

ORIGINAL

Decision No. 72496

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application No. 39303

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)

O P I N I O N

Arlyne Lansdale, as agent for Dyke Water Company, a dissolved corporation (Dyke), jointly with the municipal corporations of the Cities of Garden Grove, Anaheim, Westminster and Huntington Beach, requests modification of Decision No. 71208, issued August 23, 1966 in the contempt phase of the subject proceedings. Dyke's challenge to the validity of that decision was rejected by the California Supreme Court (S.F. No. 22462, March 22, 1967). This petition, filed April 19, 1967, followed. It is addressed to the discretion of the Commission.

Decision No. 71208 provided a detailed plan, to be carried out by Dyke at its expense and subject to audit by the Commission's Finance and Accounts Division staff, for refund, from a \$266,342 "Interim Rate Trust" on deposit with the Farmers & Merchants Bank of Long Beach (the then-estimated total refund obligation), of customers' payments of increased flat and metered rates during a period (May 16, 1960 to August 31, 1961) prior to acquisition by the cities of Dyke's water system. Earlier

proceedings, concerning the origin of the refund obligation and the conflicting claims of Dyke, the cities and others to any unclaimed refunds, are reviewed in Decision No. 71208 and need not be examined here.

The cities, during the course of the hearings (February 7-8, 1966) that preceded Decision No. 71208, agreed to divide any unclaimed refunds among themselves in proportion to the respective amounts they had paid for Dyke's system, as follows:

<u>City</u>	<u>Purchase Price</u>	<u>Percentage of Unclaimed Refunds</u>
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%

In substance, the plan directed by Decision No. 71208 to be carried out by Dyke provided for refund checks to be mailed, after audit of Dyke's customer records, to those who had paid the increased charges accruing under the interim rate order. The decision noted that perhaps only 10-25 percent of the customers to whom refunds were due would actually receive checks, because of the passage of time, change of addresses, or lack of concern for the relatively minor amount (about \$10) of the individual refunds. The decision also found that the net refunds due 21,859 customers amounted to \$210,159.40, plus the additional amount of \$15,523.33 due specially-circumstanced customers in Garden Grove (409) and Westminster (756); or total net refunds due of \$225,682.73. The balance of the trust fund, ultimately to be returned to Dyke after completion of the refunding operation, thus amounts to the sum of \$40,659.27.^{1/}

^{1/} Certified duplicate lists of former customers due refunds, comprising some 2,400 pages and in the form required by Decision No. 71208, accompany the petition as Exhibit A.

Petitioner alleges that widespread publicity concerning the refunds and spot checks of lists of former customers have shown that less than 1,000 persons have evidenced an interest in the refunds, and that close to 90 percent of former customers entitled to refunds can no longer be located at the addresses given and their present whereabouts are unknown; moreover, compliance with the ordered refund procedures under these circumstances, petitioner alleges, would result in misuse of the mails and wholesale loss of checks or use thereof by persons not entitled to refunds.

Petitioner alleges that the revised refund plan set forth in the agreement between petitioner and the four cities (Petition, Exhibit C) is consonant with the spirit and intent of the plan ordered by Decision No. 71208.

The revised plan, in substance, proposes that:

- a. The total amount (\$225,682.73) due to be refunded and now in the Interim Rate Trust, be distributed to the cities in accordance with their agreed proportionate shares and in the amounts shown in the certified lists (Exhibit A), as follows:

<u>City</u>	
Garden Grove	\$110,849.07
Anaheim	67,947.91
Westminster	28,529.88
Huntington Beach	<u>1,718.05</u>
Subtotal	\$209,044.91
Remainder to be held in reserve, during proposed 90-day refund period, as offset against errors, etc., then divided among cities on basis of stipulated percentages	<u>1,114.49</u>
Net Refund	\$210,159.40
Garden Grove, for leased tracts	2,770.27
Westminster, for leased tracts	<u>12,753.06</u>
Total	\$225,682.73

b. The cities would assume responsibility, under the terms of the agreement, for distribution of refunds to former customers of Dyke and disposition of the total amount of the \$225,682.73 in ordered refunds, using exact copies of the lists furnished the Commission (Exhibit A), during a 90-day refunding period simultaneously declared by the cities and publicly announced, at Dyke's expense, one week in advance of such refunding period (Petition, Exhibit D). During such period, any former Dyke customers listed who received water service from Dyke during the period from May 16, 1960 to July 25, 1961^{2/} would be entitled to file a written claim with any one of the municipal water departments of the four cities. The cities have agreed to transfer such claims among themselves, if filed with the wrong city, to expedite payment of refunds. Refunds would be paid either by credit to current water bills of former Dyke customers now served by the cities, or by voucher mailed to other verified refund recipients.

