KB

Decision No. 71208

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 (Contempt Proceedings, Interim Rate Refunds)

Appearances at hearings held February 7 and 8, 1966:

Thomas W. Martin and Matthew J. Dooley, for Dyke Water Company, applicant and respondent.
Woodrow W. Butterfield, in propria persona and for the Democratic State Central Committee; Charles Carlstroem and Lou Ann Marshall, for the City of Westminster; James D. Plunkett, for the City of Huntington Beach; Willard R. Pool, for the City of Garden Grove and City of Garden Grove Water Corporation; William J. Power, Deputy Attorney General, for the State of California; Alan R. Watts, for the City of Anaheim, interested parties.
John C. Gilman, with James F. Haley, for the Commission staff.

O P I N I O N

The Commission, on July 10, 1964 (63 Cal.P.U.C. 76), found Dyke Water Company (Dyke) and its officers guilty of contempt and assessed fines and alternative jail sentences on six counts of violating Commission orders. The orders in question had directed the utility to meter its water system in Orange County, to adjust its books of account, to set up a special reserve account and bank deposit in connection with revenues accruing under an interim rate increase, and to formulate and report to the Commission, within a stated time, a plan for refunding moneys received

representing the difference between revenues accruing under the interim rate order and those that would have accrued under prior rates reinstated by the Commission at the end of the interim period.

Dyke petitioned the Commission for rehearing of the contempt judgment and the Commission (63 Cal.P.U.C. 296) modified paragraph 7D of that judgment to read as follows:

> "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 30th day of September 1964, 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, 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. Any excess thereof over the exact amount due to be refunded shall be returned to Dyke Water Company by the Secretary of the Commission."

Dyke's petitions for review of the contempt order were denied by the California and United States Supreme Courts (Supreme Ct. of Cal., S.F. No. 21828, Nov. 19, 1964; Supreme Ct. of U.S., Apr. 26, 1965, Oct. Term, No. 979). The utility then received from the Commission an extension of time to September 7, 1965 within which to file a plan for making the interim rate refunds.

During the period subsequent to that in which the refund obligation was incurred, Dyke disposed of its water system to the Cities of Anaheim, Garden Grove, Westminster and Huntington Beach in part through a stipulated condemnation proceeding (Anaheim) and in part by negotiated sales (Garden Grove, Westminster and Huntington Beach). The utility did not request the Commission's authorization, required by Public Utilities Code Section 851, to dispose

of the Anaheim properties and to be relieved of its public utility obligations in connection with that portion (about one-third) of its system. Consequently, the Commission instituted an investigation (during pendency of the contempt hearings) to determine the propriety of that transfer and to provide for settlement of Dyke's obligations to its customers, including the interim rate refunds previously ordered but for which Dyke had neither accounted nor made provision for payment. The Commission, in thereafter authorizing the Anaheim transfer conditionally, ordered that an Interim Rate Trust be set up in the sum of $266,342 (the then estimated, systemwide, total interim rate refund obligation) and that the trust moneys be disbursed only with the written consent of the Commission (Decision No. 65860, August 6, 1963, Case No. 7586, 61 Cal.P.U.C. 315, as supplemented by Decision No. 65929, August 27, 1963). The utility did not seek review of those decisions, but sought to recapture the $266,342 in an action for declaratory relief filed December 9, 1963 in the Superior Court for Sacramento County (Dyke Water Co. v. Silva, No. 147884). The California Supreme Court granted a writ of prohibition against further proceedings in that action (People v. Superior Court, 62 Cal.2d 515 (1965)).

Dyke filed a plan, for refunding the interim increases, on September 7, 1965. The plan was presented at a public hearing held, after due notice, at Garden Grove on February 7 and 8, 1966, before Commissioner Grover and Examiner Gregory. The issues there raised were submitted on concurrent briefs, which have now been filed and considered. Those issues relate to the merits of claims advanced by Dyke, by the four cities which now provide service to customers inside and outside their limits from facilities acquired from the utility, and by the State of California, represented by

the Attorney General, to share, to a greater or lesser extent, in the moneys comprising the Interim Rate Trust.

