EP

Decision No. 68117

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the DYKE WATER COMPANY, a corporation, for authority to increase rates charged by it for Water Service.	Application No. 46191 (As Amended)

Lally & Martin, by Thomas W. Martin, for applicant.

Milford W. Dahl, with Howard W. Cooke, for Orange County Water District; Charles R. Handy, for City of Garden Grove; Creel F. Foshee and Woodrow W. Butterfield, for themselves; interested parties.

Harold J. McCarthy, William V. Caveney and Raymond E. Heytens, for the Commission staff.

O P I N I O N

Dyke Water Company, alleging that its present rates for water service in Orange County are insufficient and unreasonable and that the company is in a state of financial emergency, on February 11, 1964 filed an application to increase flat and meter rates and to place in effect a monthly charge of 15 cents per customer for fire protection service. Applicant alleges that on December 31, 1963 it had 14,369 flat rate services and 2,175 meter rate services. The proposal would increase the basic flat rate for a single family dwelling from $3.00 to $4.50 per month and the basic meter quantity rate and minimum charge (allowing up to 1,000 cubic feet of water) from $2.50 to $3.50 per month, both rates being applicable to 3/4-inch service connections. Annual gross operating revenues would allegedly be increased by about $350,000 under the proposed rates.

On February 14, 1964 applicant filed a First Amendment to its application by which it seeks authority, because of "extreme emergency conditions," to place into immediate effect, on an interim basis, the originally requested increases, or at least a sufficient proportion thereof to cover the Orange County underground water replenishment tax (sometimes called the "pump tax," which increased from $3.50 to $11.00 per acre foot between 1954 and 1962), together with interim authority to charge 15 cents per customer for fire protection service.

Public hearings on the application, as amended, were held at Garden Grove and Los Angeles before Commissioner Grover and Examiner Gregory during April and May, 1964. Counsel for the Commission staff moved to dismiss the proceeding on the ground of inadequacy of applicant's exhibits and showing to indicate either a financial emergency or justification for the proposed increased rates. The staff, although participating in the hearing, made no extensive study of applicant's proposals, asserting that the supporting exhibits were deficient in certain particulars and that additional data had been supplied by applicant too late for meaningful review. Both the motion to dismiss and the application, as amended, were submitted for decision at the concluding hearing held May 21, 1964.

The motion to dismiss should be granted. Applicant's showing is based largely on unsubstantiated or unaudited exhibits and on supplementary data not capable of evaluation by the staff without an original cost study of applicant's presently consolidated water system and detailed audit and segregation of recent revenue and expense components; such showing is not sufficient to justify the requested interim or general relief. The staff is not required, in a rate application, to undertake such studies and assume applicant's burden of proof.

Applicant's claim of a serious financial emergency was not established. Instead, the record reveals that the utility's working cash position, at the end of 1963, showed marked improvement following sale of approximately one-third of its assets to the City of Anaheim in September of that year and application of the proceeds to the payment or securing of certain pressing company and family obligations. Applicant, also, has had funds to take advantage of cash discounts offered for timely payment of current obligations and has continued to advance funds to either Dyman Corporation, a wholly owned Lansdale family affiliate, or to members of the Lansdale family. In addition to these advances, totaling some $595,574 during the past three years, the company has also paid $45,940 on notes held by the Lansdale family. Furthermore, applicant has taken no measures to reduce salaries to Lansdale family members, recorded as $142,584 for 1963, or to reduce other administrative and general expenses subject to control of management, in order to conserve funds during an interim period of claimed financial emergency.

The record makes clear that even if an interim rate increase were granted, as requested by applicant, the additional cash thus provided, alone, would have little effect on the utility's financial condition, since the company's past due and current obligations, as well as those anticipated for 1964, could not be met without outside financing, which applicant has been unable to obtain,[1/] or by liquidation of the major portion of the utility's assets, reflected in the recent sale of the Anaheim properties and in pending negotiations with the City of Garden Grove. Those obligations include: A balance of about $39,000 on an Orange County Water District replenishment

1/ The record does not contain any showing by applicant that the interim rate increase, if granted, would make available outside financing as a source of funds to alleviate claimed financial emergency.

assessment, due January 31, 1964 and an expected assessment of about $90,000, due July 1, 1964; general accounts payable, as of March 31, 1964, amounting to $7,000 for legal fees and $10,500 to a meter manufacturer; a balance of $857,457.37 on overdue notes to the Farmers & Merchants Bank of Long Beach, on which a collection suit is pending; substantial refund payments on main extension advance contracts, now due or to become due during 1964 and later years; Federal tax obligations arising out of the sale to the City of Anaheim in 1963, estimated by the company at $306,749.50; and disputed taxes for 1960 through 1962, in process of audit but estimated by applicant at about $250,000. These obligations total approximately $1,560,000 without taking into account cash refunds on advance contracts now due or to become due during 1964.

The record with respect to applicant's request for permanent rate relief does not afford a factual basis, on applicant's showing, for ascertainment of a rate base upon which to predicate reasonable rates for the future. No cost data were furnished for the plant comprising the remainder of the system after the Anaheim sale, other than an unpriced inventory, dated April 15, 1964 (which includes the Anaheim plant), certain exhibits (identified in this record as Exhibits 29 through 36) pertaining to a pending just compensation proceeding for acquisition, by eminent domain, of the utility's Garden Grove properties (Application No. 44634, Exhibits 1 through 8 therein),[2/] and an allocation of plant costs (Exhibit 39) arbitrarily based on numbers of customers.

