

# DEPARTMENT REPORTS

OF THE

STATE OF NEW YORK

CONTAINING THE

MESSAGES OF THE GOVERNOR

AND THE

DECISIONS, OPINIONS AND RULINGS

OF THE

State Officers, Departments, Boards  
and Commissions

---

OFFICIAL EDITION

JOSEPH H. WILSON, Director of the Budget

---

VOLUME 39

---

ALBANY

J. B. LYON COMPANY, PUBLISHERS

1930

---

[Vol. 39]      Water Power and Control Commission

---

units only of the required subjects under the above quoted rule. He claims credit for other subjects under rule 2 of the requirements for graduation; namely, "Two-fifths units will be given toward the school diploma by taking music lessons out of school, two-fifths units by work in Glee Club or Orchestra, two-fifths units by work in Physical Training."

The difficulty with the proposition seems to be that these special subjects included under rule 2 were not included in any one course of instruction established in said school approved by this department as required by rule 6.

Consequently, the appellant's son, who was not a member of the senior class and was required to meet the conditions of rule 6 in order to be graduated, is not in position to demand graduation since he did not meet the conditions prescribed by said rule.

The appeal is dismissed.

---

In the Matter of the Application of the PON QUOGUE  
WATER CORPORATION for Approval of Its Acquisition  
of a Source of Water Supply and of Its Financial  
and Engineering Plans for the Construction of a  
Water Supply System

Supply About Hampton Bays

Water Supply Application No. 516

(Water Power and Control Commission, December 19, 1929)

Application approved as modified.

BY THE COMMISSION.— Thomas R. Fowler, president  
of the Pon Quogue Water Corporation, acting on

behalf and in the name of said corporation, having on May 24, 1929, under the provisions of article XI of the Conservation Law, filed an application for approval of the plans of said company for the acquisition and development of certain sources of water supply and of the distribution system proposed to be constructed in connection therewith in certain parts of the town of Southampton and county of Suffolk; and, after due notice, published as required by law, the hearing on this application having been held in the town hall of the town of Southampton, in the village of Southampton, on June 19, 1929, at 1 o'clock in the afternoon, when it was closed as to a portion of the project, and, thereafter, pursuant to adjournment duly taken was continued as to the portion of the project now under consideration at the same place on July 18, 1929, when it was finally closed; and the petitioner herein having been represented by George W. Percy, its attorney, and objections having been filed by South Bay Consolidated Water Company, Inc., and by Sag Harbor Water Company, both represented at the hearing by Clinton H. Blake; and on June 27, 1929, the Water Power and Control Commission having approved of the proposed source of water supply and of the supply of water by said Pon Quogue Water Corporation on a part of South Beach; and the petition, maps and profiles submitted by the petitioner having been examined, the witnesses called having been heard, together with arguments of counsel, and due deliberation thereon having been had, the Commission finds it to be necessary: (a) to protect the water supply and the interests of the applicant and of the inhabitants of the territory supplied by it with water, (b) to protect the water supply and interests of any municipal corporation or other civil division of the State and the inhabitants thereof, and (c) to protect the water sup-

ply and interests of other persons or waterworks corporations 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:

1. Nothing in this decision contained shall be held to modify our earlier partial decision on this application of June 27, 1929.

2. By virtue of this decision the applicant may extend its mains into and supply water in any part of Union Free School District No. 5 of the town of Southampton which lies upon the main body of Long Island.

3. Nothing in this decision contained shall be held in any way to restrict this Commission in taking such action as it may deem suitable and proper on any water supply application affecting this area which may hereafter come before it.

4. Nothing in this decision shall be held to authorize the applicant to enter into competition with or to parallel the distribution mains of any waterworks system, either publicly or privately owned, which, with due authority from us, may hereafter be established in this area; except as to mains which the said applicant may have laid prior to the making of application to this Commission for approval of such subsequent project.

5. No further authority for the supplying of water in additional territory on South Beach is granted hereby.

The Water Power and Control Commission having given due consideration to the said petition and its exhibits, the proofs and arguments submitted at the hearing and the reports of its engineers thereon, finds and determines:

*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 that filtration is at present unnecessary.

*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.

*Wherefore,* the Water power and Control Commission does hereby approve the said application, maps and plans of Pon Quogue Water Corporation, as thus modified.

#### MEMORANDUM

By THE COMMISSION.— The matter now before us is the disposition of a part of a water supply application made by Pon Quogue Water Corporation on May 20, 1929, and filed in this office on May 24, 1929. In this application the company asked approval of the acquisition and development by it of a source of water supply and of the distribution and supply of water in union free school district No. 5 of the town of Southampton in Suffolk county and in certain other territory in said town on South beach, adjacent to said district

---

[Vol. 39]      Water Power and Control Commission

---

This matter was heard on June 19, 1929, and was opposed in part by South Bay Consolidated Water Company, Inc., and by Sag Harbor Water Company. At that hearing it was agreed between the representatives of the interested parties and of the Commission that the application be separated into two parts, that the Commission at once proceed to make its decision as to the uncontested portion and that further hearing be had on the remainder.

Accordingly the Commission proceeded on June 27, 1929, to approve of the development of the source of water supply and of the construction of all works necessary to supply water on certain specified portions of South beach.