Before considering these claims, it may be appropriate to indicate briefly the origins of the obligation, even now denied by Dyke, to refund the sums in question.

Prior to Decision No. 56003 herein, dated December 17, 1957 (56 Cal.P.U.C. 105), Dyke had been charging a $3.00 per month flat rate to its unmetered customers. Decision No. 56003 authorized the company, on an interim basis, to increase its flat rate to $3.75 and make proportionate increases in its other (metered) rates. On March 11, 1960 the Commission terminated the interim rate increase and ordered, in addition to a metering program, that the previous rates be restored (Decision No. 59828 herein). The utility requested a stay pending review of that decision, and the Commission, by an order herein dated May 16, 1960 granted the stay and ordered the utility to set up and maintain a special reserve account and special trust account for the difference in revenues as between the former rates and the increased interim rates. No petition for rehearing of the order to set up the special reserve account and bank deposit was ever filed. Decision No. 59828 was affirmed on review and the California Supreme Court, in its opinion, observed that it found nothing impossible or unreasonable in the Commission's order to install meters. (Dyke Water Co. v. P.U.C., 56 Cal.2d 105.) Thereafter, on July 25, 1961, the Commission ordered herein that Decision No. 59828 be immediately effective and that the utility file a refund plan within ten days. No petition for rehearing of that order was ever filed nor did the company file a refund plan in compliance therewith.

None of the accounting procedures required by the stay order were followed and no trustee account was ever set up until

the Commission, as stated above, ordered establishment of the "Interim Rate Trust" in the Anaheim transfer investigation. Instead, the extra amounts authorized to be collected under the stay order were diverted by the utility for its own purposes, including payment of personal family obligations and debts incurred by a non-utility affiliated company.

The increased interim rates were collected by Dyke, during the stay, between May 16, 1960 and August 31, 1961 from flat rate customers and between May 16, 1960 and July 31, 1961 from metered customers.

We next turn to a consideration of the respective claims to the funds in the Interim Rate Trust.

The utility asserts that the Commission's orders in connection with the refunds were unreasonable and beyond its jurisdiction and it claims, therefore, to be legally and equitably entitled to the full amount of the trust fund; should the Commission deny such claim, the utility claims to be entitled to any unrefunded excess in the fund and to immediate payment of whatever part of the fund may be in excess of the total amount determined as due to be refunded. (The evidence suggests that perhaps only about 10 to 25 percent of the amount found due to be refunded will actually be paid to customers, since many may have moved or died or may not be interested in making claims for the refunds - about $10 each - that normally would be due on billings for domestic water service rendered during the period when the temporary increased rates were in effect.)

The Cities of Anaheim, Garden Grove, Westminster and Huntington Beach are in the process of integrating Dyke's facilities with their own municipal systems. Consequently, as of

the present time, Dyke is not distributing water to the public but is engaged in winding up its corporate affairs.

The cities urge, citing Market Street Railway Co. v. Railroad Commission (1946), 28 Cal.2d 363, that they are equitably entitled to receive unclaimed refunds for the benefit of residents and other nearby former customers of Dyke in the area subject to the increased rates during portions of 1960 and 1961. The money, assertedly, would be used to improve the acquired facilities and to complete the systemwide metering program ordered by the Commission, first in 1956 and again in 1960; thus, the City of Anaheim states it has expended about $135,000 since its acquisition of the utility's Anaheim area system in 1963. The cities have agreed upon a method of distributing among themselves any unclaimed refunds, based on the amount paid by each city for acquisition of a portion of the Dyke system (Amended Exhibit R-9). The proportions are as follows:

City	Purchase Price	Percentage of Unclaimed Refunds
Westminster	$1,117,300.00	16.4%
Anaheim	$1,891,245.00	27.8%
Huntington Beach	$ 55,000.00	0.8%
Garden Grove	$3,750,000.00	55.0%

The State of California is in agreement with the position taken by the several cities that Dyke is not entitled to any unclaimed refunds. The State has limited its interest to recovery of unclaimed refunds due to Dyke customers located outside the limits of the claimant cities, as follows (State of Calif. Brief, p. 2):

Item	Garden Grove	Anaheim	Westminster	Huntington Beach
Services Purchased	11,789	7,137	3,000 (approx.)	*
Outside City	1,485[a]	2,605[b]	200[c]	*[d]
Within City	*	4,532	*	*

*Not Stated

[a] 900-1000 services in Santa Ana and 475 in Stanton and county area are to be sold.

