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In the Matter of the Application of the MONROE COUNTY WATER AUTHORITY for Approval of Acquisition of Water Supply and Distribution System of NEW YORK WATER SERVICE CORPORATION Constituting All Real and Personal Property Thereof Appertaining to Waterworks Systems Owned and Operated Thereby within Boundaries of Monroe County, and Approval of Financial and Engineering Plans for Acquisition of Water Supply and Distribution System. SECOND APPLICATION

Water Supply Application No. 2615
(November 9, 1954)

Application, maps and plans approved as modified.

Proceedings

BY THE COMMISSION.—Franklin W. Judson, chairman of the Monroe County Water Authority, acting in the name and on behalf of said authority, on September 1, 1954 made application to the Water Power and Control Commission for approval of its plans for the acquisition by condemnation or purchase of all of the plant and property of the Rochester division of New York Water Service Corporation, the privately owned public water supply system now serving a large part of the county and of the future operation of this plant by the water authority. This application was filed in the office of the commission on September 7, 1954.

After due notice published in the *Rochester Democrat and Chronicle* and in the *Rochester Times-Union*, the hearing on this application was held before George J. Natt, senior engineer of the commission, in the Monroe County Court House in the city of Rochester on October 15, 1954 at 10 o'clock in the forenoon. At this hearing the commission considered the petition, maps and plans submitted, examined witnesses and heard arguments concerning the project, as shown by the minutes. The petitioner was represented by Nixon, Hargrave, Devans and Dye, its attorneys (Daniel G. Kennedy, of counsel). Objections were filed by the New York Water Service Corporation, represented at the hearing by Bernard D. Fischman, Frank G. Raichle and J. Boyd Mullan, its attorneys. The town of Penfield was represented by Clarence L. Burton, town attorney and the city of Rochester appeared by David Schoenberg, its deputy corporation counsel.

Project

Monroe County Water Authority asks the approval of this commission for its acquisition by condemnation or purchase of all of the plant and property of the Rochester division of the New York Water Service Corporation, the present privately owned water supply system serving a large part of the county suburban to the city of Rochester

as well as a portion of that city. This acquisition is to include the intake works in Lake Ontario, all pumping stations and treatment works, storage tanks, reservoirs and distribution systems owned by the company. Upon acquisition, this system is to form the nucleus of what will ultimately be a complete county-operated public water supply system.

Objections

The objections of the New York Water Service Corporation consist of a general denial of the allegations of the application and a blanket objection to the granting of any approval of the application.

The town of Penfield did not object but filed an answer to the application stating that it desires to reserve its right to develop its own separate water supply system, subject to the approval of this commission, if in the future the water supply system herein sought to be acquired by the petitioner proves inadequate to supply the needs of the town or if it later can be shown that such a move would be advantageous to the town.

The city of Rochester did not object but appeared at the hearing and advised that it has an agreement with the water company covering service by the company to customers within the city. When the city is ready to take over service of water in those areas through acquisition of the mains now owned by the water company it seeks to be assured that it will not be required to pay the authority more than a reasonable value for the necessary mains and facilities and in no event more than the authority shall pay to the company for the same.

After due study of the petition and its exhibits, and the evidence and arguments given at the hearing, the commission finds as follows:

Findings of Fact

1. Monroe County Water Authority is a public benefit corporation created under the provisions of chapter 805 of the laws of 1950 as amended, now known as Title 5, sections 1093 to 1113, inclusive, of the Public Authority Law.

2. The New York Water Service Corporation through its Rochester division supplies water for domestic, industrial and fire-protection purposes to portions of the city of Rochester consisting of parts of the 10th, 18th, 21st, 22nd, 23rd and all of the 24th wards of the city and to portions of the towns of Brighton, Gates, Greece, Irondequoit, Penfield, Perinton and Pittsford (including the village of Pittsford). In addition, it supplies water wholesale for domestic, industrial and fire-protection purposes to the old village of Charlotte, (now a part of the city of Rochester) and to the following water districts: Ridge Road, Latta Road, Eddy and Stone Road, Lake Shore, Clover Street, Monroe Avenue, Highland-Clinton, Elmswood, Highland, Council Rock Estates, Browncroft, Knollwood, Penfield, Summerville, Sea Breeze, North Goodman Park, Helendale and Vicinity, East Gates, Seneca Park Avenue and Joseph Avenue. The

company also maintains an emergency connection for supply to the village of East Rochester and supplies a few customers in East Rochester as well as a few customers in the village of Fairport. The suburban area served is generally to the west, north and east of the city of Rochester.

3. Water for this system is pumped from Lake Ontario at a point north of Rochester in what is known as the old village of Charlotte. A supplementary supply of water is obtained from two wells in the town of Penfield and through interconnections with the facilities of the city.

