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ORIGINAL

Decision No. 67497

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of DYKE WATER COMPANY, a corporation, for authorization to increase its rates charged for water service.	Application No. 39303
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 utility water corporation.	Case No. 5841 Order to Show Cause (Contempt)

J. Thomason Phelps, for Rolla J. Weiser, affiant.

Lally & Martin, by Thomas W. Martin, for Dyke Water Company, William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, respondents.

O P I N I O N

Dyke Water Company, a public utility corporation and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, its officers and directors, were ordered to show cause why they should not be adjudged in contempt of the Public Utilities Commission and punished therefor according to law.[1/]

The order to show cause, issued November 28, 1962, recites the filing of an affidavit of Rolla J. Weiser, in which respondents are charged, in six separate offenses, with having contumaciously failed and refused to comply with certain orders of the Commission.

1/ Calif. Const., Art. XII, Sec. 22; Public Util. Code, Secs. 312 and 2113.

Certified copies of the affidavit and order to show cause were personally served on all respondents prior to the hearings, which were held, after due notice, at Los Angeles and San Francisco on 15 days during the period commencing January 9, 1963 and ending October 11, 1963, before Commissioner Grover and Examiner Gregory. All respondents were represented by counsel. Arlyne Lansdale, the company's Secretary-Treasurer and Attorney, and William M. Lansdale, her son and the President of the company, both testified voluntarily.

Respondents, at the hearing on February 14, 1963, orally moved to dismiss the case. The motion, submitted on written memoranda later filed by the parties, was denied with leave to respondents to file a pleading responsive to the order to show cause. On April 1, 1963 respondents filed a written answer to the Weiser affidavit, admitting certain allegations and denying others, thereby raising issues that will be described later. Thereafter, the presiding commissioner directed affiant to go forward with evidence. Affiant testified in support of his affidavit, the affidavit was offered and received in evidence and affiant then rested. Respondents then moved that the proceeding be dismissed for failure of affiant to produce any evidence except the affidavit. The motion was denied. Respondents then went forward with evidence.

Seven witnesses, including Arlyne Lansdale and William M. Lansdale, testified during the 15 days of hearings, and 54 exhibits were received. Numerous objections to the receipt of evidence were made. A considerable amount of testimony was allowed over objection by affiant's counsel, with leave granted to move to strike such evidence at a later time. Such a motion was duly presented in a communication to the Commission after the hearings were concluded.

This motion was denied by the presiding commissioner by an order contained in a letter of November 12, 1963 addressed to counsel for affiant and respondents.

Respondents, at the close of the hearings and later in a communication addressed to the Commission after the hearings pursuant to leave granted, renewed their motion to dismiss the order to show cause, the affidavit and the contempt proceedings. This motion was denied by the presiding commissioner at the close of the hearings and again in said letter of November 12, 1963. The contempt proceedings were taken under submission, subject to the filing of concurrent opening and closing briefs, by an order issued by the Commission on November 12, 1963. Closing briefs were filed on January 24, 1964.

The Issues

The affidavit alleges six separate offenses by respondents arising out of certain orders issued by the Commission in the basic proceeding herein. That proceeding involved an application by Dyke Water Company to increase its rates for water service on its system in Orange County (Application No. 39303) and an investigation on the Commission's own motion into various matters pertaining to water main extensions by the utility (Case No. 5841, consolidated for hearing with Application No. 39303).

The orders, as pertinent here, in substance directed the utility:

1. To adjust its books of account to conform to a certain balance sheet prepared by the Commission staff. (Decision No. 59828, ordering paragraph 3, issued March 22, 1960; effective July 25, 1961, after review by California Supreme Court, Dyke Water Co. v. P.U.C., 56 Cal.2d 105; cert. den. 368 U.S. 939, 9 L.ed. 2d 338; Ex. B to affiant's affidavit.)

2. To institute immediately a metering program and install not less than 400 meters per month in addition to metering all new service connections until all residential and other general service connections had been metered. (Decision No. 59828, supra, ordering paragraph 4b.)

3. To report to the Commission, within 90 days after the effective date of the order, and every 120 days thereafter, 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 had been metered. (Decision No. 59828, supra, ordering paragraph 4c.)

4. To dispose of certain recorded contributions pursuant to certain recommendations of the Commission staff. (Decision No. 59828, supra, ordering paragraph 6a.)

5. To set up forthwith and maintain a special reserve account and bank account and to credit thereto from time to time amounts representing the difference between revenues accruing under an interim rate authorized by the Commission and those that would have accrued under prior rates. (Order of May 16, 1960, effective during period from May 16, 1960 through August 1, 1961; Ex. G to affiant's affidavit.)

6. To formulate and advise the Commission within ten days of a plan for refunding moneys received representing the difference between revenues accruing under said interim rate order and those that would have accrued under prior rates. (Order of July 25, 1961, effective immediately; Ex. H to affiant's affidavit.)

The affidavit for an order to show cause, in specifying with particularity each of the six offenses, contains appropriate allegations concerning respondents' knowledge of the Commission's orders, their intent to violate them and their ability to comply with them. None of the orders has been amended, revoked, or annulled and each is still in full force and effect.

Respondents' answer contains, in substance, the following admissions, denials and affirmative allegations pertaining to the foregoing alleged offenses:

First Offense: Respondents deny that Dyke Water Company did not adjust its books of account.

Second Offense: Respondents admit that Dyke Water Company did not institute a metering program, but deny that failure so to do was willful, and allege that it was a financial and physical impossibility to comply with said order.

Third Offense: Respondents admit that Dyke Water Company did not report to the Commission with respect to the installation of meters, but deny that failure so to do was willful, and allege that respondents were unable to comply with said order to report upon the installation of meters.

Fourth Offense: Respondents admit that Dyke Water Company did not dispose of all recorded contributions in aid of construction, but deny that failure so to do was willful, and allege that respondents were unable to comply with the order to dispose of said contributions and that to do so would seriously jeopardize the utility's operations.

Fifth Offense: Respondents admit that Dyke Water Company did not set up and maintain a special reserve account and cause to be credited to said account revenues as required by the Commission's order, but deny that failure so to do was willful, and allege that respondents were unable to comply with said order.

Sixth Offense: Respondents admit that Dyke Water Company did not formulate and advise the Commission of a plan to refund money to consumers as required by the order of the Commission, but deny that failure so to do was willful, and allege that respondents were unable to comply with said order.

Included in affiant's listing of the issues are the following (Opening Br. pp. 6-8):

I. Whether respondents adjusted the books of Dyke Water as required by the Commission's order.

II. Whether respondents were physically unable to institute a metering program and install not less than 400 meters per month.

III. Whether respondents were financially unable to institute a metering program and install not less than 400 meters per month.

IV. Whether respondents were unable to report periodically to the Commission in writing with respect to the installation of meters.

V. Whether respondents were unable to dispose of the contributions in aid of construction described in the affidavit.

VI. Whether compliance with the Commission's order to dispose of said contributions would seriously jeopardize the operations of Dyke Water Company.

VII. Whether respondents were unable to comply with the Commission's order requiring Dyke Water Company to set up and maintain a special reserve account and bank account and to credit thereto certain amounts of money from time to time.

VIII. Whether respondents were unable to comply with the Commission's order requiring Dyke Water Company to formulate and advise the Commission of a plan to refund certain moneys to consumers.

The affidavit alleged, with respect to each offense, that respondents' failure to comply with a Commission order was "with intent to violate the same". Respondents' answer, except as to the First Offense, denied that failure to comply was willful. Respondents' denial of "willfulness" in connection with certain of the offenses raises additional issues as to whether the alleged failure to comply with the Commission's orders was intentional.[2/]

It was stipulated at the hearing that the whole of the record in the basic proceeding, comprising the pleadings, 67 exhibits and 23 volumes of transcript, be considered as a part of the present record, as well as the 54 exhibits (Exs. C-1 through C-54) and 15 volumes of transcript, designated as "Order to Show Cause (Contempt)", in the contempt proceeding.