[b] 1,797 in county area; 565 in Stanton; 236 in Orange; 7 in Garden Grove. 236 in Stanton and 6 in Garden Grove already sold. 540 more to be sold to Southern California Water Company.

[c] No sales contemplated.

[d] No services outside city limits. No sales contemplated.

The Attorney General argues, also citing Market Street Railway Company v. Railroad Commission, supra, that it is fairly inferable that the State, absent a superior equity existing in behalf of some other claimant, is the proper recipient of unclaimed utility refunds; that the burden of proving a right to refunds due non-city customers rests with the cities; and that this burden cannot be met, especially as regards former customers of Dyke living in areas where the cities have - or will have - sold off portions of the former Dyke system, since customers in those areas have - or will have - no relationship with the claimant cities. The State maintains that of the approximately 22,000 services purchased by cities having non-city consumers (Garden Grove, Anaheim and Westminster), about 4,292 are services to consumers beyond city limits; thus, about 20% of the money payable to customers now in areas taken over by the cities represents refunds due non-residents. Of these outside services roughly 2,000, or

about 10% of the total services acquired by the three cities from Dyke, represent former Dyke customers whose services have been - or will be - sold and who thus will have no relationship to justify distribution to the cities of due but unclaimed refunds.

The State argues, further, that the cities have no right to unclaimed refunds even with respect to outside customers who continue to be served by the cities' water systems. The point made here is that once the unclaimed refunds are placed in the cities' treasuries the cities would be free to use the money for general municipal purposes that would in no way benefit persons outside city limits.

The State takes the position that it stands in the relationship of parens patriae to its citizens and thus has the duty of protecting their collective rights. It advances the proposition that since the judicial and regulatory machinery that made these refunds possible is supported by general State taxation, it seems "eminently fair" that the State should have the unclaimed refunds due customers outside the cities or whose services will be sold by the cities to other entities. The Attorney General points out that it is California's policy to place title to otherwise ownerless or abandoned property in the State rather than in local political subdivisions (Govt. Code, Sec. 182; Civil Code, Sec. 670), and that in the absence of superior equities the cited code sections would seem to dictate that the State be awarded the refunds due to the persons described above. Thus, although the State does not object to the fractional percentages stipulated to by the cities, it urges that, assuming the Commission decides that Dyke is not entitled to retain the unclaimed refunds, the fractions, when converted to dollars, should be reduced for the three cities having outside customers (whether retained or sold off) by an amount

determined by dividing the number of outside customers by the number of services acquired by each of the cities, with the amounts so deducted from the cities' shares going to the State.

The Commission staff, after reviewing the orders and related litigation prior and subsequent to the establishment of the "Interim Rate Trust", makes the following points:

1. The utility has no legal right to any part of the trust fund, except legitimate offsets for certain unpaid bills and any excess over the amount of interim rates collected from customers, and it has no equitable right to unclaimed refunds. (We will discuss this point later.)

2. It is not inequitable to allow the cities to divide refunds due unlocated customers. (This point will also be considered later.)

3. The utility should be required to refund to customers outside its certificated area who paid proportionally increased rates during the refund period.

4. The City of Garden Grove is entitled to refunds as a customer of the utility, since no authorization pursuant to Paragraph X of former General Order No. 96 (now 96-A) was secured by the utility to perform services for that city for resale at rates different from those offered to the utility's other customers. Since "sales for resale" to a municipality are "public utility" sales (Pub.Util.Code Sec. 216(c)), the utility was authorized to and, it appears, did make proportionate increases in the rates to the city at the time of the interim increase. The city continued to pay the increased rates during the refund period and should, therefore, be entitled to a refund.

