

ORIGINALDecision No. 73194

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 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
(Petition for Rescission, etc.
Filed August 9, 1967)

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
(Contribution Refunds-Trust
No. 1772, Farmers & Merchants Trust Co. of Long Beach)

O P I N I O N

Arlyne Lansdale, agent for Dyke Water Company, a dissolved corporation, by an unverified document entitled "Complaint and Petition for Rescission, Amendment and Alteration of Orders", filed herein on August 9, 1967, requests an ex parte order awarding to her, as Dyke's agent, a balance of \$13,484.58, plus accumulated interest, now remaining in a "Contributions Refund Trust", Trust No. 1772, on deposit with the trustee, Farmers & Merchants Trust Company of Long Beach pursuant to previous Commission orders.

Petitioner submits that it would be in the interest of "justice and equity" for the Commission now to grant the requested relief by changing portions of its orders in Decisions Nos. 68272, 69075, 71231 and 72497. Those decisions were issued, at various

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times, in proceedings involving Dyke's refund obligations incurred for advances for construction or unlawfully exacted contributions in aid of construction prior to June 30, 1958. The obligations were outstanding in 1963 and, thereafter, during the period Dyke was engaged in transferring its water system to the Cities of Anaheim, Garden Grove, Westminster and Huntington Beach pursuant to various authorizations of the Commission.

If petitioner's request is granted, the unrefunded balance remaining in Trust No. 1772, plus accrued interest, would be returned to her as Dyke's agent, rather than be disbursed, as the existing orders in pertinent part now provide:

" . . . in accordance with Title 10 of Part 3 of the Code of Civil Procedure, and provided further that no part of said \$33,807.27 shall be paid or awarded to Dyke Water Company." (Decision No. 71231, dated August 30, 1966, Application No. 46889, Case No. 7586; review denied March 22, 1967 by California Supreme Court, S.F. No. 22474. Emphasis as in quoted text.)

The instant petition is entitled in Application No. 46889 (the so-called Garden Grove transfer case) and in Case No. 5841 (a Commission investigation, instituted October 30, 1956, into Dyke's water main extension contracts and practices). Of the decisions Dyke seeks to modify or rescind here, Decision No. 68272, dated November 25, 1964 and Decision No. 69075, dated May 18, 1965 (the latter on Dyke's petition to modify Decision No. 68272), were issued in Application No. 46889; Decision No. 71231 - cited above - modified certain provisions of Decisions Nos. 68272 and 69075 and denied rehearing of Decision No. 69075; Decision No. 72497, dated May 23, 1967, was issued in Application No. 46889 and Case No. 7586 (the latter a Commission investigation, instituted March 29, 1963, into the then pending transfer by Dyke of a portion of its water system to the City of Anaheim).

Determination of the amounts and proper disposition of Dyke's various refund obligations, including the one before us here, has long engaged the attention of this Commission, the California Supreme Court and the Supreme Court of the United States. Dyke's challenges to the Commission's orders concerning these refund obligations without exception have been rejected by the reviewing courts.^{1/}

The instant petition, which seeks not only to have the Commission rescind its outstanding orders for disposition of the unrefunded balance remaining in the Contributions Refund Trust, but which also renews the contention, long since considered and rejected by the Commission and the courts, that the original contributions