We now turn to the evidence related to the several offenses alleged in the affidavit.

First Offense

The Commission's order requiring an adjustment of the books of Dyke Water Company, the major item of which was the requirement to remove from the assets of the company nearly $500,000 representing alleged contributions to the company by the Lansdale family, became effective, after review, on July 25, 1961. The record shows that as late as March 20, 1962 such an adjustment had not been made on the company's books of account.

2/ As to the First Offense, respondents simply denied failure to adjust their books of account, thereby raising an issue of fact. If this issue be resolved against respondents, willfulness can be inferred from the fact of noncompliance. (Vernon v. Superior Court, 38 Cal.2d 509, 518.) This would likewise be true of respondents' denial of willfulness as to the Third Offense (failure to report periodically on meter installations), since compliance in either case would involve mere clerical acts.

Respondents urge that the correctness of the ordered adjustments is questionable and that, in any event, timely adjustments were made, after March 20, 1962, by journal entries which would normally be posted to the books and records prior to their closing for the year 1961 and were included in the company's 1961 and 1962 annual reports filed with the Commission.

The Commission's order did not specify a time by which the required adjustments were to be made; in effect, therefore, the order directed them to be made within a reasonable time. The order became effective July 25, 1961, following review by the California Supreme Court.

We do not agree with respondents that adjusting the books at some undisclosed time after March 20, 1962 would be within a reasonable time after July 25, 1961. The intervening period of almost eight months involved an unreasonable delay in complying with a mere clerical directive. Mrs. Lansdale testified that she instructed the company's accountants to make the adjustments. She did not establish, however, when she gave them that instruction nor when, if ever, they carried it out. Although she categorically stated that the adjustments were made, it is apparent from her testimony as a whole that she really did not know whether or not the accountants had made the necessary entries; her position amounted to no more than a claim that they must have done so because they would have no reason to disobey her directive.

The annual reports for 1961 and 1962, relied on by respondents as showing the adjustments, were not filed until August 1, 1963 and September 13, 1963, respectively; in the case of the 1961 annual report, the filing was made 16 months late and

only after a special directive of the Commission. (Decision No. 65665, dated July 9, 1963, in Cases Nos. 7518 and 7519.) These annual reports are not in this record in their entirety, and respondents have not shown how any part of them demonstrates that adjustments on the company's books were made - nor when.

Second Offense

The Commission's order requiring installation of meters became effective, after review, on July 25, 1961. Respondents have admitted that they did not comply, but allege that compliance was "a financial and physical impossibility".

The evidence shows that it would be physically possible to do the job, with labor in addition to the utility's normal working force.

The question of the financial feasibility of installing not less than 400 meters per month on the Dyke system, in addition to metering all new service connections, is somewhat more complex. It may be noted that the Supreme Court of California found nothing unreasonable in the Commission's order. (Dyke Water Co. v. P.U.C., supra.) In fact, the Court observed that, in a prior decision involving the utility's request for authority to serve in an extensive area in Orange County (Decision No. 53858, dated October 1, 1956, in Applications Nos. 37097 and 37061, 55 Cal.P.U.C. 235, petitions for review denied by Supreme Court of California, without opinion, on August 27, 1957, S.F. 19657-19660), the utility's own witnesses, including Dyke Lansdale, its then president, testified that metering the system was "essential" and that numerous metering companies would compete for the opportunity to do the work of installation on favorable credit terms. The

Court also pointed out that when the Commission issued its order on March 22, 1960 (Decision No. 59828), directing the utility to install not less than 400 meters per month, the company had had three and a half years since the issuance of the Commission's prior order on October 1, 1956 (Decision No. 53858) within which to formulate a plan of its own. The Court concluded: "At this late date petitioner is hardly in a position to complain that the commission's order of March 22, 1960, is impossible or unreasonable." (Dyke Water Co. v. P.U.C., supra, at 120, 121.) The record shows, further, that Dyke Water Company, after Decision No. 59828 became effective July 25, 1961, never sought from the Commission any relaxation of the requirement to install not less than 400 meters per month.

The record in the basic proceeding (included in the contempt case) makes abundantly clear the imperative necessity for metering the Dyke system in order to conserve use of water and thereby contribute to the objectives of the ground water recharge program of Orange County Water District. In the present contempt proceeding, the evidence shows that, at least since 1954, respondents have considered the possibilities of metering their system and have negotiated from time to time with meter manufacturers, lending institutions and underwriters; that when the company did replace flat rate service with metered service, from time to time, its affected revenues increased; and that at least four engineering reports between 1955 and 1963 confirmed that a metering program both was economically feasible and would produce highly advantageous operating results for the company. The utility's current president, William M. Lansdale, admitted that a metering program would be

beneficial, stating: "We would be crazy not to put them on for purely income purposes, extra income purposes if we had the ability to do it." (R.T. p. 1019.)

Respondents admittedly did not comply with the Commission's order to meter their system, and there is nothing in this record to show that they even complied with the order to install meters in existing services. Despite respondents' professed interest in such a program and the recitals of their efforts to secure the necessary financing, the record shows that Dyke Water Company, under the presidency of respondent Dyke Lansdale, from the time of its inception, March 5, 1951, until October 31, 1957, and again for a period of about eight months commencing in February 1959, vigorously opposed metering its system in order to enlarge and protect its water service operations in the face of competition by other water companies in Orange County during a period of unprecedented subdivision development commencing in the early 1950's. The failure to institute a metering program continued in the face of the Commission's specific orders of October 1, 1956 and March 22, 1960, and despite the Commission's finding, in Decision No. 59828, that the company would earn a rate of return of more than 7% with a properly metered system.

The evidence shows, unquestionably, that the management of Dyke Water Company not only had a fixed determination not to meter the system as ordered by the Commission but also a concrete and large-scale program to discredit and subvert the very idea of metering. The record leaves little doubt as to the effectiveness of that program in the minds of the utility's thousands of actual and potential flat rate customers, whose natural enthusiasm for the cheaper flat rates coincided perfectly with the utility's efforts to retain them. Dyke Lansdale did not testify in the

contempt hearings. Since his earlier testimony, in the basic proceeding, would have been incompatible with the professed willingness of William Lansdale to meter the system if the utility were financially able to do so, his absence is understandable.

Direct testimony concerning the company's financial situation came chiefly from Arlyne Lansdale, its secretary-treasurer. It consisted, in large part, of (a) a statement that the company was financially unable to comply with the Commission's order; (b) a description of various isolated financial obligations of the utility, uncorrelated with its other liabilities and assets; (c) statements, purportedly from Mrs. Lansdale's memory, of gross revenues, operating expenses, depreciation, and net income figures and amounts of money refunded on advances for construction, for various years; (d) a reading into the record by the witness of various data selected from the utility's annual reports, purportedly to show deficient earnings from the company's operations. None of this evidence was accompanied by an offer to make available for inspection the underlying books and records, including supporting vouchers, of Dyke Water Company. In fact, the production of records to substantiate the testimony of Arlyne Lansdale and of William M. Lansdale, by means of which that evidence might have been tested on cross-examination, was strenuously resisted by respondents and their counsel. The withholding, by respondents, of such records renders their testimony of negligible probative value upon the question of the financial condition of the company during the time it was required to comply with the Commission's metering order in Decision No. 59828.

Affiant's rebuttal evidence presents a quite different picture of the utility's financial condition from 1956 to 1962. It shows that, if the company's management had been willing, sufficient funds could have been found to carry out an initial metering program suggested by Walter O. Weight, Pacific Coast Manager of Hersey Products Division of Hersey-Sparling Meter Company, a witness who had been called on behalf of Dyke Water Company. This witness testified that the net cost of installing meters on the Dyke system would run between $44 and $46 per service and that his company had offered to respondents a way to make a start with 500 meters to be financed by Hersey-Sparling Meter Company.

