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Decision No. 72497

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 non-  
profit corporation under provisions  
of Section 851 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

Investigation on the Commission's  
own motion into the matter of a  
proposed sale and transfer by  
DYKE WATER COMPANY, a corporation,  
of a portion of its property to  
the City of Anaheim.

Case No. 7586

O P I N I O N

Arlyne Lansdale, as agent for Dyke Water Company, a dissolved corporation (Dyke), has petitioned for modification of, and a further order in, Decision No. 71231, issued August 30, 1966 in the subject proceedings. That decision further modified previous orders (Decision No. 68272, dated November 25, 1964, as modified by Decision No. 69075, dated May 18, 1965, in Application No. 46889); authorized Farmers & Merchants Trust Company of Long Beach to pay Dyke \$13,361 from the Construction Advances Trust in that bank, by reason of Dyke's purchase of certain main extension contracts referred to in Decision No. 69299, dated June 22, 1965, in Case No. 7586; and denied Dyke's petition for rehearing of Decision

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No. 69075, as modified by Decision No. 71231. Dyke's challenge to the validity of Decision No. 71231 was rejected by the California Supreme Court (S.F. No. 22474, March 22, 1967). This petition, filed April 19, 1967, followed. It is addressed to the discretion of the Commission.

Petitioner alleges that the requested modifications are necessary to make compliance with the Commission's orders in Decision No. 71231 possible under existing conditions, and that further orders are needed to expedite total compliance with that decision. The Commission staff does not oppose the petition.

The petition concerns disposition of trust funds for payment of construction advance refunds and refunds of improperly exacted contributions in aid of construction, and return to Dyke of a portion of such funds, in connection with Dyke's water utility operations in Garden Grove, Anaheim and other cities, prior to transfer of Dyke's utility properties to the several cities pursuant to previous authority of the Commission. Details of the earlier proceedings, some of which were extensively litigated, need not be recited here.

Petitioner requests amendment of Decision No. 71231 as follows:

1. That the Farmers & Merchants Trust Company of Long Beach, trustee of the various funds here pertinent, be directed: (a) to issue its check for \$10,571.70 on the Construction Advances Trust (sub-trust No. 1774A), payable to Arlyne Lansdale, agent for Dyke, as provided in ordering paragraph 1.B. of Decision No. 71231; (b) to issue its check for the balance, \$1,483.55, remaining in sub-trust

No. 1774A, payable to William E. Otis, Jr., 2856 Chapman S/E Corner, Garden Grove, California. Ordering paragraph 1.A. of Decision No. 71231 directs petitioner to execute a main extension agreement with Otis; but, petitioner alleges, he has refused to sign the agreement and instead has demanded full payment of his construction advance. Petitioner asks that such payment now be authorized in order to expedite compliance with Decision No. 71231.

2. That the Trust Company set aside and retain in trust the sum of \$33,807.27 from the sum of \$39,946.77 now in the Contributions Refund Trust (No. 1772), and that such retained sum of \$33,807.27 be disbursed to persons to whom contribution refunds are due, in accordance with the amended refunding program proposed in paragraph IV of the petition; that, as directed in ordering paragraph 1.D. of Decision No. 71231, the difference between said sums of \$39,946.77 and \$33,807.27, amounting to \$6,139.50, now be ordered returned to Arlyne Lansdale, as agent for Dyke, plus accumulated interest.

3. That the Trust Company now issue its check on the Construction Advances Trust, No. 1774, in the amount of \$13,361.00, payable to Arlyne Lansdale, as agent for Dyke, as directed by ordering paragraph 3 of Decision No. 71231. Payment of this item, which originated from Dyke's purchase, at a discount, of certain construction advance refund contracts, was withheld pending review of Decision No. 71231.

We find petitioner's requests reasonable. To the extent petitioner's request to pay the sum of \$1,483.55 to William E. Otis, Jr., for total refund of a construction advance by Otis, involves a deviation from any of Dyke's tariff rules in effect when the

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construction was requested or performed, specifically Dyke's Water Main Extension Rule, authority for such deviation will be granted in the ensuing order.

The petition should and it will be granted. A public hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. Decision No. 71231 herein is amended in the particulars described in paragraphs 1, 2 and 3 of the above opinion. Except as so amended, said Decision No. 71231 shall otherwise be and remain in full force and effect.

2. Farmers & Merchants Trust Company of Long Beach is authorized and directed to make the payments and disbursements to the persons named or designated in paragraphs 1, 2 and 3 of the above opinion, from trust funds specified in said numbered paragraphs. Payments to Arlyne Lansdale, agent for Dyke Water Company, shall be addressed to her in care of Lally & Martin, Attorneys at Law, Suite 1116, 926 J Building, Sacramento, California 95814.

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3. Petitioner may deviate from the provisions of its Water Main Extension Rule to the extent necessary in causing to be refunded to William E. Otis, Jr., the sum of \$1,483.55 for the construction advance by said Otis referred to in the petition and in numbered paragraph 1(b) of the foregoing opinion.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 23<sup>rd</sup>  
day of MAY 1967.

[Signature]  
President

[Signature]

[Signature]

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Commissioners