5. The Commission, by setting up and ordering disbursement of a refund trust is not, as the utility claims, attempting

to establish priority of creditors (cf. Hempy v. Public Utilities Comm., 56 Cal.2d 214, quoted on page 7 of Dyke's "Statement in Opposition to Claims", filed herein February 14, 1966). In any event, it has already been determined that the Superior Court has no jurisdiction to determine the rights of claimants to this Interim Rate Trust fund. (Dyke Water Co. v. Silva; People v. Superior Court, supra.) Moreover, the persons entitled to refunds here are not now nor were they ever merely creditors of Dyke. They were and are beneficiaries of a trust, the funds of which were never assets of the utility to which other creditors might have obtained any rights.

The staff recommended, at the hearing, that:

1. After verification by the staff and other interested parties of Dyke's refunding calculations against customer records, Dyke should immediately receive from the trust fund the difference between $266,342 and the total amount of possible refunds indicated by the verified calculation.

2. Immediately thereafter, Dyke should be ordered to mail refund checks in accordance with lists of persons prepared by Dyke and verified by the interested parties, such checks to be valid for ninety days. (The staff, in its brief, has modified these two recommendations to provide that any payments to Dyke be deferred until after completion of the first mailing. The staff has also suggested, in its brief, that any orders herein provide for settlement of disputes as to the amount of refunds due to customers, and that the company be required to enclose with each check a statement of the credits and debits that went into computation of each customer's refund, especially those against which offsets are claimed.)

3. The balance remaining in the fund, after completion of Items 1 and 2 above, should be disbursed to the four cities in accordance with proportions that may be stipulated to by them.

Each city should agree that, for a period of ninety days after receiving its proportionate share of the remaining balance of the fund, it would stand ready to pay any legitimate claim upon demand by any former Dyke customer served by that city's portion of the former Dyke system.

Since the parties have addressed themselves to the equities involved in apportioning the $266,342 fund comprising the Interim Rate Trust, we will consider those equities first. At the outset, we note that the Supreme Court, in the cited Market Street Railway case, observed (28 Cal.2d at 370):

> "But the absence of a similar provision [escheat of unclaimed toll-bridge refunds] in respect to public utilities generally is consistent with the legislative determination to leave the disposition of unrefunded monies to the sound discretion of the court or other body having jurisdiction to order it...."

We do not doubt the legal and equitable right of former Dyke customers, who paid the increased interim rates in 1960 and 1961, to a refund of the 75-cents-per-month increase in flat rates and the proportionate increase in metered rates for the period from May 16, 1960 to August 31, 1961 (flat rate customers) and from May 16, 1960 to July 31, 1961 (metered customers). The Commission's orders (requiring collection and accounting for these temporary excess charges and establishment of a special fund for their refund if the Court failed to reverse Decision No. 59828), were explicit and were capable of being complied with by the utility. Instead of complying with, or even seeking reversal of, those orders, the utility and its management chose to ignore them. The orders, including the Anaheim transfer order, have long become final and the Commission is determined to see that they are obeyed.

We hold, therefore, that the only money in the Interim Rate Trust to which Dyke may be entitled is the excess over refunds determined to be due to its former customers on the basis of

verified collections of the interim rates (less legitimate offsets) for the periods of May 16, 1960 to August 31, 1961 for flat rate customers and May 16, 1960 to July 31, 1961 for metered customers. The company's claim to any other sums from the trust fund is without merit.

The cities have undertaken to continue, in accordance with their own respective municipal needs, the upgrading and metering of the facilities acquired from Dyke. Although, in negotiating the various purchase prices, they may have taken into consideration the need for such improvements, that was equally true of the City and County of San Francisco in the Market Street Railway case, supra, where the Court, in awarding unclaimed refunds to the city, nevertheless considered the condition of the property transferred. The cities here have indicated that they would be willing to use unrefunded sums, if allocated to them, to assist in such an improvement program. Since the cities contend that they are equitably entitled to unclaimed refunds for the benefit of their water customers, including former Dyke customers both inside and outside their limits, it would appear reasonable that in seeking equity they should be prepared to do equity. Disbursement of any of the Interim Rate Trust to the cities can be made conditional on their using the funds for water service purposes. Accordingly, when refunds to known recipients have been completed and the excess amount to be distributed from the trust is finally ascertained, the cities may, if they choose, indicate to the Commission that unclaimed refunds, if distributed to them, will be used solely for such purposes, either by applying the sums to reducing equitably their billings to water customers or by otherwise using the money for municipal water supply or service purposes. Until such time as the

excess over actual refunds is known, the Commission will defer making an order for distribution to the cities of such excess.