In addition to the reports, mentioned hereinabove, showing the desirability and economic feasibility of a metering program and to the fact that a substantial start could have been made, without any initial capital outlay by the utility, by acceptance of the Hersey-Sparling Meter Company's offer of financial aid, the evidence adduced in rebuttal by affiant reveals that the utility had funds available to carry out the program.

The Commission found that the utility's operations would produce a rate of return of more than 7% "for a properly metered system". (Decision No. 59828.) By July 25, 1961, however, when the metering order finally became effective after review by the Supreme Court of California, the record (including annual reports filed by the utility with the Commission and the records of certain financial transactions among members of the Lansdale family and with nonutility companies associated with Dyke Water Company) shows that substantial sums of money which otherwise could

have been used for capital outlays, such as a metering program, had been diverted to other purposes. This reveals that the utility's charges to operating expenses, especially to administrative and general salaries and total administrative and general expense during the period 1958-1962, were unreasonably high; that certain accounts (Account 223, Payables to Associated Companies; Account 126, Receivables from Associated Companies) contain numerous entries indicating cash transactions with either members of the Lansdale family or associated companies; and, on the basis of account balances at December 31, 1957 and December 31, 1961, that during the period between those dates approximately $612,000 of assets of Dyke Water Company were depleted by withdrawals in the form of cash or other assets by associated companies. ("Associated companies" is defined in the Commission's Uniform System of Accounts for Water Companies.)

An analysis of the utility's "cash flow" (essentially net income increased by noncash expenses such as depreciation) for the years 1956 through 1961 shows cash generated by the utility from operations during the three-year period 1959-1961 amounting to $794,798 and that the charges to the account for advances for construction, for refunds for the same period, were $701,911. A staff expert testified that "during this same period the largest demand for funds in the company was for refunds on advance contracts, since expenditures for utility plant construction were rather nominal during this same period."

Finally, the record reveals that Dyke Water Company, sometime prior to June 1, 1961, received from Farmers & Merchants Bank of Long Beach, one million dollars as the proceeds of certain

promissory notes executed by the utility ($650,000, July 24, 1959) and by Dyman Corporation, its nonutility associate ($350,000, July 27, 1960) for various purposes, including "paybacks" of advance contracts and retirement of Dyke Water Company's notes held by Farmers & Merchants Bank at Garden Grove and Long Beach.

Affiant argues, from the foregoing evidence, that respondents had no real intention to comply with the Commission's metering order and that, in addition to the $1,000,000 proceeds of the loan from Farmers & Merchants Bank, internally generated cash was also available for metering, had respondents seen fit to use it for that purpose. This cash, it is urged, was available even after diverting cash to associated companies, to the payment of unreasonably high salaries to members of the Lansdale family, and to the payments of money on the obligation of another corporation and on void obligations.

Respondents' plea of financial inability to comply with the Commission's "money" orders utilizes a misleading selection of isolated operating results data, combined with a bitter attack on the integrity and professional ability of the witness Knaggs, a Commission staff engineer. For example, respondents introduced certain figures in a staff "Results of Operation" study of Dyke Water Company for 1953, 1954 and 1955 (a period remote from that in which they were required to comply with the various orders here involved) in an effort to prove the company's financial plight. They urged that the study for those years "shows by the Commission staff's own figures, that the Dyke Water Company operated at a net loss of $7,985.16 in 1953, at a net loss of $7,561.19 in 1954, and at a net loss of $14,601.38 in the twelve months ending

August 31, 1955". The fact is, however, that these were "recorded" figures, as the exhibit (Exhibit C-17) shows. The exhibit, on its face, contains a warning that the company's books and records do not conform to the uniform system of accounts for water corporations prescribed by the Commission and that the accounting used by the company does not adequately set out the facts concerning the company's financing and operations. Furthermore, the record shows that the alleged net losses for 1954 and for the 12 months ending August 31, 1955 were greatly exceeded by depreciation expense charged in those periods, so that operations were in fact producing cash flow despite recorded net losses.

Respondents have asserted that there should be added to the alleged deficit of $828,380 the sum of $479,182 (representing claimed Lansdale family contributions, properties classified as nonoperative and a tract "seized" by the City of Anaheim which was charged out of the company's books by the Commission) and the $148,823 in payback contracts held by the Lansdale family interests (Chapter 4, page 4-9, Exhibit No. 19), "all of which represent monies expended for Dyke Water Company and its operation, whether or not the Commission staff recognizes this as a fact." There is no sound reason for subtracting the foregoing items as obligations or financial requirements in a cash flow study for the period 1956-1961. Even if $479,182 had been contributed by the Lansdale family, by its very nature as a contribution it would create no cash obligation for the utility. The contract paybacks of $148,823 appear to have been cancelled in 1957 and so have not been an obligation since that time.

Aside from what the record shows to have been a sharp rise, to unreasonably high levels after 1958, in administrative and general salaries and expense and the depletion in the utility's assets, by payments to "associated companies" amounting to $612,000, the evidence reveals that a separate but affiliated company, Dyman Corporation, obtained $250,000 in 1958 from Farmers & Merchants Bank of Long Beach upon notes made and issued by Dyke Water Company; that in 1959 the utility made and issued another note for $650,000 for a further loan from the same bank "to be used to transfer to any or all of Dyke Water Company or Dyman Corporation accounts as needed"; that the Board of Directors of Dyke Water Company passed a resolution authorizing its president and secretary "to open a special account under the name of Dyke Lansdale and A. Lansdale in the sum of $650,000, checks for withdrawals to be signed by both Dyke Lansdale and A. Lansdale. Said $650,000 to be used to pay any and all notes outstanding against Dyke Water Company and held by Farmers & Merchants Bank of Garden Grove and Long Beach. Balance of money to be used for 'pay-back' agreements. Transfers from 'special account' to be made to any of Dyke Water Company or Dyman Corporation accounts as needed"; that later another note in the sum of $350,000 was made and issued to the same bank by Dyman Corporation, but respondents treated this as an obligation of Dyke Water Company and paid interest on it from time to time out of moneys of Dyke Water Company; that the Dyke Water Company note for $650,000 was issued for the purpose, in part, of refunding or renewing two previous promissory notes of the utility, dated June 30, 1958, for a total of $250,000, for the benefit of Dyman Corporation; and that said $650,000 note was issued more than

12 months after the date of issuance of the earlier notes, was not authorized by the Commission, and is therefore void. (Public Utilities Code Section 825; General Order No. 44.)

In other ways, too, the evidence shows that respondents made unreasonable uses of money of Dyke Water Company. Mrs. Lansdale testified that from time to time sums of money, of unspecified amounts, were paid by the water company to creditors of Dyke Lansdale and charged to his "drawing account"; that Dyke Lansdale had his personal accounts tied up as the result of some litigation "and we had to hide any money he had, if he might have any"; and that sums of money were loaned to Dyke Lansdale and carried on the company's books as an open account for moneys that had been paid on his behalf. Also, the evidence reveals that records of the company for the year 1961 showed total charges to the account for office supplies and expenses of $42,510, a figure that compares with the sum of $12,000 estimated by the staff for this account for the year 1959 (Exhibit 19, basic proceeding, page 9-2).

It is entirely possible that a full disclosure, from records withheld by respondents, might show an even more favorable financial condition and might reveal other practices equally irregular.