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- ^{1/} (a) Decision No. 59828, March 22, 1960, Application No. 39303, issued in a rate case consolidated with Case No. 5841, mentioned above - 57 Cal.P.U.C. 586; affirmed 56 Cal.2d 105; cert.den. 368 U.S. 939, 9 L.ed.2d 338. Decision No. 59828, among other matters, ordered Dyke to dispose of recorded contributions, totalling \$39,946.77, in accordance with certain staff recommendations. Dyke did not challenge that specific order in its petition for rehearing of Decision No. 59828 and it did not seek to have it reviewed by the California Supreme Court. The order still stands.
- (b) Decision No. 67497, July 10, 1964, Application No. 39303, Case No. 5841 - 63 Cal.P.U.C. 76; review denied by California Supreme Court, November 19, 1964; S.F.No. 21828; cert.den. by U.S. Supreme Court, Oct. Term 1964, No. 979. Decision No. 67497 ordered Dyke and its officials punished for contempt for wilful failure to comply with a number of Commission decisions, among them Decision No. 59828 which included the order to dispose of the recorded contributions. The corporation and its officials paid fines totalling \$12,000.
- (c) Decision No. 71231, supra, in which Dyke's challenge, on petition for rehearing, to the previously ordered disposition of funds in the Contributions Refund Trust was later rejected by the California Supreme Court.

themselves were properly, i.e., not unlawfully, received by Dyke, is totally without merit. Only one step remains to be taken with respect to the unrefunded balance now in Trust No. 1772, and that is to direct that such balance be disbursed as previously ordered. To that subject we now turn.

Decision No. 71231, supra, in ordering paragraph 1.D. thereof, directs that:

"From the trust created by said Contributions Refund Trust Agreement, payment may be made to Dyke Water Company of the sum of \$6,139.50, being the difference between the \$33,807.27 referred to in the preceding paragraph and the \$39,946.77 referred to in Paragraph 4.c. of the Order in Decision No. 68272. Within 30 days after the effective date of this decision, Dyke Water Company and Farmers & Merchants Trust Company of Long Beach shall each report in writing to the Commission the extent of compliance with Paragraph 1.C. of this Order. Paragraphs C and D hereof do not authorize any payment from the Construction Advances Trust." (Paragraph 1.C of Decision No. 71231 orders disbursements from the Contributions Refund Trust to designated recipients, to a total of \$33,807.27, and disbursements of any unrefunded balance in accordance with Title 10, Part 3 of the Code of Civil Procedure.)

The Commission (Decision No. 71447, dated October 25, 1966) denied Dyke's petition for rehearing and for a stay of Decision No. 71231 and the California Supreme Court, as noted earlier, denied review. Dyke then, on April 19, 1967, filed a "Notice Of Compliance With The Commission's Orders in Decision No. 71231, Petition For Change In Ordering Paragraph 1a Of Said Decision, And Request For Further Order Of The Commission." (Ordering paragraph 1.A. of Decision No. 71231 had modified certain specific refunding orders in Decisions Nos. 68272 and 69075 with respect to the "Construction Advances Trust", also on deposit with the Farmers & Merchants Trust Company of Long Beach.)

The Commission, by ex parte order (Decision No. 72497, supra), granted Dyke's petition to the extent, only, of authorizing

the trustee: (a) to pay Arlyne Lansdale, as Dyke's agent, the sum of \$10,571.70 from the Construction Advances Trust; (b) to repay to William E. Otis, Jr., a construction advance of \$1,483.55 (the amount then remaining in Sub-Trust No. 1774 A); (c) to set aside and retain in the Contributions Refund Trust (No. 1772) the sum of \$33,807.27 from the sum of \$39,946.77 then in the trust, and to pay the difference, \$6,139.50 plus accumulated interest, to Mrs. Lansdale as Dyke's agent; (d) to pay to Mrs. Lansdale, as Dyke's agent, the sum of \$13,361.00 from the Construction Advances Trust (No. 1774), as directed by ordering paragraph 3 of Decision No. 71231, resulting from Dyke's discounted purchase of certain construction advance refund contracts.

Both Dyke and the Farmers & Merchants Trust Company of Long Beach have now filed written reports concerning the ordered refund procedures and payments in connection with the Contributions Refund Trust, No. 1772. Dyke's final report, filed August 9, 1967, is in considerable detail. The gist of it is tabulated below.