4. The Charlotte station of the water company consists of a pumping plant and treatment works for the clarification and purification of the water obtained from the lake. This plant includes two concrete sedimentation basins of about 1,000,000 gallons capacity each and 22 pressure filters and appurtenances.

5. The nominal rated capacity of the company's filter plant is 12,000,000 gallons per day based on a designed rate of operation of two gallons per minute per square foot of filter surface area but demands on the system have required this plant to be operated continuously at rates in excess of normal capacity and frequently, for periods as long as 14 consecutive days, the rate of operation has reached 19,600,000 gallons daily.

6. Demands on the company's facilities have steadily been increasing. In 1935 these demands averaged 7,240,000 gallons per day while such demands in 1953 amounted to 14,310,000 gallons daily. Since 1948 average daily requirements on the Charlotte pumping station and filter plant have exceeded the designed capacity of the filters. Maximum daily demands are considerably greater than the average requirements and on July 13, 1954 such requirements on the company's entire system amounted to 27,570,000 gallons, which figure is well above the company's capacity to produce filtered water. On that occasion additional quantities were required to be secured from the city with the result that the city's Cobbs Hill reservoir became dangerously depleted and the company was advised by the city to reduce its withdrawals of water from the city reservoir. Thereafter the water company enacted measures to conserve water through enforcement of restrictions on use of sprinklers. On July 13, 1954, the maximum day referred to above, 19,500,000 gallons of water were processed through the company's filter plant.

7. The combined capacity of the two wells of the town of Penfield is only 1,500,000 gallons per day but these sources cannot be depended upon to supply this quantity of water for any great length of time because of the fact that continued pumping of one well results in the delivery of water of poor chemical quality.

8. At times of low levels of water in Lake Ontario the water company cannot obtain sufficient water from the lake through its own intake facilities. On January 19, 1953 the company filed an application with this commission seeking approval of the use, through an inter-

connection to be constructed, of the intake into Lake Ontario of the Rochester Gas and Electric Company as an auxiliary source of supply.

9. Hearings on that application, designated as *Application No. 2315* by the commission, have just been concluded and in that proceeding the commission has considered the question of the adequacy of the company's plant. A decision on that application of the company is this day being rendered by the commission. Certain conditions have been imposed by that decision.

10. It was testified at the hearing on the instant application that service by the company has not always been satisfactory and that many complaints as to lack of sufficient quantity and pressure of water have been received from customers throughout the entire territory served by the company.

11. On September 1, 1954 the Monroe County Water Authority by a resolution adopted on that day authorized the acquisition by it through condemnation or purchase of the plant and property of the Rochester division of New York Water Service Corporation. That resolution also authorized the chairman of the authority to file with this commission a formal application for approval of such a proposal.

12. The project is to be financed by the issuance of bonds of the authority in an amount such as may be needed to acquire the properties of the corporation.

13. The facilities of the Rochester division of the New York Water Service Corporation for the production of water, now are taxed beyond designed capacity and no new construction presently is proposed to be carried out by the applicant. The commission must require that upon transfer of title to this water system to the authority, the authority shall be bound by the conditions imposed in the commission's decision of this date on *Water Supply Application No. 2315* affecting the plant proposed to be acquired herein, if such acquisition takes place before the time limit, imposed for compliance with such conditions, or any extension of said time limit has expired.

14. In order to insure continued service to all consumers now supplied with water by the existing facilities proposed to be acquired, it must be required that, upon acquisition of these facilities by Monroe County Water Authority, that authority shall continue to serve water of satisfactory sanitary quality to all present customers of the corporation unless and until such customers have elected to secure or have secured a supply of water in some other manner.

15. Monroe County Water Authority now proposes to acquire only the entire plant and property of the Rochester division of the New York Water Service Corporation. No approval at this time can be given for the development or acquisition by Monroe County Water Authority of any new or additional sources of water supply for its water supply system, except those sources of supply now used by New York Water Service Corporation.

16. The objections of the New York Water Service Corporation appear to be based primarily upon a desire of the company to retain

ownership and control of the operation of its plant. The right to condemn this company, with the approval of this commission, has been vested in the authority by the statute creating it.

17. The position taken by the city of Rochester in reference to the cost of future acquisitions by it from the company or authority concerns matters not under the jurisdiction of this commission.

18. The right of the town of Penfield to establish or acquire its own water supply system is not before the commission at this time. When and if an application for that purpose is presented to the commission, it will be acted upon in accordance with the provisions of article XI of the Conservation Law. Under *Condition C* of this decision, the commission reserves its right to authorize the construction of waterworks systems in Monroe county other than that of the authority.

19. The carrying-out of this project will have no adverse effect upon the water supply interests of any other municipality or civil division of the state.

20. The legal damages that may be caused by the execution of the plans of the petitioner are not such as to require any special consideration or legislative enactment in order that they equitably may be determined and paid.