We have considered respondents' arguments concerning the company's financial condition and we find that they are not meritorious. Nor is there any merit to respondents' assertion that the company's financial condition was the result, even in part, of unreasonably low rates. The decision fixing the rates in question (Decision No. 59823) was rendered after extensive

hearings in which respondents were fully heard, it was affirmed by the Supreme Court of California, and review was denied by the United States Supreme Court, as noted hereinabove. Moreover, the Commission by a later decision of which we take official notice (Decision No. 64372, dated October 9, 1962, in Applications Nos. 43668 and 43899) disposed of two applications by Dyke Water Company for authority to increase its rates. The opinion in that later decision notes that public hearings were held on the applications on four days extending from January 31 to September 18, 1962, at Los Angeles; that applicant made no showing at any of the hearings; and that applicant's attorney, on the last date mentioned, stated that applicant desired to withdraw its applications. The applications, accordingly, were denied.[3/]

Respondents' attack upon the testimony and personal integrity of the witness Knaggs constitutes a transparent and unworthy effort to change the subject - to suggest that Mr. Knaggs, rather than respondents, is the transgressor in these proceedings. We are not impressed. Mr. Knaggs' record as a staff engineer is beyond reproach. His testimony in this case was not extreme; on the contrary, it was forthright, reasonable and persuasive, and it was entirely consistent with the comparable testimony of other staff engineers in innumerable similar cases involving other water utilities. We expressly find that the criticism of this witness is without justification.

3/ On February 11, 1964, Dyke Water Company filed Application No. 46191 for a systemwide increase in rates. That application has been heard and submitted for decision.

Third Offense

The order (Decision No. 59828) requiring respondents to report periodically to the Commission upon what they were doing about metering became effective July 25, 1961, after review by the California Supreme Court. Respondents admitted that the utility did not so report, but denied that the failure to do so was willful, and alleged that they were unable to comply.

The only activity called for by this order was the writing of a report every six months. Respondents' officials explained, on cross-examination, that they did not file the reports either because of their pending negotiations with the City of Garden Grove to acquire portions of the Dyke system (which later were broken off), or because William M. Lansdale considered certain conversations with Commission staff personnel at Los Angeles as the equivalent of compliance with the order.

The order to report was specific and entailed the performance of mere clerical acts. Respondents' explanations fall far short of justification for their admitted failure to comply with that order.

Fourth Offense

The order to dispose of $39,946.77 of recorded contributions in aid of construction (pp. 1-6, Exhibit E, affiant's affidavit) admittedly was not complied with. Respondents denied willfulness and alleged that compliance would have seriously jeopardized the utility's operations. The record shows affirmatively that the failure to dispose of these contributions was intentional and that such disposition would have been possible with cash available to the company, as indicated in the discussion above concerning the utility's financial condition in 1958 and after.

These contributions were exacted by the utility from various persons, prior to June 30, 1958, for meter and service connections and main extensions under conditions found by the Commission to have been unlawful and in violation of the utility's tariffs; they were ordered to be repaid in cash to designated persons. (Decision No. 59828. See also, Decision No. 61642, dated March 13, 1961, Application No. 42454, in which Dyke Water Co. was authorized to transfer certain properties to the City of Garden Grove, subject to a condition, among others, that these contributions be repaid on or before May 1, 1961.)

Respondents' intentions concerning repayment of these contributions emerge from this record in the contradictory statements of Mrs. Lansdale and in a review of the record in the basic proceeding. The witness, when asked on direct examination why the company had not disposed of the contributions as ordered, testified that the utility did not owe some of the amounts, that some of the contributors could not be located, that others did not insist on immediate repayment, and that all this occurred at the time of the then pending sale to the City of Garden Grove when it was contemplated that a trust would be established with the Farmers & Merchants Bank to repay those who had agreed to accept the refund.

When asked on cross-examination whether the utility had ever done anything to seek review of the Commission's order pertaining to contributions (Decision No. 59828), or to have it modified, or to attack its validity or accuracy, the witness, at first, answered in the negative but later changed to an affirmative reply. The record in the basic proceeding, however, shows

that the petition for rehearing before the Commission with respect to Decision No. 59828 (filed on March 31, 1960) did not challenge the ordered disposition of these contributions, that respondents did not seek review of that particular point in the California Supreme Court, and that the Court's decision does not discuss it.

The witness then testified on cross-examination that "we had set up a trust" to repay the contributions in connection with the then contemplated sale to the City of Garden Grove, and that the utility had planned to do this even before being ordered by the Commission to do so as a condition of the transfer authorization (Decision No. 61642, supra). The transfer application, however, although making provision in the annexed contract of sale for payment of advances for construction, made no provision for repayment of the contributions as ordered by the Commission in Decision No. 59828. On the contrary, the application requested (Application No. 42454, page 8) that "All existing executory orders of this Commission applicable to Dyke Water Company shall be of no further force or effect."

On March 17, 1961, after issuance of Decision No. 61642, Dyke Water Company filed with the Commission a Declaration of Trust, executed March 16, 1961 by the utility as Trustor and Farmers & Merchants Trust Company of Long Beach as Trustee, which recited that "Trustee does hereby acknowledge the receipt from Trustor of the said sum of $39,946.77 in trust, upon the uses and trusts hereinafter more particularly described." This document was filed in compliance with ordering paragraph 4 of Decision No. 61642. Despite the foregoing recital by the Trustee, Mrs. Lansdale admitted on cross-examination that no such sum of money was in fact received

by the Trustee, but only a promissory note in that amount which was later returned to Dyke Water Company when the proposed sale to the City of Garden Grove failed of consummation.

Mrs. Lansdale also testified on cross-examination that Dyke Water Company never carried the sum of $39,946.77 on its books as a liability "because we didn't owe it", and that with respect to the issuance of the note "it was our intention to straighten that out with the Commission after the sale. We were in a hurry to get the sales completed."

The evidence demonstrates a deliberately formed intention not to comply with the Commission's order when, as shown by the foregoing discussion of the utility's financial transactions during the period subsequent to 1958, it had the cash available to it to do so.

Fifth and Sixth Offenses

Respondents have admitted failure to comply with the Commission's order of May 16, 1960 (Exhibit G to affiant's affidavit) to set up a special reserve account and bank deposit (Fifth Offense) for the difference in revenues collected under an interim rate increase of 75 cents authorized by Decision No. 56003 and the rates, theretofore in effect, which were reinstated by Decision No. 59828. The order of May 16, 1960 granted a stay of Decision No. 59828 pending review; the additional provisions requiring that the special reserve account and bank deposit be established were designed to ensure that moneys representing incremental charges thereafter collected by the company under the interim rate order (amounting ultimately to more than $250,000) be refunded in the event Decision No. 59828 were affirmed, which it was.

Respondents have also admitted failure to comply with a distinct but related order (Order Terminating Stay of Decision No. 59828, dated July 25, 1961, Ex. H to affiant's affidavit) which required the utility to formulate and advise the Commission, within 10 days from the date of the order, of a plan to refund the 75-cent difference between the interim rates and those reinstated by Decision No. 59828 (Sixth Offense).

Respondents have alleged that their noncompliance with these orders was not willful and that they were unable to comply.

The record shows that the utility was receiving the 75 cents per month increase during the interim but that the board of directors elected to use the money for other purposes rather than to set up the special account. Furthermore, when asked why the 75-cent increase was not deposited in a trust fund, Arlyne Lansdale answered: "Because we did not owe it...we had a stay order...so we did nothing."

The record reveals further evidence indicating respondents' intentions with respect to this order. Decision No. 61642 had required that the Supreme Court proceeding (review of Decision No. 59828 - S.F. No. 20479) be dismissed and that the refunds be made on or before May 1, 1961, or, in the alternative, that a trust fund be established and sufficient moneys be deposited therein to pay all refunds on or before May 1, 1961. On March 17, 1961, the utility filed a document with the Commission (Exhibit C-8), entitled "Dyke Water Company - Reserve and Adjustment Account - Special Trust Fund - Declaration of Trust", executed March 16, 1961, naming Farmers & Merchants Trust Company of Long Beach as trustee, which recites:

> "Trustor does hereby deliver to Trustee in trust upon and subject to the uses and trusts hereinafter more particularly described the sum of $208,800.00 and Trustee does hereby acknowledge receipt thereof."

In fact, however, as Mrs. Lansdale admitted, the trustee did not receive that sum but instead received from Dyke Water Company a promissory note for $208,800 which was later returned to the company when the sale to the City of Garden Grove collapsed.