c. After all refund claims filed with the cities during the 90-day period have been verified and paid, the remaining unclaimed refund moneys would become the property of the separate cities holding such unclaimed refund moneys, in accordance, petitioner asserts, with the intent of Decision No. 71208.

^{2/} The dates indicated above appear in the petition, page 7. The correct dates of commencement and termination of the right to refunds, as stated in Decision No. 71208, mimeograph page 5, are: for flat rate customers, between May 16, 1960 and August 31, 1961; for metered customers, between May 16, 1960 and July 31, 1961. Those dates must be observed by Dyke and the cities in making refunds. Failure to do so, for any reason, will void any authority whatsoever granted by this decision.

Petitioner further alleges that there is in the Interim Rate Trust, in excess of the \$225,682.73 proposed to be distributed to the cities, the sum of \$40,659.27 plus accumulated interest on the trust funds to the date of closing the trust, and that Decision No. 71208, in ordering paragraph 5, provides for return of such excess sum to petitioner, Arlyne Lansdale, as Dyke's agent, in care of Lally & Martin, Attorneys at Law, Suite 1116, 926 J Building, Sacramento, California 95814.

Petitioner requests the following specific relief:

1. Approval of the proposed revised refund plan as outlined in the agreement, Exhibit C annexed to the petition.
2. "Approving and accepting" the agreement, Exhibit C.
3. Instructing the Farmers & Merchants Bank of Long Beach and/or Farmers & Merchants Trust Company of Long Beach to issue its checks in the distribution of the interim rate refund moneys of \$225,682.73 now held in the Interim Rate Trust, as follows:

To the City of Garden Grove \$110,849.07;
plus \$2,770.27;

To the City of Anaheim \$ 69,947.91;

To the City of Westminster \$ 28,529.88;
plus \$12,753.06;

To the City of Huntington Beach \$ 1,718.05;

To the City of Garden Grove 55%,
to the City of Anaheim, 27.8%
to the City of Westminster 16.4%,
and to the City of Huntington
Beach 0.8% of the amount of
\$1,114.49.

To Mrs. Arlyne Lansdale, agent for Dyke,
c/o the above-named attorneys, the
remaining moneys of the interim trust
fund, amounting to \$40,659.27 plus
accumulated interest to the closing
of said trust account.

4. Releasing Mrs. Lansdale, agent, and Dyke Water Company "from all responsibility with the interim rate refund and limiting the responsibility of said separate cities to the refunds as contained in the certified list (Exhibit A) as approved by the Commission."
5. Dismissing Application No. 39303 and closing Case No. 5841.

An ex parte decision on the petition is requested.

By Decision No. 71208, the Commission adopted the staff's conclusions, as set forth in Exhibit R-7, paragraph 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 were reasonably correct and a complete audit of all accounts would make little change in the final amount. Accordingly, we are of the opinion that the refund data contained in the 2,400 sheets comprising Exhibit A accompanying the current petition furnish a reasonable basis for refunding to all known or determinable former customers of Dyke eligible for and due such refunds.

The current petition has been reviewed and the documents submitted as Exhibit A thereof have been examined. Although the amounts set forth in the petition as distributable to the various cities are in order, those modifications pertaining to the revised method or plan for refund to former Dyke customers are not in keeping with either the letter or intent of Decision No. 71208, and would be unfair to customers due refunds, by requiring them, first, to become informed and take note of the new refund plan and its requirements and, second, to file, in writing, a claim for refunds due within the proposed 90-day period. In effect, former Dyke customers from whom excess rates and water charges were collected would be again imposed upon in order for

them to obtain refund of excess charges which Decision No. 71208 ordered refunded in cash approximately eight months ago. It is parenthetically noted that the overcharges giving rise to the ordered refunds occurred in 1960 and 1961.