Conditions

The commission finds it necessary, in order to protect the water supply and the interests of the applicant and of the inhabitants of the territory supplied by it with water, to protect the water supply and interests of any other municipal corporation or other civil division of the state and the inhabitants thereof and to protect the water supply and interests of any other person or waterworks corporation engaged in supplying water to any other municipal corporation or other civil division of the state and the inhabitants thereof, that the application, maps and plans submitted should be modified to conform to the following:

A. Under this decision and approval, Monroe County Water Authority is authorized to acquire by condemnation all of the plant and property of the Rochester division of the New York Water Service Corporation including the sources of supply of that division of that company. This approval, however, is subject to compliance by the authority with all of the conditions of the decision rendered this day by the commission on *Water Supply Application No. 2315* affecting the Rochester division of the New York Water Service Corporation, if title to this system is vested in the Monroe County Water Authority prior to the date or any extension thereof stated in that decision for full compliance with all of its terms and conditions.

B. The water authority, after acquisition of this property by it, must continue to sell water to all present customers of the corporation so long as said customers elect so to obtain a supply of water.

C. Monroe County Water Authority may, so far as the jurisdiction of this commission is involved and without any further approval of this commission, extend its supply and distribution mains within and supply water to any residents of Monroe county, provided, however, that nothing herein contained shall be held to authorize the distribution and sale by it of raw water or water not treated in a satisfactory manner as required by all of the decisions of this commission or any of its predecessors with respect to this plant and further provided that nothing in this decision shall be held to authorize the said authority to dispense with the consent of the local authorities of any part of the county which may otherwise be required; or to authorize said authority to enter into competition with or to parallel the distribution mains of any other waterworks system either publicly or privately owned now legally established in this county or which hereafter legally may be established therein; or to sell water to any other waterworks systems, either publicly or privately owned and not now served by the corporation proposed to be acquired, until the owners or authorities in charge of such systems have applied for and received the approval of this commission. Further provided that this commission retains the right to authorize the construction of other waterworks systems within the county, both publicly and privately owned, and to authorize the development of other sources of water supply for the supply of water in any parts of the county. Generally, this approval shall not be held in any way to restrict this commission in taking such action as it may deem suitable and proper on any other water supply application which may come before it affecting Monroe county.

D. No authority is given for the acquisition by the Monroe County Water Authority of the plant and property of any public water supply system now existing within the county other than that owned by the New York Water Service Corporation nor for the development of any new or additional sources of public water supply by Monroe County Water Authority without the further consent of this commission.

E. Upon completion of the transfer of title to this plant to the Monroe County Water Authority, the authority must immediately advise the commission of such fact and thereafter the authority may operate this system.

F. Unless such transfer of title has been consummated by December 1, 1959 or within such extended time as may have been applied for and granted by the commission, then and on that date this decision shall be deemed to have lapsed and to be of no further force or effect.

Statutory Determinations

The Water Power and Control Commission having given due consideration to the said petition and its exhibits and the proofs and

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arguments submitted at the hearing, determines and decides as follows:

First. That the application, maps and plans submitted are modified as set forth above and, as so modified, are the plans hereinafter mentioned.

Second. That the plans proposed are justified by public necessity.

Third. That said plans provide for the proper and safe construction of all work connected therewith.

Fourth. That said plans provide for the proper protection of the supply and the watershed from contamination and for the proper treatment of such supply.

Fifth. That said plans are just and equitable to the other municipalities and civil divisions of the state affected thereby and to the inhabitants thereof, particular consideration being given to their present and future necessities for sources of water supply.

Sixth. That said plans make fair and equitable provisions for the determination and payment of any and all legal damages to persons and property, both direct and indirect, which will result from the execution of said plans or the acquiring of said lands.

Decision

Wherefore, the Water Power and Control Commission does hereby approve the said application, maps and plans of Monroe County Water Authority as thus modified.

In the Matter of the Application of the TOWN BOARD OF THE TOWN OF WOODBURY, ORANGE COUNTY, for and in Behalf of TOWN OF WOODBURY WATER DISTRICT No. 2, for Approval of Acquisition of Source of Water Supply and Financial and Engineering Plans for Construction of Water Supply Distribution System in TOWN OF WOODBURY WATER DISTRICT No. 2. WOODBURY WATER DISTRICT No. 2

Water Supply Application No. 2616
(November 9, 1954)

Application, maps and plans approved as modified.

Proceedings

BY THE COMMISSION.—Walter H. Belding, supervisor of the town of Woodbury, Orange county, acting in the name of said town and on behalf of Woodbury Water District in that town on August 20, 1954 made application to the Water Power and Control Commission for approval of the plans of said town for the acquisition of a supply of water for said district from the mains of existing Woodbury Water District and of the construction of a water supply system in Water District No. 2. This application was filed in the office of the commission on September 8, 1954.

After due notice published in *The Orange County Courier*, the