2/ The presiding examiner reserved rulings on the offers in evidence of Exhibits 29 through 36. On consideration of the record herein Exhibits 29 through 36 are hereby received in evidence.

Other data supplied by applicant at or shortly prior to the hearings, in explanation or elaboration of exhibits attached to either the original or the amended application and which are essential for calculation of a rate base or operating results, are uncertain, unsubstantiated, or improperly accounted for. As an example, in estimating future system operating revenues applicant used, variously, the terms "services" and "customers" (Exhibit 1, Ch. 4). Since "services" normally refer to plant and "customers" to revenue and the record does not reveal a relationship between the number of active or dormant services and the number of ratepaying customers, the resultant revenue estimate is inherently uncertain.

Applicant, in its comparative income statement (Exhibit 1, Table B4-13), has included in 1964 estimates, at proposed rates, the sum of $167,739 for transmission and distribution expense, of which $134,400 is stated to be for an 8-month metering program at the rate of 200 meter installations per month. No convincing justification was shown for inclusion in operating expenses of what would normally be considered a capital cost.

Other items of expense also tend to distort applicant's estimates upon which it has relied for justification of its request for permanent relief. For example, applicant recorded the sum of $67,225 for "regulatory expense" and "outside services" in 1963 and has estimated an amount of $56,749 for these items for 1964, including expenses of defending certain condemnation suits, by applying to the last three years' average of recorded Administration and General Expenses an arbitrary subtractive factor of 15 percent, with the statement that regulatory expense is expected to continue at high levels "due to the pending and anticipated proceedings and court

actions necessary to defend the company's position" (Exhibit 1, Ch. 8). Aside from the doubtful propriety of including condemnation suit costs in regulatory expense, there is no justification in this record for applicant's assumption that costs of regulation and "outside services," normally amortized over a period of years, will continue at present levels and might thereby become a proper recurring charge against the ratepayers.

With respect to the item of depreciation expense, applicant, in its results of operation report (Exhibit 1, p. 54), has used the straight-line total life method, with relatively short lives, and the same depreciation rates used at the inception of the company's utility business in 1951 or 1952. The Commission, however, in 1960, by a decision issued in a previous rate application proceeding by the utility, adopted staff depreciation recommendations using longer average service lives by an order effective, after review by the California Supreme Court, on July 25, 1961 (Decision No. 59828, Application No. 39303; affirmed, 56 Cal.2d 105; cert.den., 368 U.S. 939, 9 L.ed.2d 338). The Commission's order required applicant to file for Commission review annual straight-line remaining life depreciation studies and to accrue depreciation on the basis of the studies. Applicant has not filed such reviews and, in the present proceeding, has completely failed to justify either its depreciation expense or its disregard of the Commission's order.

One other item deserves mention. Farmers & Merchants Bank of Long Beach received $500,000 in connection with distribution of escrowed proceeds from the sale of utility property to the City of Anaheim. Not all of this amount, however, was credited by the bank to debts owed by the utility; instead, $214,654.29 was applied to a personal obligation of Dyke Lansdale. (The transaction was recorded

on the utility's books as a "receivable" from Dyke Lansdale.) Applicant represented at the hearing that the $214,654.29 was applied by the bank, by exercise of a "banker's lien" and without the company's consent or approval, to payment of a personal note of Dyke Lansdale, executed about 1957 and personally guaranteed by him when he owned stock in the company. The record shows, however, that when the utility and its non-utility affiliate, Dyman Corporation, in 1959 and 1960 secured loans totaling $1,000,000, the utility agreed with the bank that on the sale of a major part of the utility's assets to the City of Garden Grove, then pending but ultimately not completed, all individual as well as corporate loans would be paid. The notes became delinquent and the bank sued and attached to collect all sums due from the two corporations and the individual members of the Lansdale family. Prior to trial, however, the utility sold its Anaheim properties. The bank's attorneys insisted that all personal obligations would have to be paid first from the proceeds of the sale. The two corporations, by Mrs. Arlyne Lansdale as secretary, their then attorneys (Roe and Rellas), and Mrs. Lansdale and her son, William (president of the utility), as individuals, agreed to this in writing in a letter dated August 21, 1963 (Exhibit 38). Mrs. Lansdale, earlier in the hearing, categorically testified that neither the company nor she individually had ever authorized the bank to apply any of the proceeds of the Anaheim sale to pay the obligation of Dyke Lansdale (Tr. p. 356). While the bank's application of the $214,654.29 to payment of Dyke Lansdale's personal obligation, if authorized and otherwise proper, would not affect the delinquent balance of the long-term obligation on the two corporate notes, the inclusion, in the utility's books and its exhibits herein of a receivable from Dyke Lansdale as a result of payment of his personal obligation from the Anaheim proceeds to that extent adversely affects the company's financial condition.

The record reveals that applicant, prior to and during the hearing, was less than candid concerning the foregoing transactions. The facts were finally unearthed only at the insistence of the staff's attorney.

We recognize that the utility and its owners have pressing financial obligations, and we do not wish to foreclose applicant from presenting a proper application for rate relief at some future time, should it be so advised. We are unable, however, to grant such relief on the showing made here. The motions to dismiss this application for interim and permanent increases in rates will be granted without prejudice to the filing of a proper application by applicant at a future time.

O R D E R

IT IS ORDERED that the motions by counsel for the Commission's staff to dismiss the application herein, as amended, be granted and said application, as amended, is hereby dismissed without prejudice.

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

Dated at San Francisco, California, this 27th day of OCTOBER, 1964.

Frederick B. Holoboff
President

Commissioners