

ORIGINAL

Decision No. 88428 JAN 31 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Walter V. Hays,

Petitioner,

vs.

SAN JOSE WATER WORKS, a California corporation,

Respondent.

Case No. 10330
(Filed May 12, 1977)

Case No. 10395
(Filed August 16, 1977)

Investigation on the Commission's own motion into the rates, tolls, rules, charges, operations, practices and contracts and the adequacy of service and facilities of San Jose Water Works, a California corporation.

McCutchen, Doyle, Brown & Enersen, by Crawford Greene, Attorney at Law, for San Jose Water Works, defendant in Case No. 10330 and respondent in Case No. 10395.
Maxine C. Dremann, Attorney at Law, for the Commission staff.

O P I N I O N

On May 12, 1977 Walter V. Hays filed his complaint, Case No. 10330, alleging that on or about May 6, 1977 San Jose Water Works was in the process of distributing with its monthly bills literature designed to promote the passage of Measure H on the Santa Clara County ballot of May 31, 1977.

The complainant requested that the Commission order defendant to mail, to parties who received the literature promoting the passage of Measure H, comparable literature giving the arguments of the opponents

of Measure H and for such further relief as the Commission deems just and proper. The request to order the mailing of literature opposing Measure H was denied by Decision No. 87343 dated May 17, 1977.

On August 16, 1977 the Commission, on its own motion, instituted an investigation for the purposes of determining:

1. Whether respondent San Jose Water Works has violated Public Utilities Code Section 453(d)(1)^{1/} by distributing with its monthly bills for services, literature designed to promote passage of Measure H on the Santa Clara County election ballot for May 31, 1977;
2. Whether respondent San Jose Water Works should be ordered to cease and desist from any such unlawful operation and practices;
3. Whether the Commission should institute punitive action pursuant to Public Utilities Code Sections 2107 and 2108; and
4. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

The matters were consolidated for hearing which was held before Administrative Law Judge O'Leary on November 22, 1977 at San Francisco. The matters were submitted upon the receipt of late-filed Exhibit 4 on November 25, 1977. Appearances at the hearing were entered by San Jose Water Works and the Commission staff. No one appeared on behalf of the complainant in Case No. 10330.

Exhibit 1 is an agreed statement of facts signed by counsel for San Jose Water Works and the Commission staff which is summarized as follows:

1. Measure H was submitted to the voters in the Santa Clara Valley Water District at a special election held May 31, 1977. A copy of the official ballot setting forth Measure H is included in the exhibit.

^{1/} Section 453(d)(1) states:

"(d) No public utility shall include with any bill for services or commodities furnished any customer or subscriber any advertising or literature designed or intended (1) to promote the passage or defeat of a measure appearing on the ballot at any election whether local, statewide, or national, ..."

2. On or about May 6, 1977 for a period of approximately five days San Jose Water Works distributed, as a bill insert, literature setting forth arguments in favor of Measure H to approximately 40,000 customers. A copy of the literature is included in the exhibit.
3. The mailing of the literature was in technical violation of Section 453(d)(1) of the Public Utilities Code. At the time of the mailing San Jose Water Works was not aware of the provisions of Section 453(d)(1). The mailing was stopped immediately following notice to San Jose Water Works.
4. A \$5,000 penalty is reasonable.
5. San Jose Water Works will refrain from violating Section 453(d)(1) of the Public Utilities Code.

Exhibit 2 is a document entitled "Offer of Information by San Jose Water Works" which contains information that San Jose Water Works would have offered had the agreed statement of facts, set forth in Exhibit 1, not been reached.

Exhibit 3 is a motion to dismiss Case No. 10330 and Exhibit 4 is a certificate of service by mail of Exhibit 3 upon the complainant in Case No. 10330.

Findings

1. On May 31, 1977 the following measure was submitted to the voters in the Santa Clara Valley Water District as Measure H:

"Shall Santa Clara Valley Water District, in order to improve its water supply system, issue revenue bonds in the principal amount of \$56,000,000 pursuant to the Revenue Bond Law of 1941 to provide funds for the following improvements to the District's water utility enterprise: (a) a source of supply; (b) raw and treated water transmission and distribution facilities; (c) water treatment; (d) all expenses incidental to or connected with said improvements; and (e) other works, property or structures necessary or convenient therefor?"

2. On or about May 6, 1977, for a period of approximately five days San Jose Water Works distributed, as a bill insert, literature setting forth arguments in favor of Measure H to approximately 40,000 customers.

Conclusions

1. San Jose Water Works has violated Section 453(d)(1) of the Public Utilities Code.
2. San Jose Water Works should be ordered to pay a penalty of \$5,000 to this Commission pursuant to Public Utilities Code Sections 2107 and 2108 of the Public Utilities Code.
3. The motion to dismiss Case No. 10330 should be granted.

O R D E R

IT IS ORDERED that:

1. San Jose Water Works shall pay a penalty of \$5,000 to this Commission pursuant to Public Utilities Code Sections 2107 and 2108 on or before the twentieth day after the effective date of this order.
2. In the event the penalty ordered to be paid by paragraph 1 of this order is not paid by the date specified, the Commission's General Counsel shall commence action in accordance with Section 2104 of the Public Utilities Code.
3. The motion to dismiss Case No. 10330 is granted.

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

Dated at San Diego, California, this 31st day of JANUARY, 1978.

I abstain
William Lyons-Jr

Robert Bateman

President

Richard D. Swale
Clair J. Gehring

Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.