We do not question the reasonableness of the stipulation entered into by the cities for proportionate shares of any unclaimed refunds to be distributed to them.

The State, in advancing its claims to unpaid refunds due customers outside the city limits of Anaheim, Garden Grove and Westminster and customers, both inside and outside the limits of Anaheim and Garden Grove, whose services have been - or will be - sold by those two cities to other water purveyors, asserts that State policy requires vesting of title in the State, rather than in local political subdivisions, to otherwise ownerless or abandoned property. The outside or sold-off services, the State argues, do not bear the relationship to the cities that they formerly did to the utility, so as to justify distribution of unclaimed refunds to the cities in connection with such services.

We have noted that the four purchasing cities have been engaged in repairing and upgrading the acquired Dyke properties and integrating them with their local water systems, to the end that the municipal systems would be able to render water service, within or outside the city limits, in conformity with long-standing public policies in the area related to conservation of the available water supply. The cities, moreover, have indicated on this record that they propose to use their shares of unclaimed refunds for municipal water service purposes. The fact that some outside services, as well as some within city limits, have been sold to other water agencies and that some outside services will be retained by one or more of the cities, does not seem to us to vitiate the equities that derive from the cities' purchase of these utility properties. As between the State, claiming a bare right to take title to otherwise

ownerless or abandoned property, and the cities, claiming an equitable right to be placed in the shoes of former Dyke customers who paid the excess charges and who thus became legally and equitably entitled to refunds, we hold that the affected cities have equities in the unclaimed trust funds superior to those asserted on behalf of the State. Expressed in the language of equity, our holding is that the competing claims of the State and the cities are more appropriately judged by the principle of cy pres than by the principle of bona vacantia, and also that that judgment should be made as of the time of the transfers from Dyke to the cities.

The City of Garden Grove is also entitled to refunds as a customer of the utility, since no authorization, pursuant to Paragraph X of former General Order 96 (now 96-A), was secured by the utility to perform services for that city for resale at rates different from those offered to the utility's other customers. The city paid the increased rates during the refund period and is entitled to a refund.

Ascertainment of the exact amount due to be refunded, for the purpose of providing a basis for disposition of the $266,342 refund trust, requires resolution of conflicting views of the company and the staff with regard to certain offsets and omissions in the company's calculations of net refunds. The company (Exhibit R-8 and Amendment to R-8, filed after the hearing) submitted data from its metered and flat rate customer records which indicate total net refunds of $210,159.40 due to 21,859 customers, after offsets totaling $23,170 for (1) unpaid regular service bills and swimming pool charges, and (2) refunds, totaling $2,770.27, claimed by the company not to be due to the City of Garden Grove with respect to 409 customers located in tracts served by that city, under the latter's metered rates, with water purchased from Dyke at lower flat rates. Also, the company did not include as potential refund recipients a number of metered customers in the City of Westminster (759 in 1960 and 756

in 1961) whom the company asserts it served only on a temporary basis and under compulsion of Commission orders pending city acquisition of Dyke's properties in that area. (The staff, in its Exhibit R-7 filed after the hearing and after analysis of the company's refund plan and exhibits, has estimated, without audit, that gross refunds due 756 Westminster customers would amount to $12,753.06.)

