

Decision No. 69075

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
DYKE WATER COMPANY, a corporation,)
for an order authorizing it to sell,)
transfer and convey a major portion)
of its water service system and)
utility plant in Orange County,)
California, to the CITY OF GARDEN GROVE)
WATER CORPORATION, a nonprofit)
corporation, under provisions of)
Section 581 of the Public Utilities)
Code, and for said City of Garden)
Grove Water Corporation to lease)
said water system to the City of)
Garden Grove.)

Application No. 46889
(Petition filed December
15, 1964)

O P I N I O N

By petition filed December 15, 1964, Dyke Water Company seeks (1) modification of Decision No. 68272, issued November 25, 1964, in this matter and (2) to present oral argument with respect thereto.

With respect to modification of said decision, the petition in essence asks that:

- a. The total amount of the Construction Advances Trust be reduced by \$150,000.
- b. Duplication of refund amounts be eliminated.
- c. Certain amounts not be made subject to refund.
- d. Provisions for payment of certain final unrefunded amounts to the State be eliminated.
- e. The remainder of the existing non-interest bearing "Advances Trust" established in connection with sale of properties to the City of Anaheim be combined with the Construction Advances Trust ordered by Decision No. 68272.

At the outset, it should be clearly understood that this Commission has no intention of forcing petitioner to pay duplicated or erroneously-determined construction-advance refunds. The refund

amounts arise from provisions contained in petitioner's tariffs authorized and ordered by this Commission. The utility is bound thereby. Enforcing payment, in the final analysis, is no more than enforcing the tariffs. The contracts, which give rise to the need for both escrow instructions and the trust agreement, are required by the tariffs; indeed, the contracts are essential parts of the tariffs. Each contract has been specifically approved by this Commission and petitioner has been ordered to carry out the terms thereof. Arguments to the contrary do not alter these simple facts.

Other than the issues of correction of monetary errors and the adequacy of trust fund provisions for future refunds, petitioner now presents no issue on which petitioner has not heretofore been accorded ample opportunity to be heard. The Commission finds that further argument thereon, as presently sought by petitioner, would serve no useful purpose. Petitioner's request therefor is denied.

The Commission again has had one of its accounting experts make a review of petitioner's records as they pertain to petitioner's allegations respecting errors, with the full cooperation of petitioner, and a "Memorandum Financial Report" thereon has been prepared. By stipulation of petitioner, said report is hereby received herein as Exhibit No. 24. Petitioner's stipulation and response, filed April 7, 1965, setting forth certain exceptions to the staff report and certain contentions respecting subjects heretofore decided by this Commission, is hereby received, as Exhibit No. 25.

By Decision No. 68272 in this matter, a sum of \$234,682.77 was ordered to be placed in escrow. Exhibit No. 24 shows that the correct amount necessary for payment of due and past-due construction-advance refunds is a total of \$230,847.48. This amount is made up of \$116,374.34 payable to Howard Morf (\$98,972.51 in refunds on Garden Grove contracts and \$17,401.83 on three Anaheim contracts as shown in

Table A of Exhibit No. 24) plus \$114,473.14 for various refunds to other contract holders due in 1961, 1962, 1963 and 1964 in the Garden Grove area. Payment of this latter amount, from escrow funds, was authorized by the Commission on March 9, 1965. When said sum of \$114,473.14 has been paid out of escrow, all past-due and currently-due refunds for the Garden Grove system through December 29, 1964, as shown in Table B of Exhibit 24, will have been made. Payment to Howard Morf has been made out of funds other than those making up the total of \$234,682.77 originally specified by the Commission. As shown by the bank's "certificate of payment", dated February 4, 1965, Morf received \$108,701.90 and a balance of \$7,672.04, which Morf and Dyke agree is subject to negotiation between them, has been placed in a separate trust fund. The remainder to be transferred from escrow to the principal trust fund is a net amount of \$120,209.63. The Commission finds that this remainder is the net result of the elimination of errors and duplications and the payments relating to Morf contracts. By the conditions heretofore set forth in Decision No. 68272 in this matter, such remainder has been added to the \$359,600 placed in the "Construction Advances Trust" ordered by said decision.