<u>Item</u>	<u>Amount</u>
Total amount ordered refunded to 233 contributors	\$39,946.77
Total amount from 68 contributors ordered returned to Dyke.....	<u>6,139.50</u>
Balance retained in Trust No. 1772.....	\$33,807.27
Total refunds paid to 70 listed claimants..	\$20,322.69
Ordered refunds on which no claim was filed (84 notices returned unclaimed, 11 no response).....	<u>\$13,484.58</u>
Balancing Total	\$33,807.27

The Farmers & Merchants Bank of Long Beach, as trustee, on August 25, 1967 filed its report on the progress of disbursements from Trust No. 1772, assertedly made in compliance with Decisions Nos. 72497 and 71231. The report is tabulated below.

<u>Item</u>	<u>Amount</u>
Original deposit	\$39,946.77
Payment to Arlyne Lansdale, Agent for Dyke....	\$ 6,139.50
Payment of 70 refund items to named payees listed on Reports Nos. 1, 2 and 3.....	\$20,322.69
Balance in Trust (not including accrued interest).....	\$13,484.58
Accrued interest paid to Arlyne Lansdale, Agent.....	\$ 2,753.23

The Commission finds that:

1. The balance now remaining on deposit with Farmers & Merchants Trust Company of Long Beach, Trustee, in the Contributions Refund Trust, Trust No. 1772, is the sum of \$13,484.58.
2. Neither Dyke Water Company, a dissolved corporation, nor Mrs. Arlyne Lansdale, as agent for said Dyke Water Company, is entitled to be paid or awarded said sum of \$13,484.58 or any part thereof.

The Commission concludes that:

1. The complaint and petition herein should be denied.
2. The Farmers & Merchants Trust Company of Long Beach, Trustee of funds in the Contributions Refund Trust, Trust No. 1772, should forthwith disburse the sum of \$13,484.58 (plus any accrued interest thereon not heretofore paid to Arlyne Lansdale, Agent) in accordance with Title 10 of Part 3 of the Code of Civil Procedure, as heretofore directed by the Commission in Decision No. 71231.
3. A public hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. The relief sought by the complaint and petition of Arlyne Lansdale, Agent for Dyke Water Company, filed hereon on August 9, 1967, is denied.

2. Farmers & Merchants Trust Company of Long Beach, Trustee, is authorized and directed to disburse a balance of \$13,484.58 remaining in the Contributions Refund Trust (No. 1772) on deposit with said trust company (plus any accrued interest thereon not heretofore paid to Arlyne Lansdale, Agent) in accordance with applicable provisions of Title 10 of Part 3 of the Code of Civil Procedure of the State of California, as heretofore provided by Ordering Paragraph 1.C. of Decision No. 71231, supra.

The Secretary of the Commission is directed to cause service of a certified copy of this decision upon Arlyne Lansdale, Agent for Dyke Water Company, in care of Lally, Martin, Chidlaw & Viets, 926 J Building, Sacramento, California 95814, and upon the Farmers & Merchants Trust Company of Long Beach, 302 Pine Avenue, Long Beach, California 90812. The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 10th day of OCTOBER, 1967.

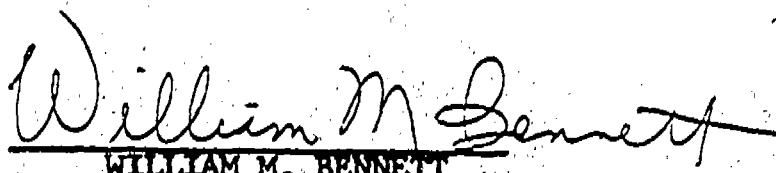
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President

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William Sproule
Aud P. Moussey
Commissioners

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COMMISSIONER WILLIAM M. BENNETT DISSENTING:

I dissent. While the transmission of the funds here involved may conveniently be directed to the State of California upon some undisclosed theory of escheat, it is my view that such is neither provided for by law or permitted. I find nothing in the Code of Civil Procedure which provides for the escheat of these monies to the State.


WILLIAM M. BENNETT
Commissioner

San Francisco, California

October 11, 1967