The staff selected random samples of Dyke's customer account cards for the purpose of verifying the company's computation of refunds due. The results of the staff's analysis are shown in its late-filed Exhibit R-7, which indicates that over 25% of a total of the 22,268 services shown by Dyke's late-filed Exhibit R-8 were test checked and that the computations checked were found to be reasonably accurate. An offset of $7,049.53, representing balances due Dyke by customers on discontinuance of service, was not questioned and appears to be reasonable. The other offsets and omissions, mentioned above (and which, together with the unpaid regular service bill offset of $7,049.53, resulted in Dyke's calculation of $210,159.40 as the net refunds due) were considered by the staff as insufficiently supported by customer records (swimming pool charges - $13,350.73) or includible for refund if determined by the Commission to be proper items (claimed deduction of $2,770.27 for the 409 services in Garden Grove and omission of an estimated $12,753.06 for 756 services in Westminster). The staff has concluded, accordingly, that $239,033 of the $266,342 trust may be required for refunding to Dyke's former customers, leaving $27,309 available for return to the company.

We adopt the staff's conclusions (Exhibit R-7, par. 11) that the task of auditing each account and verifying each net refund would be time-consuming and costly to the Commission, and that, on the basis of the samples audited, the company's calculations are

reasonably correct and a complete audit of all accounts would make little change in the final amount.

We are of the opinion that the company should be allowed an offset of $13,350.73 in swimming pool charges for the months of November and December, 1962 and January, 1963, as shown in Exhibit R-8, pages 4-10. These pool charges, originally approved by the Commission and filed in a tariff for residential flat rate service that became effective July 3, 1957, were eliminated after February 1, 1963 for lack of justification, following an investigation by the Commission of bills disputed by a number of customers who occupied premises containing swimming pools (Re Dyke Water Co., 60 Cal.P.U.C. 491). (The staff's analysis of more than 300 account cards as to which the company has claimed pool charges discloses that in no case had a pool charge been entered for the period from July, 1957 through the final date of service, except a $10 charge for January-February, 1963 along with the usual bi-monthly flat rate charge of $6; with respect to these entries the company had reduced the $16 charge to $11 in compliance with the Commission's decision which eliminated the pool charge as of February 1, 1963; when pool payments of $10 were received, the company had given credit to customers against their regular flat rate bills for the overcharge for the month of February, 1963.)

Although the cited decision (60 Cal.P.U.C. 491) voided, as an unauthorized deviation from tariff provisions, the $60 pool charge billed by the company on or about November 16, 1962 for the previous 12-month period, the pool charge of $5 per month remained in effect as part of the flat rate tariffs until it was eliminated as a result of that decision. Consequently, we perceive no equitable reason for refusing, in this proceeding, to allow the company to offset against refunds any unpaid swimming pool charges that might

properly have been billed for the months of November and December, 1962 and January, 1963 to customers to whom refunds may be due.

With regard to the 409 services metered by the City of Garden Grove and served with water purchased from Dyke by the city at flat rates, the city, as has been observed above, is entitled to a refund. Before, during and after that period, the company charged, and the city paid, the flat rates authorized by the Commission - without adjustment either for the fact of resale or for the terms of resale. So far as entitlement to refunds is concerned, the city is like all other Dyke customers who paid the higher rates during the refund period. Accordingly, the company's estimate of $2,770.27 (less legitimate offsets, if any, due from the City of Garden Grove) should be included in the calculation of net refunds due.

The 756 metered Westminster customers, who were served, during the interim rate increase period, on a temporary basis pursuant to final orders of the Commission, should also be considered eligible for refunds, since they, like other metered Dyke customers, were obligated to pay the proportionally increased metered rates which gave rise to the right to refunds. To deny that right here would subject them to discrimination. Hence, the company should include an additional sum, estimated herein as $12,753.06, less legitimate offsets, in its calculation of net refunds due the 756 customers in Westminster.

