 5841 is discontinued.

9. The effective date of this order shall be April 11, 1960. ✓

Dated at San Francisco, California, this 22nd day of March, 1960.

Ernest R. Page
President
John H. ...
W. ...
C. ...
Theodore Jenner
Commissioners

APPENDIX A
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LIST OF APPEARANCES

For Applicant and Respondent:

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Richard M. Barker, attorneys, and
Howard W. Crooke, Secretary-Manager,
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and Richard R. Gesley, Manager
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for the City of Garden Grove

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Philip F. Walsh, Vice President, for
Southern California Water Company
(Interested Party in A.39303 Amd.
and Protestant in C.6024 disposed of
by Decision No. 56114 1-21-58)

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APPENDIX A
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LIST OF APPEARANCES

Protestant:

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For the Commission Staff:

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