The trust agreement ordered by Decision No. 68272 in this matter, among other things, sets forth in paragraph i.c. thereof a listing of certain designees and the amounts advanced by each which have heretofore been found to be subject to refund. Exhibit No. 24 shows that certain of these items should be altered or amended. In total, \$10,879.35 of the originally listed amounts should not now be refundable. While main extension contracts should have covered \$6,004.59 of such total as refundable construction advances, no subsequent refunding would have occurred during the term of the contracts because either (1) no additional water services were in

fact attached to the extensions involved during such term or (2) zoning restrictions precluded connection of additional services. These reasons, however, are a matter of hindsight, apparent only after the passage of time, and constitute no defense for petitioner's failure to abide by its tariffs in the original instances. Exhibit No. 24 also shows that certain items should not have been made subject to refund agreements. These items total \$4,874.76 and represent payments made for repairs of main damage and certain temporary services. One other item in this portion of the trust is particularly challenged by petitioner, an item of \$3,475.70 for the designee Wm. Gutosky. In this connection petitioner refers to the receipt of a \$4,000 check which was not honored by the bank because of insufficient funds. The \$3,475.70 amount relates to cash advances made for construction in Tract 1543 and is the proper amount for such item. The \$4,000 check was for a Tract 1336. These are separate transactions insofar as petitioner's tariff provisions are concerned and they should not be consolidated and are not offsetting for the purposes of this proceeding.

The Commission finds that corrections for the foregoing items, as set forth in Table E of Exhibit No. 24, should be made and that such corrections will reduce the requirement for this portion of the trust to an amount of \$12,055.25 instead of the \$22,934.60 specified in the trust agreement. Petitioner's request that any escheating of this fund be eliminated, is denied.

The trust agreement in paragraph 1.b. thereof sets forth a list of contract holders eligible for future refund payments. Exhibit No. 24 shows certain corrections which should be made therein, including the addition of the unpaid balances of six contracts heretofore omitted by petitioner. The Commission finds that these corrections and omissions will require modification of the trust agreement.

Petitioner has placed in trust, for the future repayment of construction advances, the sums of \$200,000 relating to its Anaheim system and \$359,600 relating to its Garden Grove system. The Anaheim trust unlike the Garden Grove trust, is non-interest bearing. Analyses therefor are illustrated in the following tabulations. The figure of \$340,000 shown as the estimated future refunds on the Garden Grove system is a judgment amount, derived in the same manner as set forth in Decision No. 68272, which recognizes an amount of \$80,000 as the probable amount by which total advances will not pay out in the future. In other respects, the tabulations directly reflect Exhibit No. 24.

Future Refund Requirements

<u>System</u>	<u>Contract Balances July 1, 1964</u>	<u>Estimated Future Refunds</u>
Anaheim	\$323,304.81	\$181,070.00
Garden Grove	421,425.01	340,000.00
Plus amended amount for refund contracts not executed	<u>12,055.25</u>	<u>12,055.00</u>
TOTAL	<u>\$756,785.07</u>	<u>\$533,125.00</u>

Trust Status

Anaheim Trust (non-interest bearing)		
Original Trust Amount		\$200,000.00
Refunds to June 30, 1963	\$77,988.21	
Refunds to June 30, 1964	<u>57,187.26</u>	
TOTAL Anaheim Refunds		<u>135,175.47</u>
Balance remaining in trust		\$64,824.53
Garden Grove Trust (interest bearing)		
Original Trust Amount		\$359,600.00
Plus Transfer of escrow balance, February 4, 1965		<u>120,209.63</u>
TOTAL Garden Grove		\$479,809.63

Future refund obligations of approximately \$533,125 can be met with reduced trust funds only if the trust funds earn interest. Exhibit No. 25 shows that petitioner's trust funds presently earn an interest rate of 4.0 percent. At such an interest rate, the required total trust principal is approximately \$450,000. As shown in the foregoing tabulations, petitioner's present trust funds total approximately \$544,634 (\$64,824.53 non-interest bearing and \$479,809.63 interest bearing).