The tabulation below, based on the company's and staff's exhibits, as modified with respect to swimming pool charge offsets and amounts to be included for the Garden Grove and Westminster customer refunds, discussed above, indicates the estimated total amount of refunds which we hereby find, on this record, to be due to former Dyke water users, together with the estimated amount which we find, on this record, should be paid at this time to Dyke from

the refund trust. We have provided for a balance of $5,000 to be left in the trust, pending determination of the exact total amount of net refunds actually to be paid. This $5,000 left in the trust will ultimately be payable to the company. The tabulation follows:

Item			Amount
Interim Rate Refund Trust			$266,342.00
Est. gross refunds - 22,268 customers (Dyke)		$233,329.93	
Unpaid regular service bill offset (Dyke)	$ 7,049.53		
Swim pool charge offset (Dyke)	13,350.73		
Requested denial of refunds to 409 Garden Grove services (Dyke)	2,770.27	23,170.53	
Net refunds due 21,859 customers (Dyke)		210,159.40	
Gross refunds allowed herein re 409 Garden Grove customers	2,770.27		
Gross refunds (staff est.) allowed herein to 756 Westminster customers	12,753.06	15,523.33	225,682.73(a)
Est. excess in Refund Trust			40,659.27(a)
Amount to remain in Trust temporarily			5,000.00
Est. amount to be returned to Dyke Water Company			$ 35,659.27(a)

(a) Subject to offsets to Garden Grove and Westminster customers, as indicated above.

It is apparent, in view of the complexity of ascertaining and paying refunds (which the company is obliged to do despite the obvious tediousness of such a task), that some time will elapse before the unclaimed portion of the trust fund is known. It appears, too, that the total amount collected by the company under authority of the stay order is less than $266,342 and that about $40,000, which reflects offsets, may ultimately be returned to the company.

Under these circumstances, the ensuing order, while providing for the method of making refunds, will be subject, as indicated herein, to appropriate modification, amplification or supplementation by the Commission. For purposes of rehearing and judicial review, however, the order herein is final.

Following submission of this matter counsel for Dyke, by letter of July 25, 1966, advised that as of January 31, 1966 the company has been completely wound up and dissolved, but that under Section 5400 of the Corporations Code it "continues to exist for the purpose of winding up its affairs". Attached to the letter was a copy (certified by an Assistant Secretary of State of the State of California) of a certificate that Dyke Water Company, a California corporation, has been completely wound up and dissolved; we take official notice of the certificate. Also attached to the letter of July 25, 1966 was a copy (certified by Arlyne Lansdale as Secretary-Treasurer of Dyke) of the minutes of a meeting of the Board of Directors thereof held on November 19, 1965, at which meeting Arlyne Lansdale, c/o Lally & Martin, Attorneys at Law, Suite 1116, 926 Jay Building, Sacramento, California, was appointed the company's Agent to take all actions necessary to accomplish the winding up of its business. Accordingly, the Order which follows will be served upon, and will be made binding upon, Arlyne Lansdale as such Agent, c/o said Attorneys.

O R D E R

IT IS HEREBY ORDERED that:

1. Dyke Water Company, within thirty days after the effective date of this order, shall compute the gross refunds due: (1) to the City of Garden Grove in connection with the 409 customers who were served by said city with water purchased from Dyke Water Company, and (2) the 756 customers in Westminster referred to in the foregoing opinion. Dyke Water Company may deduct from such gross refunds the amounts, if any, computed in accordance with filed tariff rates that may properly be due from the City of Garden Grove or from said customers in Westminster.

2. Dyke Water Company, within thirty days after the effective date of this Order, shall furnish the Commission a certified list, in duplicate, of all refunds due customers (including the customers referred to in Paragraph 1 of this Order), showing the name, address and net refund amount due each in accordance with the foregoing opinion, and showing whether any customer has moved from the service address indicated on the company's records. Following audit of such list against the company's records by the Commission's Finance and Accounts Division staff, the Chief of said Division shall return one copy thereof to the company and, if said audit reveals no errors, he shall, by authority of this Order, forthwith authorize the Farmers and Merchants Bank of Long Beach to transfer, from monies in the Interim Rate Trust account at the main office of said bank to a new commercial account at its Garden Grove Branch, in the name of Dyke Water Company, sufficient funds to pay the total amount of net refunds shown by said audited list; provided that all funds in said commercial account which are not used to pay refund checks drawn thereon as herein provided (including funds therein for refund checks which are not presented for payment within ninety days after date of issuance) shall be disbursed only as the Commission may hereafter order.