The Commission staff, therefore, has recommended certain modifications of the proposed plan for interim rate refund, in order more equitably to distribute the amount held in trust for that purpose, and to expedite the refunds to those former Dyke customers including those surviving as customers of the various cities which acquired the Dyke water properties. The recommended modifications, set forth below, have been considered by the Commission, are found to be reasonable and will be incorporated in the ensuing order.

a. The cities which will be recipients of the funds to be distributed from the Interim Rate Trust shall, within a 30-day period following the effective date of the decision in this matter, identify from their customer records and from the lists of customers who have written to the Commission concerning refunds, those former Dyke customers including those who survive as customers of the cities, and shall effect refunds to such customers either by cash or check, or by credit or offset of the refund due, as shown in Exhibit A, against such customers' current water accounts or billing. For this purpose, a copy of Exhibit A and the aforesaid lists shall be made available to each city by petitioner.

b. After accomplishment of the above cash refunding or offset (the method to be at the election of the cities), petitioner Lansdale shall follow the procedure regarding advertising the refunding period and procedure, in the

manner set forth in Chapter IX on page 8 of the petition, and the cities shall honor all valid claims for refunds submitted within the proposed 90-day period from and after publication of proper notice to the public as provided in the petition, either by refunds in cash or by check, or by offset against water bills on accounts due the cities from such claimants.

c. The agreement, Exhibit C to the petition, and the notice of 90-day refund period, Exhibit D to the petition, shall be revised as required to conform to the above modifications.

O R D E R

IT IS ORDERED that:

1. The proposed revised plan for payment of interim rate refunds to former customers of Dyke Water Company, as outlined in the petition and in the Agreement of April 18, 1967, between Mrs. Arlyne Lansdale, agent for Dyke Water Company, and the Cities of Garden Grove, Anaheim, Westminster and Huntington Beach, Exhibit C attached to the petition, subject to and conditioned upon revision and modification as required to incorporate Commission staff recommendations (a), (b), and (c) contained in the preceding opinion, is authorized.

2. The Agreement for Refund entered into by said Mrs. Arlyne Lansdale and said Cities of Garden Grove, Anaheim, Westminster and Huntington Beach (Exhibit C), subject to and conditioned upon revision and modification as required to incorporate Commission staff recommendations (a), (b) and (c), contained in the preceding opinion, is authorized.

3. The Farmers & Merchants Bank of Long Beach is instructed to issue its checks in the distribution of the interim rate refund moneys of \$225,682.73 now held in the Interim Rate Trust in accordance with the schedule and plan of distribution set forth in Item 3 of the prayer of the petition on pages 9 and 10 thereof.

4. Upon accomplishment of all of the above, Mrs. Arlyne Lansdale, agent, and Dyke Water Company are released from all responsibility with respect to the making of interim rate refunds to Dyke's former customers.

5. The responsibility of the above-named separate cities is limited to the refunding of amounts to persons or entities listed in the certified list (Exhibit A), hereby approved, in accordance with a modified and revised refund plan and Agreement for Refund reflecting the Commission staff recommendations contained in the preceding opinion.

6. The separate cities shall each submit to the Commission, in writing, within thirty days after the terminal date of the refund plan authorized herein, a report or schedule summarizing the results of such refunding, and the disposition or proposed application of any unrefunded amounts received in distribution from the Interim Rate Trust.

7. Upon completion of the refunding operation and submission of the report or schedule described in the preceding ordering paragraph, all proceedings in Application No. 39303 and Case No. 5841 shall stand closed.

8. Pending closing of these proceedings, as provided in ordering paragraph 7 above, Decision No. 71208, except as modified by this order, shall be and remain in full force and effect.

A. 39303, C. 5841 HJH

The Secretary is directed to cause service of a certified copy of this decision to be made upon Mrs. Arlyne Lansdale, agent for Dyke Water Company, c/o Lally & Martin, Attorneys at Law, Suite 1116, 926 J Building, Sacramento, California 95814, and upon the Mayor and City Clerk of the Cities of Garden Grove, Anaheim, Westminster and Huntington Beach, and said attorneys and cities shall file herein an acknowledgement of such service.

This decision shall become effective on the date hereof.

Dated at San Francisco, California, this 23rd day of MAY 1967.

[Signature]
President

[Signature]

[Signature]

[Signature]

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Commissioners