Exhibit C-10 is a copy of Application No. 43899 filed by Dyke Water Company on November 6, 1961, seeking authority to increase rates. Reference is made, on page 3 of that application, to the company's lack of funds to comply with the Commission's decisions, including "the ordered $250,000 refund." (This was one of the applications that was denied, after hearing, for failure of applicant to proceed. Decision No. 64372.) On cross-examination, however, Mrs. Lansdale admitted that the company had never recorded the interim rate refund obligation as either a fixed or contingent liability on its books, and that she had told the company's accountant that the liability was a nominal one.

This record clearly shows that respondents did not recognize and did not intend to discharge their obligation to make provision for the required interim rate refunds to their customers. 4/

A natural consequence of respondents' denial of any obligation to make refunds was their failure to formulate any plan

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4/ The Commission, in its decision authorizing Dyke Water Company to transfer, conditionally, a portion of its system to the City of Anaheim, ordered that an Interim Rate Trust be set up and that the trust moneys be disbursed only with the written consent of the Commission. (Decision No. 65860, August 6, 1963, Case No. 7586, as supplemented by Decision No. 65929, August 27, 1963.) The company has sought to recapture these moneys, amounting to $266,342, in an action for declaratory relief filed December 9, 1963 in the Superior Court for Sacramento County, No. 147884.

for that purpose and to advise the Commission thereof.

Respondents' attack upon the legality of the order of May 16, 1960 (directing the establishment of a special trust account) is without merit. After the Commission on May 9, 1960 denied the petition for rehearing of Decision No. 59828, the company's only authority for continuing to charge the higher interim rates was that very same order of May 16, 1960. Respondents may not have it both ways. Moreover, no such criticism of the order was made during the pendency of respondents' petition for review of Decision No. 59828 - when respondents were collecting and spending the money which had been directed to be held on special deposit. Neither this Commission nor the California Supreme Court were then advised of any claimed defect in the order. Even when Decision No. 59828 was affirmed by the Supreme Court, and the Commission, on July 25, 1961, directed the company to submit a refund plan, respondents raised no such defense. No petition for rehearing of either the order of May 16, 1960 or the order of July 25, 1961 has ever been filed.

The alleged financial inability to make the refunds is irrelevant. The real violation was in spending this money in the first place. The funds were ordered to be deposited in a special trust account; respondents had no right to use them for any other purpose - even if they intended to make refunds at a later time. There is no claim, nor could there be, that respondents were financially unable to make the trust deposits as they collected the additional 75¢ from each customer each month. They had the money then and they clearly could have obeyed the order then. Later financial inability to restore such trust funds is no more a defense than is later inability to restore stolen property a defense to a charge of larceny.

Of course, subsequent restoration of these funds might bear upon the seriousness of respondents' conduct and the penalty to be imposed. To this extent, financial inability, if coupled with a showing of good faith effort and willingness to make restoration, might merit consideration. However, as we have pointed out in connection with the metering requirements, respondents' alleged financial inability is not borne out on this record.

Even if financial inability were proved, it could in no way excuse the entire failure of respondents to present a refund plan pursuant to the order of July 25, 1961. At the very least, respondents were obliged to advise the Commission of their financial condition and to attempt to formulate some means of eventual restoration of the funds in question. Instead, for an extended period respondents refused even to permit reasonable inspection of the company's books.

General Discussion

If this proceeding were the outgrowth of but a single act of defiance of the Commission's proper authority, it might be hoped that a warning or admonition to respondents would be sufficient to restore a normal atmosphere of regulatory relationships. The record, however, presents a dismal story of studied and evasive tactics by respondents covering many years of rendering a public utility water service in Orange County. Although the company's service, at least from the standpoint of consumers, seems to meet expected standards of adequacy, proper regulation entails much more than consumers' approval of service.

It involves the fixing of rates, the establishment of standards of plant construction, the regulation of accounting and financial matters and a host of other phases of utility activity.

Dyke Water Company and its associate, Dyman Corporation, are closely held family enterprises. As a regulatory agency of the State, we look to the utility operation and its management to provide adequate service at reasonable rates with the property the utility devotes to public use. In our regulatory function we provide the owners of such property with an opportunity to realize a reasonable return on their investment. To that end, the Commission prescribes uniform systems of accounts for water and other utilities, so that transactions related to the fixing of rates, to financing activities, to size and description of utility plant and to many other matters are available at all reasonable times, but especially during formal proceedings involving such matters. Much of the record in this case deals with unsuccessful efforts by the Commission and its staff to see and audit the utility's records supporting or negating assertions by its management concerning its financial condition at specific times.

Respondents should be punished for what this record demonstrates to be their willful and contumacious defiance of this Commission's orders. For each of the offenses except the second and the fifth, we have determined that the maximum fine of $500 for each respondent is appropriate. The second and fifth offenses are more serious.

The metering requirement imposed by Decision No. 59828 was, and is, of great importance to the water supply and conservation programs of all of Orange County. Moreover, the rates

ultimately authorized by Decision No. 59828 (although lower than the interim rates) presupposed the installation of the required meters; even after allowing for investment in meters, the Commission found that a rate of return of more than 7% would result. The refusal - and, more important, the continuing refusal - of respondents to carry out a reasonable metering program is contrary to the public interest.

Although the evidence indicates that respondents may no longer be in a position to install meters at the rate of 400 per month, it was shown in some detail at the hearings that a program of 100 meters per month is feasible. If respondents are not now willing to install 100 meters per month, in addition to metering new service connections, then a fine for violating the metering requirement of Decision No. 59828 is not enough. In addition to fines for the Second Offense, therefore, our order in this proceeding will provide for five days of imprisonment for each of the individual respondents unless 1,000 meters are installed in the next ten months, at the rate of 100 per month, in addition to the metering of all new service connections.

The Fifth Offense likewise involves serious misconduct. If this trust money is not refunded, then respondents belong in jail.

In Case No. 7586 (involving the recent transfer of approximately one-third of the Dyke Water Company system to the City of Anaheim), the company agreed to a Commission requirement calling for the creation of a trust fund for such refunds in the amount of approximately $266,000. That trust has been established, with a bank as trustee, and it is subject to a provision that no

disbursement therefrom may be made except with the approval of this Commission. The company, however, has since filed an action in the Superior Court for Sacramento County (No. 147884) in which it seeks to regain these funds. The Superior Court suit is frivolous, and we entertain no doubt that it will be dismissed in accordance with the rule recently reaffirmed by the California Supreme Court in the Sokol case. (Pac. Tel. & Tel. Co. v. Superior Court, 60 Adv. Cal. 383.) Meanwhile, further unjustified delay results.

Our order herein, in addition to maximum fines for the Fifth Offense, will provide for imprisonment of the individual respondents unless they promptly carry out a satisfactory refund program.

FINDINGS OF FACT

First Offense

1. On November 28, 1962, the affidavit of Rolla J. Weiser for an order to show cause herein was filed with the Public Utilities Commission of the State of California, in which it was alleged, in substance, that respondents, notwithstanding the Commission's order in Decision No. 59828 and its further orders of May 16, 1960 and July 25, 1961, all issued in the above-entitled consolidated proceedings, and with knowledge of the contents of said orders, with ability to comply therewith and with intent to violate said orders and during their effective period, failed and refused to comply therewith.

2. On November 28, 1962, subsequent to said filing of said affidavit, the Commission duly issued its order directing respondents, and each of them, to appear before Commissioner George G. Grover and such Examiner as might thereafter be designated, at 10 o'clock a.m. on the 9th day of January 1963, in

the Commission Courtroom, State Building, 107 South Broadway, Los Angeles, California, there to show cause why said respondents should not be punished for the alleged contempts set forth in said affidavit. A certified copy of said order to show cause, to which was attached a certified copy of said affidavit, was personally served on respondents Arlyne Lansdale and Dyke Water Company, a corporation, on November 30, 1962, on respondent Dyke Lansdale on December 3, 1962 and on respondent William M. Lansdale on December 17, 1962. On January 9, 1963 and each of the days thereafter to which the hearings herein were duly and regularly adjourned, each of said respondents appeared, in person or by counsel, and participated fully herein.