Upon depletion of the Anaheim trust,^{1/} future refunds of construction advances on the former Anaheim system, by the terms of Decision No. 68272 in this matter, will thereafter be paid out of the Garden Grove trust. Having in mind the anticipated refunds of \$50,000-\$55,000 from the Anaheim trust becoming due by July 1965 and also petitioner's other requests to make payments terminating contracts at a discount, the Anaheim trust may well be reduced to zero within a few months' time. The Commission finds that petitioner's request to transfer the Anaheim trust funds into the Garden Grove trust will now accomplish no useful purpose. It follows that such request should be denied.

Petitioner originally requested that the total amount of trust funds be reduced by \$150,000 and in its Exhibit No. 25 petitioner requests an immediate release of \$120,000 from the trust deposits. To permit immediate reduction of such magnitudes would be unrealistic and would defeat the purposes for which the trusts have been established. The present amounts in trust are more than sufficient to meet the trust fund requirements and particularly in view of the withdrawals from the Anaheim trust anticipated to be made in the near future, it appears to be feasible to reduce the trust funds by \$85,000 at this time. The Commission finds that such a reduction should be authorized.

1/ The Anaheim trust was not established pursuant to the decision herein for which petitioner seeks an order for modification, it having been established pursuant to Decision No. 65860 in Case No. 7586, issued August 6, 1963.

Petitioner asks that any unrefunded remainder of an amount of \$39,946.77 ordered to be paid out of escrow, by Decision No. 68272, be paid to petitioner rather than to the State. The items making up this total are unlawful collections which petitioner has heretofore been ordered to repay^{2/} but which petitioner has not yet repaid. If petitioner were to be permitted to take any portion of these funds to itself, it would profit from its unlawful acts. Petitioner's request in this regard, is denied. As previously noted, this amount of \$39,946.77 was ordered to be paid out of escrow. Contrary to such order, petitioner created a trust account for this amount pending, so the trust agreement states, outcome of its petition herein. By the terms of the trust agreement, it may not be "amended, modified, revoked, canceled, or superseded" without the written authorization of the Commission. This trust should be canceled forthwith and the \$39,946.77 paid out in compliance with this Commission's Decision No. 68272.

The Commission concludes that the petition herein should be granted to the extent set forth in the following order and should be denied in all other respects.

O R D E R

IT IS ORDERED as follows:

1. Dyke Water Company and Farmers & Merchants Trust Company Of Long Beach are hereby authorized to modify that certain trust agreement made between them on January 20, 1965 pursuant to ordering paragraphs 6 and 7 of Decision No. 68272 issued in this proceeding on November 25, 1964 by:

^{2/} Decision No. 59828 in Application No. 39303, issued March 22, 1960, and Decision No. 61642 in Application No. 42454, issued March 13, 1961.

(a) Substituting for paragraph 1.b. of the aforesaid trust agreement, the following:

"1.b. From said sums and the interest earned thereon, Trustee shall in the month of July each year hereafter, or as soon thereafter as practical, pay to holders and assignees of the construction advance refund contracts listed below, such sums as shall be due thereunder for the preceding twelve months' period, until the amount due under such contracts is paid in full or until the term of each contract expires, whichever occurs first. The sum due under each of said contracts in each year shall be certified to Trustee by Dyke in writing. Upon receipt of said certification, Trustee shall present a true copy of said certification to the Public Utilities Commission and upon written instructions respecting the same from said Commission, and not before, Trustee shall make payment in accordance with such written instructions.