3. Refund checks drawn on said commercial account shall be issued by Dyke Water Company to the persons and in the amounts shown on said audited list, shall be signed by Arlyne Lansdale as Agent for Dyke Water Company, shall be mailed in "window" type envelopes bearing the return address of Dyke Water Company, and shall contain, on each check or in an accompanying writing: (a) a statement of the credits and debits used in computing the net refund, and (b) a statement that any dispute by a customer concerning the indicated amount of the refund may be referred by him to the

Commission, for informal settlement, within ten days after receipt of the check and that such settlement will be final unless the customer, within thirty days after mailing to him by the Commission of notice of such informal settlement, shall have filed with the Commission, in accordance with its Revised Rules of Procedure, a formal complaint concerning such disputed refund amount. On each check shall appear a statement that it is not valid for more than ninety days after its date. Dyke Water Company shall bear all costs in connection with the refunding procedures herein prescribed, except costs incurred by consumers who may elect to file formal complaints with respect to disputed refunds.

4. Dyke Water Company, commencing not more than sixty days after its first mailing of refund checks and monthly thereafter until further order of the Commission, shall report to the Commission, in writing, its progress in the distribution of refund checks, such initial and subsequent reports to include a statement showing the number and dollar amount of cashed checks, a list of uncashed checks returned and the dollar amount thereof, and a list of unreturned checks possibly not cashed and the dollar amount thereof. Dyke Water Company shall retain all cashed checks for audit by the Commission's Finance and Accounts Division staff and until further order of the Commission.

5. Upon receiving from the Chief of the Commission's Finance and Accounts Division the authorization for transfer of funds which is referred to in Paragraph 2 of this Order, the Farmers and Merchants Bank of Long Beach shall disburse to Arlyne Lansdale, Agent for Dyke Water Company, c/o Lally & Martin, Attorneys at Law, Suite 1116, 926 Jay Building, Sacramento, California, from said trust the difference (less $5,000) between said authorization and the amount in said trust. Except to the extent any part of said $5,000 may be

needed to complete the refunding provided for in this Order (including the disbursement of unclaimed refunds in accordance with Paragraph 6 of this Order), the Commission by further order will authorize payment of said $5,000 to Dyke Water Company.

6. Upon completion of the refunding operation herein provided for, the Commission will authorize, by further order herein, the distribution to the Cities of Westminster, Anaheim, Huntington Beach and Garden Grove of the unclaimed refunds, based on the respective percentages heretofore agreed to by said cities as set forth in Exhibit R-9 herein, subject, however, to the condition that each city, by resolution of its governing body filed in this proceeding, shall indicate to the Commission that: (a) for a period of ninety days after receiving its share of the remaining balance of unclaimed refunds from the refund trust it will stand willing to refund, upon demand, to any former customer of Dyke Water Company served by the portion of Dyke Water Company's water system acquired by said city, any legitimate claim for an interim rate refund; (b) the unclaimed refunds received by said city, less any refunds paid by said city to former Dyke Water Company customers, will be applied by said city to reducing equitably its billings to water customers, or to the maintenance and improvement of its water system, including the portions thereof acquired from Dyke Water Company and retained by said city as part of its municipal system.

7. Except to the extent granted herein, the respective petitions filed by Dyke Water Company, the State of California and the Cities of Westminster, Anaheim, Huntington Beach and Garden Grove, for payment to them of the whole or a portion of the funds comprising the Interim Rate Trust, are, and each of said petitions is, hereby denied.

8. This Order is binding upon Arlyne Lansdale as Agent of Dyke Water Company. Wherever a specific portion of this Order requires Dyke Water Company to perform any act, it shall be construed to include the requirement that Arlyne Lansdale, as such Agent, shall perform said act or cause it to be performed.

9. The Secretary is directed to cause service of a certified copy of this decision to be made upon Arlyne Lansdale, Agent for Dyke Water Company, c/o Lally & Martin, Attorneys at Law, Suite 1116, 926 Jay Building, Sacramento, California. Within five days after such service, Arlyne Lansdale and said Attorneys shall file herein an acknowledgment of such service.

This decision shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 23rd day of AUGUST, 1966.

President

Commissioners

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.