3. On December 17, 1957 the Commission, by its Decision No. 56003 duly given and made, authorized respondent Dyke Water Company, a regulated public utility water corporation, to file certain schedules of rates for water service as shown in Appendix A attached to said decision and to make said rates effective for service rendered on and after January 1, 1958. Thereafter, said respondent filed such rates with the Commission on December 27, 1957 and such rates thereupon became the lawfully established rates of said respondent for public utility water service rendered by it on and after January 1, 1958. Said respondent from time to time assessed and collected from its customers, for such service, charges calculated by the use of such rates.

4. On March 22, 1960, the Commission duly issued in the above-entitled consolidated proceedings Decision No. 59828, in which it ordered that:

(a) The rates and charges established by Decision No. 56003 be terminated as of the seventh day following the effective date of said order.

(b) Coincidental with the termination of said rates and charges there be reinstated, as the regularly filed and effective rates of 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.

(c) Dyke Water Company adjust its books of account to conform to a certain balance sheet, prepared by the Commission staff, as of December 31, 1957, after adjustments, as shown on Table 4-B of Exhibit 19 in said consolidated proceedings.

(d) Dyke Water Company immediately institute a metering program and 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 general service connections should have been metered; and, within ninety days after the effective date of said order and every 180 days thereafter, report to the 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 should have been metered.

(e) Dyke Water Company immediately dispose of its recorded contributions pursuant to the classification and itemization in Appendix C of Exhibit 44 in said consolidated proceedings, in accordance with the staff recommendations contained in Chapter 4 of said exhibit; and, within ninety days after the effective date of said order, certify to the Commission in writing, over the signature of a responsible officer, that it had complied therewith.

5. A certified copy of said Decision No. 59828 was duly served on March 22, 1960 upon Dyke Lansdale, then President of Dyke Water Company, and upon each of the then attorneys of record of said corporation in the above-entitled proceedings. Respondent Dyke Water Company and its officers and directors had notice and knowledge of the issuance of said Decision No. 59828 and of the contents thereof. On March 22, 1960, respondent William M.

Lansdale was an officer of Dyke Water Company and respondent Arlyne Lansdale was its Secretary-Treasurer and Attorney and an officer thereof.

6. On May 16, 1960 the Public Utilities Commission of the State of California duly issued in said consolidated proceedings an order that:

> a. The effective date of Decision No. 59828 be stayed pending a review proceeding thereon by the Supreme Court of the State of California and until the final determination of said proceeding or until further order of the Commission.
>
> b. Dyke Water Company forthwith set up and maintain a special reserve account and bank account and credit thereto from time to time amounts representing the difference between revenues accruing on and after the effective date of said order under rates authorized by Interim Decision No. 56003, dated December 17, 1957, and those accruing under rates authorized by Decision No. 59828, dated March 22, 1960, the effective date of which was stayed as hereinabove described.
>
> c. Dyke Water Company designate, as special trustee, a bank authorized to do business in the State of California and open a special trust account and maintain on deposit therein a sum of money equal to the balance in the special reserve account created by said order of May 16, 1960.

Said order of May 16, 1960 became effective on the date thereof.

7. A certified copy of said order of May 16, 1960 was duly mailed by first class mail on May 16, 1960 to the same persons as those identified hereinabove in paragraph 5 of these findings as persons upon whom a certified copy of said Decision No. 59828 was served. On May 16, 1960 said Dyke Lansdale was President of said Dyke Water Company. Respondent Dyke Water Company and its officers and directors had notice and knowledge of the issuance of said order of May 16, 1960 and of the contents thereof. On

May 16, 1960, respondent William M. Lansdale was an officer of Dyke Water Company and respondent Arlyne Lansdale was its Secretary-Treasurer and Attorney and an officer thereof. On June 22, 1961, the Supreme Court of California affirmed said Decision No. 59828.

8. On July 25, 1961, the Public Utilities Commission of the State of California duly issued in said consolidated proceedings an order that:

a. Decision No. 59828 in its entirety be made effective as of the date of said order of July 25, 1961.

b. Within ten days from the date of said order of July 25, 1961 Dyke Water Company formulate and advise the Commission of a plan to refund to its consumers moneys collected by it representing the difference between revenues accruing on and after May 16, 1960, under rates authorized by Decision No. 56003 and those which would have accrued under rates authorized by Decision No. 59828.

9. A certified copy of said order of July 25, 1961 was mailed by first class mail on July 26, 1961 to William M. Lansdale, President, Dyke Water Company, and to Richard P. Roe, H. O. Van Petten and Frederick L. Simmons, Attorneys, 433 South Spring Street, Room 633, Los Angeles 12, California. On July 26, 1961, said William M. Lansdale was President of Dyke Water Company and said Richard P. Roe, H. O. Van Petten and Frederick L. Simmons continued to be attorneys for Dyke Water Company. Dyke Water Company and its directors and officers had notice and knowledge of the issuance of said order of July 25, 1961, and of the contents thereof. On July 26, 1961, said Dyke Lansdale was Vice President of said Dyke Water Company and an officer thereof, and said Arlyne Lansdale was its Secretary-Treasurer and Attorney and an officer thereof.

10. On March 20, 1962, a stipulation was entered into by and between said Dyke Water Company, by William M. Lansdale as its

President and Roe and Rellas (by Chris S. Rellas) as its then attorneys of record in these consolidated proceedings, and J. Thomason Phelps, attorney for the staff of the Commission.

11. Paragraph 1 of said stipulation is as follows:

> "1. That as of the date hereof, the Dyke Water Company has not adjusted 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 19, as directed by ordering paragraph 3 of Decision No. 59828."

The facts recited in said paragraph 1 of said stipulation are true.

12. Dyke Water Company, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, and each of them, while officers and directors of said company and while having notice and knowledge of the contents of said Decision No. 59828, including ordering paragraph 3 thereof, and while having ability to comply with said ordering paragraph 3, and while said Decision No. 59828 and paragraph 3 thereof remained in force and effect, failed, within a reasonable time after the effective date of said decision, and with intent to violate the same, to comply with said ordering paragraph 3, in that they failed and refused to adjust or cause to be adjusted the books of account of said Dyke Water Company to conform to the balance sheet as of December 31, 1957, after adjustments, as shown on said Table 4-B of said Exhibit 19. Said failure and refusal were in violation of law and in contempt of the Commission and of its said order.

Second Offense

13. We refer to and incorporate by this reference paragraphs 1 through 10, inclusive, of the findings hereinabove set forth with respect to the First Offense, with the same force and effect as if said paragraphs and each and every finding therein were set forth in full herein.

14. Paragraph 3 of said stipulation of March 20, 1962 is as follows:

> "3. That the Dyke Water Company has not as of the date hereof instituted a metering program in addition to metering new service connections, as directed by ordering paragraph 4 of Decision No. 59828."

The facts recited in said paragraph 3 of said stipulation are true.

15. Dyke Water Company, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, and each of them, while officers and directors of said company and while having notice and knowledge of the contents of said Decision No. 59828, including ordering paragraph 4b. thereof, and while having ability to comply with said ordering paragraph 4b., and while said Decision No. 59828 and said ordering paragraph 4b. remained in force and effect, have continuously, since the issuance of said decision to the present time, and with intent to violate the same, failed and refused to comply with said ordering paragraph 4b., in that they have failed and refused to institute a metering program, and to install or cause to be installed not less than 400 meters per month in addition to metering all new service connections, until all residential and other general service connections should have been metered. Said failure and refusal were in violation of law and in contempt of the Commission and of its said order. Respondents presently have the ability to install such meters at the rate of 100 per month in addition to metering all new service connections.