: Tract :	: Contract :	: Original :	: Expira- :	: 7/1/64 :		
: No. :	Name :	Date :	Terms :	Amount :	tion Date:	Balance :
1286	Ralph M. Davis	4/11/55	35% 10 yrs.	\$ 7,015.95	4/11/65	\$ 2,482.34
1425	Virginia Van Skike	12/19/55	22% 20 yrs.	15,853.10	12/19/75	10,906.10
1436	Eureka Homes, Inc.	11/10/55	35% 10 yrs.	6,390.00	11/10/65	1,892.80
1698	1st Inv. Serv. Co.	8/30/54	100%	22,800.00	When pd-off	2,964.89
1830	Banner Inv. Co.	2/ 2/55	100%	10,769.55	" " "	1,264.62
1868	Moore Built Homes	3/15/55	35% 10 yrs.	7,269.22	3/15/65	1,699.61
1892	S. Harrod-P. Murphy	6/ 2/55	35% 10 yrs.	3,838.00	6/ 2/65	736.39
2027	(1st Invest. Co., Valley View) Inv. Co., Columbia Inv. Co.)	5/ 3/55	100%	22,530.39	When pd-off	6,074.58
2036	Builders Mtge. Co.	12/ /58	22% 20 yrs.	7,062.25	12/ /78	5,418.94
2063	Atlantic-Pacific Co.	6/ 8/55	35% 10 yrs.	5,200.00	6/ 8/65	2,285.34
(2083	(Arletta, Central Consumers)					
(2166	(Columbia, L.A. First Inv.)	5/ 2/55	100%	25,791.21	When pd-off	5,888.35
2091	Stoll Inv. Co.	7/ 2/55	35% 10 yrs.	10,250.00	7/ 2/65	3,019.97
2097	Ray & Sunny Homes	4/11/55	35% 10 yrs.	12,334.49	4/11/65	2,993.38
2100	Atlantic Pacific Co.	12/11/55	22% 20 yrs.	13,300.00	12/11/75	8,091.13
2142	Land Estates, Inc.	1/20/56	22% 20 yrs.	3,039.24	1/20/76	1,875.39
2146	Ernest A. Wilson	5/11/55	35% 10 yrs.	10,554.68	5/11/65	1,727.36
2182	Ajax, Assig. & Andrews	4/18/55	35% 10 yrs.	16,703.69	4/18/65	1,794.32
2191	Royal Crest, J. & V. Gordon	2/10/55	35% 10 yrs.	12,779.07	2/10/65	7,587.37
2216	Alex Ginsburg	4/11/55	35% 10 yrs.	4,809.48	4/11/65	2,052.33
2224	G. G. Properties	3/31/55	35% 10 yrs.	8,741.78	3/31/65	3,728.31
2232	Aristocrat Homes	6/23/55	35% 10 yrs.	4,969.00	6/23/65	1,233.83
2276	Ajax & Eastman	1/24/55	35% 10 yrs.	2,678.75	1/24/65	198.13
1475	Moore Built Homes	2/23/55	35% 10 yrs.	11,779.58	2/23/65	3,134.04
2283	Katella House & Turner	4/ 5/55	35% 10 yrs.	4,803.49	4/ 5/65	1,815.37
2283	Markev House & Turner	4/ 5/55	35% 10 yrs.	4,803.49	4/ 5/65	1,716.74
2289	Robertson Inv. Co.	4/ 2/55	22% 20 yrs.	9,857.38	4/ 2/75	4,938.09
2311	Casahome, Inc.	2/28/55	35% 10 yrs.	42,551.60	2/28/65	16,339.28
2328	Moore Built Homes	3/15/55	35% 10 yrs.	7,979.97	3/15/65	2,215.29
2352	R. Davis, A. Duff	4/ 4/55	35% 10 yrs.	6,988.75	4/ 4/65	1,314.06
2376	G., S., & J.R. Sandstrom	6/23/55	35% 10 yrs.	3,102.30	6/23/65	1,201.24
2383	Roberts Dev. Co.	1/ /56	22% 20 yrs.	10,629.74	1/ /76	7,657.09
2384	Roberts Dev. Co.	3/18/58	22% 20 yrs.	955.00	4/18/78	619.48
2404	Randale One, Inc.	2/17/58	22% 20 yrs.	11,852.00	2/17/78	9,110.90
2419	Ralph B. Robbins	7/28/55	22% 20 yrs.	28,505.15	7/28/75	18,190.30
2420	Builders Mtge. Co.	8/31/55	35% 10 yrs.	16,625.00	8/31/65	5,522.31
2455	Sunny Homes, Inc.	2/28/55	35% 10 yrs.	11,264.91	2/28/65	4,711.65
2463	John & Vivian Gordon	7/28/55	35% 10 yrs.	13,768.28	7/28/65	7,903.07
2464	Harold & Winifred Keck	7/30/56	22% 20 yrs.	19,163.63	7/30/76	12,707.26
2465	Harold & Winifred Keck	7/30/56	22% 20 yrs.	11,710.00	7/30/76	6,513.43
2478	S. Harrod, P. Murphy	6/ 2/55	35% 10 yrs.	4,475.00	6/ 2/65	1,559.61
2485	Dale, Francis Turner	5/ 6/55	35% 10 yrs.	5,077.28	5/ 6/65	1,019.58
2518	Harold & Winifred Keck	12/19/55	22% 20 yrs.	19,495.38	12/19/75	11,886.67
2519	Ralph B. Robbins	7/28/55	35% 10 yrs.	4,373.75	7/28/65	1,619.38