Third Offense

16. We refer to and incorporate by this reference paragraphs 1 through 10, inclusive, of the findings hereinabove set forth with respect to the First Offense with the same force and effect as if

said paragraphs, and each and every finding therein, were set forth in full herein.

17. Dyke Water Company, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, and each of them, while officers and directors of said company, and while having notice and knowledge of the contents of said Decision No. 59828, including ordering paragraph 4c. thereof, and while having ability to comply with said ordering paragraph 4c., and while said Decision No. 59828 and said ordering paragraph 4c. remained in force and effect, have continuously, since the issuance of said decision to the present time, and with intent to violate the same, failed and refused to comply with said ordering paragraph 4c., in that they have failed and refused to report or cause to be reported to said Commission in writing, within 90 days after the effective date of said Decision No. 59828, and every 180 days thereafter, the total number of meters installed by said Dyke Water Company, together with the net number of meters installed by it during the period covered in each such report, until all of its general service connections should have been metered. Said failure and refusal were, and continue to be, in violation of law and in contempt of the Commission and of its said order.

Fourth Offense

18. We refer to and incorporate by this reference paragraphs 1 through 10, inclusive, of the findings hereinabove set forth with respect to the First Offense with the same force and effect as if said paragraphs, and each and every finding therein, were set forth in full herein.

19. Paragraph 5 of said stipulation of March 20, 1962 is as follows:

> "5. That the Dyke Water Company has not disposed of all of 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, as directed by ordering paragraph 6 of Decision No. 59828."

The facts recited in said paragraph 5 of said stipulation are true.

20. Dyke Water Company, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, and each of them, while officers and directors of said company, and while having notice and knowledge of the contents of said Decision No. 59828, including ordering paragraph 6a. thereof, and while having ability to comply with said ordering paragraph 6a., and while said Decision No. 59828 and said ordering paragraph 6a. remained in force and effect, have continuously, since the issuance of said decision to the present time, and with intent to violate the same, failed and refused to dispose of or cause to be disposed of the contributions recorded by said Dyke Water Company 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, in that they have failed and refused to return, or cause to be returned, to the persons and in the amounts shown on pages 1-6, inclusive, of said Appendix C, such contributions. Said failure and refusal were, and continue to be, in violation of law and in contempt of the Commission and of its said order.

Fifth Offense

21. We refer to and incorporate by reference paragraphs 1 through 10, inclusive, of the findings hereinabove set forth with respect to the First Offense with the same force and effect as if

said paragraphs, and each and every finding therein, were set forth in full herein.

22. Paragraphs 7 and 8 of said stipulation of March 20, 1962, are as follows:

> "7. That the Dyke Water Company has not maintained a special reserve account entitled 'Reserve and Revenue Adjustment,' nor credited thereto an amount representing the difference between revenues accruing on and after May 16, 1960, under rates authorized by Interim Decision No. 56003, and those accruing under rates authorized by Decision No. 59828.
>
> "8. That the Dyke Water Company has not maintained on deposit in a special trust account or in any other account in a bank authorized to do business in California or in any other bank or depository a sum of money equal to the balance in the account referred to in paragraph 7 of this stipulation, or any sum of money equal to any part thereof."

The facts recited in said paragraphs 7 and 8 of said stipulation are true.

23. Dyke Water Company, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, and each of them, while officers and directors of said company, and while having notice and knowledge of the contents of the order issued by the Commission on May 16, 1960 (hereinabove referred to in paragraph 6 of the findings herein with respect to the First Offense), and while having ability to comply therewith, and while said order remained in force and effect, have continuously, since the issuance of said order to the present time, and with intent to violate the same, failed and refused to comply therewith, in that they have failed and refused to set up and maintain or cause to be set up and maintained a special reserve account entitled "Reserve and Revenue Adjustment" and have failed and refused to credit or cause to be credited to such an account

from time to time any amount representing the difference (or any part thereof) between revenues accruing on and after the effective date of said order of May 16, 1960 under rates authorized by said Decision No. 56003 (referred to in paragraph 3 of the findings herein with respect to the First Offense) and revenues accruing under rates authorized by said Decision No. 59828 (referred to in paragraph 4 of the findings herein with respect to the First Offense), and in that (except as specified hereafter in this paragraph 23) they have failed and refused to designate or cause to be designated as special trustee a bank authorized to do business in the State of California, or to open or cause to be opened in such bank or any other bank or depository a special trust account or to maintain or cause to be maintained on deposit in such account a sum of money equal to the balance in any such special reserve account, said exception being that, pursuant to the Commission's Decision No. 65860, dated August 6, 1963, in Case No. 7586, and decisions supplemental thereto (which conditionally authorized Dyke Water Company to transfer a portion of its assets to the City of Anaheim), Dyke Water Company did establish an Interim Rate Trust with Farmers & Merchants Bank of Long Beach, containing a corpus of $266,342 which may be disbursed only with the written approval of the Commission. Dyke Water Company has sought to recapture said $266,342 by an action in the Superior Court of the State of California, in and for the County of Sacramento, No. 147884. Said failure and refusal were, and continue to be, in violation of law and in contempt of the Commission and of its said order of May 16, 1960.

Sixth Offense

24. We refer to and incorporate by reference paragraphs 1 through 10, inclusive, of the findings hereinabove set forth with respect to the First Offense with the same force and effect as if said paragraphs, and each and every finding therein, were set forth in full herein.

25. Paragraph 9 of said stipulation of March 20, 1960, is as follows:

> "9. That the Dyke Water Company did not, within ten days from the date of the order of July 25, 1961 (Order Terminating Stay of Decision No. 59828) formulate and advise the Commission of a plan whereby it will refund to its customers moneys collected by it representing the difference between revenues accruing on and after May 16, 1960, under rates authorized by Interim Decision No. 56003 and those that would have accrued under rates authorized by Decision No. 59828; and further, that Dyke Water Company has not, as of the date hereof, formulated and advised the Commission of any such plan."

The facts recited in said paragraph 9 of said stipulation are true.

26. Dyke Water Company, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, and each of them, while officers and directors of said company, and while having notice and knowledge of the contents of said Order Terminating Stay of Decision No. 59828, issued by said Commission on July 25, 1961, as aforesaid, and while having ability to comply therewith, and while said order remained in force and effect, and with intent to violate the same, have failed and refused to formulate or cause to be formulated or to advise the Commission, or cause the Commission to be advised, of a plan whereby said Dyke Water Company would refund to its customers moneys collected by it representing the difference between revenues accruing on and after May 16, 1960 under rates authorized by Decision No. 56003 and revenues that would have accrued under rates

authorized by Decision No. 59828. Said failure and refusal were, and continue to be, in violation of law and in contempt of the Commission and of its said order of July 25, 1961.

27. For said contempts, respondents should be punished as provided in the following judgment and order.

JUDGMENT AND ORDER

Dyke Water Company, a corporation, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, having appeared in person or by counsel and having been given full opportunity to answer the order to show cause herein, dated November 23, 1962, and to exonerate themselves from the alleged contempts set forth in the affidavit filed herein on November 28, 1962; now, therefore, based upon the foregoing Opinion and Findings of Fact,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Dyke Water Company, a corporation, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, as officers and directors of said corporation, are and each of them is guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made March 22, 1960 in ordering paragraph 3 of its Decision No. 59828 in the consolidated proceedings herein, Application No. 39303 and Case No. 5841, by failing and refusing to make or cause to be made, within a reasonable time, adjustments to the books of account of said corporation as directed by said order. (First Offense.)

2. Dyke Water Company, a corporation, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, as officers and directors of said corporation, are and each of them is guilty of

contempt of the Public Utilities Commission of the State of California in disobeying its order made March 22, 1960 in ordering paragraph 4b. of its Decision No. 59828 in the consolidated proceedings herein, Application No. 39303 and Case No. 5841, by failing and refusing to institute or cause to be instituted a metering program and to install or cause to be installed meters as directed by said order. (Second Offense.)