Tract No.	Name	Contract Date	Terms	Original Amount	Expiration Date	Balance 7/1/64
2532	Land Estates, Inc.	4/21/55	35% 10 yrs.	\$ 5,389.26	4/21/65	\$ 2,077.28
2535	Newhope Terrace	4/ 9/55	35% 10 yrs.	12,077.50	4/ 9/65	2,953.33
2545	Randale One, Inc.	4/29/57	22% 20 yrs.	5,300.00	4/29/77	3,792.11
2559	Pacific Constr. Co.	7/19/55	22% 20 yrs.	16,858.09	7/19/75	11,284.75
2612	Walco Homes, Inc.	7/ 8/55	35% 10 yrs.	4,308.49	7/ 8/65	784.55
2621	Atlantic-Pacific	8/ 4/55	35% 10 yrs.	4,250.00	8/ 4/65	605.86
2622	L. Minor S. Bartleson	8/29/55	35% 10 yrs.	5,100.00	8/29/65	1,640.35
2623	Atlantic-Pacific	9/28/55	35% 10 yrs.	5,300.00	9/28/65	1,686.62
2702	Davis, Duff Constr.	1/31/56	22% 20 yrs.	12,634.25	1/31/76	7,599.13
2728	Davies, Keusder, Brown	3/29/56	22% 20 yrs.	8,324.49	3/29/76	5,204.24
2731	M.C. & Jean Pardini	4/20/59	22% 20 yrs.	5,431.40	4/20/79	4,638.17
2792	Rainbow Constr. Co.	2/27/56	22% 20 yrs.	1,375.00	2/27/76	699.04
2801	Pac. Utilities Invest.	10/31/55	22% 20 yrs.	18,589.70	10/31/75	10,992.71
2852	C. R. Nelson, et al	9/12/56	22% 20 yrs.	2,735.99	9/12/76	1,958.15
2880	John & Vivian Gordon	1/25/57	22% 20 yrs.	21,786.20	1/25/77	15,680.19
2923	Elmer E. Everett	2/12/59	22% 20 yrs.	3,800.00	2/12/79	2,584.48
2961	M. C., Jean Pardini	4/20/59	22% 20 yrs.	10,918.00	4/20/79	9,631.81
2963	Cedric Roberts	12/ 3/56	22% 20 yrs.	7,592.45	12/3/56	6,579.98
2969	Newhope Terrace	4/25/56	22% 20 yrs.	13,005.28	4/25/76	7,331.01
2987	Atlantic-Pacific	12/14/55	22% 20 yrs.	14,000.00	12/14/75	11,271.16
3002	Stanford Homes, Inc.	5/ 3/56	22% 20 yrs.	6,993.06	12/ 3/76	4,347.65
3010	J. Ray et al	4/19/57	22% 20 yrs.	7,888.60	4/19/77	5,412.07
3020	Evans Building	4/ 2/57	22% 20 yrs.	1,000.00	4/ 2/77	571.44
3026	Roberts Develop. Co.	5/ 4/56	22% 20 yrs.	3,542.63	5/ 4/76	2,823.36
3040	Downey Heights	1/22/57	22% 20 yrs.	9,738.81	1/22/77	7,617.84
3043	J. Ray et al	4/19/57	22% 20 yrs.	12,050.80	4/19/77	8,982.28
3050	George, Berthal Gregory	8/ 3/56	22% 20 yrs.	1,383.36	8/ 3/76	502.76
3206	W.E. Investment Co.	5/ 7/57	22% 20 yrs.	14,716.06	5/ 7/77	11,295.71
3221	Dream Homes	6/24/58	22% 20 yrs.	8,768.40	6/24/78	6,842.22
3264	Roberts Develop. Co.	12/13/57	22% 20 yrs.	16,519.07	12/13/77	10,003.28
3344	G. M. & Stan Sandstrom	5/27/58	22% 20 yrs.	1,581.78	5/27/78	1,243.64
2433	Verans, Trask, Taft & Central Homes	5/20/55	35% 10 yrs.	15,099.14	5/20/65	4,770.64
	Newhope Sparkletts	1/17/57	22% 20 yrs.	1,011.85	1/17/77	939.39
	Brookhurst Harrison	1/18/58	22% 20 yrs.	4,701.33	1/18/78	3,650.02
	Brook.&Chap. Orange Plaza	1/10/58	22% 20 yrs.	17,168.02	1/10/78	12,771.71
	Berrydale St. Berrydale Church	3/ 4/58	22% 20 yrs.	1,007.70	3/ 4/78	784.43
	Katella-Gilbert Gasci	1/19/59	22% 20 yrs.	1,665.00	1/19/79	1,256.25
	9582 Chapman Malone	1/31/57	22% 20 yrs.	2,674.98	1/31/77	1,864.30
	12172 Brookhurst Novak	8/21/58	22% 20 yrs.	642.26	8/21/78	588.98
	Vons Market	2/28/57	22% 20 yrs.	8,611.65	2/28/77	6,942.57
	2179 Dale, Francis Turner	12/29/54	35% 10 yrs.	26,500.00	12/29/64	7,548.95
	2189 Bertha Keller Mann	11/17/54	35% 10 yrs.	9,871.00	11/17/64	71.15
	2190 R. A. Watt	8/19/54	35% 10 yrs.	11,473.24	8/19/64	3,966.92
	2255 Water Contracts	8/31/54	35% 10 yrs.	16,959.39	8/31/64	2,159.85
	2263 Katella Co.	11/30/54	35% 10 yrs.	14,311.57	11/30/64	5,354.45
	2430 Henry C. Cox	12/ 7/54	\$1.25 mo. per user	7,886.68	12/ 7/64	2,477.93