3. Dyke Water Company, a corporation, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, as officers and directors of said corporation, are and each of them is guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made March 22, 1960, in ordering paragraph 4c. of its Decision No. 59828 in the consolidated proceedings herein, Application No. 39303 and Case No. 5841, by failing and refusing to report, or to cause to be reported, to the Commission, in writing, within the times specified, concerning the installation of meters as directed by said order. (Third Offense.)

4. Dyke Water Company, a corporation, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, as officers and directors of said corporation, are and each of them is guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made March 22, 1960, in ordering paragraph 6a. of its Decision No. 59828 in the consolidated proceedings herein, Application No. 39303 and Case No. 5841, by failing and refusing to dispose of recorded contributions, or to cause recorded contributions to be disposed of, as directed by said order. (Fourth Offense.)

5. Dyke Water Company, a corporation, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, as officers and directors of said corporation, are and each of them is guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made May 16, 1960 (Order Staying Decision No. 59028) in the consolidated proceedings herein, Application No. 39303 and Case No. 5041, by failing to set up and maintain or cause to be set up and maintained a special reserve account and by failing to maintain or cause to be maintained on deposit in a special trust account certain sums of money, as directed by said order. (Fifth Offense.)

6. Dyke Water Company, a corporation, and William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, as officers and directors of said corporation, are and each of them is guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made July 25, 1961 (Order Terminating Stay of Decision No. 59828) in the consolidated proceedings herein, Application No. 39303 and Case No. 5041, by failing and refusing to formulate, or cause to be formulated, and by failing and refusing to advise the Commission of, or to cause the Commission to be advised of, a plan whereby Dyke Water Company would refund to its customers moneys collected by it representing the difference between revenues accruing on and after May 16, 1960 under rates authorized by Decision No. 56003 and revenues that would have accrued under rates authorized by Decision No. 59028, as directed by said order of July 25, 1961. (Sixth Offense.)

7. For said contempts of the Public Utilities Commission of the State of California and its orders, as hereinabove described, the following punishments are hereby imposed:

A. For each of the six contempts (First through Sixth Offenses, inclusive) specified hereinabove, Dyke Water Company shall pay a fine of $500, said fine, totalling $3,000, to be paid to the Secretary of the Public Utilities Commission of the State of California, 5th Floor, State Building, San Francisco, California, within five (5) days after the effective date of this decision.

B. For each of the six contempts (First through Sixth Offenses, inclusive) specified hereinabove, in addition to the punishment ordered in subparagraphs C and D of this paragraph 7 of this order, each of the individual respondents (William M. Lansdale, Arlyne Lansdale and Dyke Lansdale) shall pay a fine of $500, said fines, totalling $3,000 for each of said persons, to be paid to the Secretary of the Public Utilities Commission of the State of California, 5th Floor, State Building, San Francisco, California, within five (5) days after the effective date of this decision.

C. For the contempt described in paragraph 2 of this order (Second Offense), in addition to the fines imposed in subparagraph B of this paragraph 7 of this order, William M. Lansdale, Arlyne Lansdale, and Dyke Lansdale, and each of them, shall be committed, on a date to be fixed by further order of the Commission, to the County Jail of the County of Orange for five (5) consecutive

days; provided that if Dyke Water Company, in addition to metering all new service connections, installs not less than one hundred (100) meters during each calendar month for a period of ten (10) consecutive calendar months, commencing with the month of August 1964, and if satisfactory evidence of such installation is filed with the Commission on or before the fifth day following each such calendar month, then the Commission by further order will rescind the punishment imposed by this subparagraph C of this paragraph 7 of this order.

D. For the contempt described in paragraph 5 of this order (Fifth Offense), in addition to the fines imposed in subparagraph B of this paragraph 7 of this order, William M. Lansdale, Arlyne Lansdale and Dyke Lansdale, and each of them, shall be committed, on a day to be fixed by further order of the Commission, to the County Jail of the County of Orange for five (5) consecutive days; provided that if, on or before the tenth day after the effective date of this decision, respondents shall have deposited with the Secretary of the Commission the sum of $266,342 for the purpose of making the refunds contemplated by the Commission's said order of July 25, 1961, and if respondents, and each of them, on or before the tenth day after the effective date of this decision shall have filed with the Secretary of the Commission, on behalf of themselves and all persons claiming under them, a written quitclaim and disclaimer, satisfactory to the Commission, of any and all interest in said $266,342 so deposited with the Secretary,

then the Commission by further order will rescind the punishment imposed by this subparagraph D of this paragraph 7 of this order. The $266,342 now held by Farmers & Merchants Bank of Long Beach in the Interim Rate Trust (pursuant to the Commission's orders in Case No. 7586) may be used to make said deposit with the Secretary of the Commission.

8. In default of the payment, by William M. Lansdale, Arlyne Lansdale, or Dyke Lansdale, of the fines imposed upon each of said persons, as ordered in subparagraph B of paragraph 7 of this order, such person or persons so in default shall be committed to the County Jail of the County of Orange, State of California, until such fine, or fines, be paid or satisfied in the proportion of one day's imprisonment for each fifty dollars ($50) of said fine that shall be unpaid.

9. The Secretary of the Public Utilities Commission of the State of California, if said fines or any part thereof shall not be paid by any of the aforementioned natural persons within the time specified above, shall prepare and issue 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 the County of Orange, to which shall be attached and made a part thereof a certified copy of this decision.

10. As to each respondent, the terms of imprisonment imposed by subparagraphs C and D, respectively, of paragraph 7 of this order shall be served consecutively and not concurrently. Furthermore, such terms of imprisonment shall be in addition to,

and shall be served consecutively with, any and all imprisonment resulting from paragraph 8 of this order.

For purposes of rehearing and judicial review as contemplated by Sections 1731 and 1767, inclusive, of the Public Utilities Code, this decision shall become effective, as to each of the contemnors hereinabove named, twenty days after personal service of a certified copy hereof upon such contemnor. In all other respects said decision shall become effective the date hereof. The Secretary is directed to make personal service of a certified copy of this decision upon each of said contemnors.

Dated at San Francisco, California, this 10th day of JULY, 1964.

Frederick B. Holoboff
President

Commissioners

A 39303; C 5841

I concur in part and dissent in part.

The record is clear that the Dyke Water Company has failed to comply with the six directives of this Commission alleged in the Order to Show Cause issued November 28, 1962.

Because of the penalties which may be imposed, contempt is criminal in nature and such proceedings are construed strictly to protect the interests of the accused. Technically, therefore, I do not believe the majority decision can be supported.

Assuming that the decision were legally supportable, nonetheless it does not solve the problem of metering the Dyke water system. Indeed, the requirement in the order of 100 meters per month (for ten months only) is merely a token supplementation. If, as the decision states, the need for water conservation in Orange County is immediate, the action of this Commission to meter the entire Dyke water system should likewise be immediate.

Peter E. Mitchell, Commissioner

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of DYKE WATER COMPANY, a corporation, for authorization to increase its rates charged for water service.	Application No. 39303
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 utility water corporation.	Case No. 5841 Order to Show Cause (Contempt)

BENNETT, William M., Commissioner, Dissenting Opinion:

The power to punish for contempt is an extraordinary one. It has been entrusted to us to use only under appropriate circumstances and then, and most importantly, with reasonable dispatch. Because of the severe penalties which the power of contempt permits, it is imperative that the Commission accord due process to the parties upon whom it is to be visited.

I have read the record herein and note that the proceeding is punctuated with delay and confusion; it is an abundance of monologue. Further, the offenses which are alleged to be contemptuous of this Commission are like grievances stored in a bank apparently to be withdrawn whenever whim permits. If Commission authority has been violated, if decisions are not respected, this Commission in the past had the absolute duty to proceed in a manner the law contemplates and with diligence. It was not done here and it was not done throughout the proceedings. The penalties imposed by way of fines and possible imprisonment are harsh and excessive.