(b) Substituting for paragraph 1.c. of the aforesaid trust agreement, the following:

"1.c. From said sums and the interest thereon, Trustee shall in the month of July 1965, or as soon thereafter as practical, pay to the holders of the refunding agreements listed below such sums as shall then be due and past-due thereunder and shall in the month of July in each year thereafter, or as soon thereafter as practical, pay to the holders of said refunding agreements such sums as shall be due thereunder for the preceding twelve months until the amount due under such agreements is paid in full or until the term of each agreement expires, whichever occurs first. The sums due under each of said agreements shall be certified to Trustee by Dyke in writing. Upon receipt of said certification, Trustee shall present a true copy of said certification to the Public Utilities Commission of the State of California and upon written instructions respecting the same from said Commission, and not before, Trustee shall make payment in accordance with such written instructions.

"In the event that Dyke shall fail to certify any of such refunds to Trustee, any sums remaining to a total of \$12,055.25 shall become the property of the State of California and Trustee shall, on July 1, 1980, pay the same into the Treasury of the State of California.

<u>"Date</u>	<u>Designee and Description</u>	<u>Amount</u>
1953		
2-28	Bryant Kraack Tract #1569	\$ 4,641.00
12-31	Wm. Gutosky Partial System-Tract #1543	3,475.70
12-31	Robert Shannon Partial System-Tract #1594	2,455.00
1958		
2-28	William E. Otis, Jr. 2856 Chapman S/E Corner	<u>1,483.55</u>
	Total	\$12,055.25

2. Decision No. 68272 and Appendix A thereto, issued November 25, 1964, is hereby modified so as to accomplish the foregoing.

3. Farmers & Merchants Trust Company Of Long Beach is hereby authorized to pay to Dyke Water Company out of the aforesaid principal trust an amount of \$85,000.

4. Dyke Water Company and Farmers & Merchants Trust Company Of Long Beach are hereby directed to revoke and cancel that certain "Contributions Refund Trust Agreement", for the amount of \$39,946.77, executed January 28, 1965, and to pay out said amount in accordance with Decision No. 68272.

5. Except as modified hereinabove this Commission's Decision No. 68272, issued November 25, 1964, shall remain in full force and effect.

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

Dated at Los Angeles, California, this 18th day of May, 1965.

Frederick B. Helms
President

George F. Brown
Commissioners