Thereafter the hearing on the remainder of the application was continued in Southampton on July 18, 1929, when it was closed, except for the submission of briefs.

Pon Quogue Water Corporation is a domestic corporation, formed under the provisions of the Transportation Corporation Law. Its certificate of incorporation was filed in the office of the Secretary of State on April 24, 1929. It is the successor in interest, in water supply matters, of Southampton Bay and Beach Corporation. It has a franchise to operate in union free school district No. 5 of the town of Southampton on the main island and also on all of South beach between the westerly line of Shinnecock road in the village of Southampton and Ocean avenue in the village of Quogue. We have already approved of the supplying of water on this beach between said Shinnecock road on the east and the boundary between the lands of Southampton Bay and Beach Corporation and E. Overton on the west, a distance of some 44,919.5 feet. We have now to consider the question of supplying water on the main island and in the addi-

tional area at the west end of the beach. These matters are taken up separately herein.

South Bay Consolidated Water Company, Inc., was originally the Quantuck Water Works Company, formed to supply water in Quogue and West Hampton. It has been expanded by consolidations and mergers until it now owns, controls or is affiliated with a large proportion of all the private water plants on Long Island. It is affiliated with Sag Harbor Water Company, the other objector. In the town of Southampton this company distributes water in Quogue, East Quogue, West Hampton and West Hampton beach and in the village of Southampton and about that municipality. It operates under two franchises. On October 3, 1902, it was authorized to supply water "in that portion of the town of Southampton lying west of Weesuck creek." On September 1, 1892, a franchise was given it to supply water in "the village of Southampton and vicinity."

In January, 1928, South Bay Company asked the town board for a franchise covering all of the town west of a true north and south line running through the intersection of Scuttle Hole road and Montauk highway (West longitude  $72^{\circ}:20'$  — about three miles due east of the center of the village of Southampton). This was denied on February 1, 1928. On February 14, 1928, the company applied for a franchise to operate in all parts of the town west of a north and south line through Shinnecock canal and east of "the center of Weesuck creek and a line running north thereof to Peconic bay." This application also was denied by the town board.

Sag Harbor Water Company, an objector in these proceedings, supplies water in and about Sag Harbor, in the northeast corner of the town. It is in no wise affected by this project and will be given no further consideration.

We have already approved of the source of water supply of Pon Quogue Water Corporation. Since our first decision on this application was made, the well therein mentioned has been abandoned, a 3.764 acre plot of land, adjacent to and east of the original well plot, purchased and a new well sunk in it. This new well is advantageously located with regard to and protected from local pollution. It is a safer source of supply than the old well.

#### SUPPLY OF WATER ON MAIN ISLAND

On the main body of Long Island, union free school district No. 5 of the town of Southampton includes: Shinnecock Canal, Canoe Place, Good Ground, Pon Quogue, Springville, Tiana, West Tiana and Squiretown, all served by Hampton Bays station of Montauk division of Long Island railroad. We are unable to determine either from the testimony or from the maps just where the boundaries of this district are. They seem to be known to the town authorities and they were described with sufficient accuracy to justify us in making our decision apply to the actual boundaries of the district, regardless of any errors of description there may be in the record.

This portion of Long Island is as yet but little developed. It is estimated that the permanent population is about 1,200 and that the summer population is from 500 to 700 greater. There is now no public water supply system in this area, other than the source of supply and a portion of the main supply line of the applicant. There is need for water in various parts of this area.

Pon Quogue Water Corporation was formed originally to supply water to the land holdings of Southampton Bay and Beach Corporation on South beach. This latter company negotiated for such a supply with



South Bay Consolidated Water Company, but satisfactory terms were not arrived at. The real estate company then went ahead to obtain its own supply and the applicant company was formed for that specific purpose. When application was made for a franchise, the town board refused to grant it for the beach alone, but insisted that it also cover this particular area.

South Bay Consolidated Water Company objects to the granting of this part of the application on the grounds that it has "a franchise to supply water throughout the town of Southampton," which it has had and exercised in good faith for many years, and that to permit another company to come into this territory will hurt its interests. The franchises have been described above; both are quite indefinite as to important boundaries.

Quantuck franchise covers all of the town "west of Weesuck creek," a stream about a mile in length, which runs in a generally southeasterly direction and has two branches. Northerly extension of the smaller branch would hit Peconic bay at Red Cedar point, extension of the line of the main branch would hit Peconic river near Calverton, about nine miles west of the point. Any attempt to prolong the creek across Shinnecock bay to the beach is equally indefinite. The town board doubtless erred in giving so vague a description, but the error was natural. At the time, it doubtless considered only the strip along the south shore of the main island, mostly south of the railroad, running from Eastport to East Quogue, in which need for water was anticipated and for which the creek is an obvious and precise boundary. The inner portion of the island was and is a wilderness. Making the assumption most favorable to the objector, the easterly line of this area is over a mile west of the westerly boundary of the school district. In this territory the

---

[Vol. 39]      Water Power and Control Commission

---

objector has wells and a pumping plant near Quantuck creek and supplies water in perhaps the eastern two-thirds of the area between the railroad and the bays. It would have to extend its mains about three miles to reach West Tiana, the nearest settlement in the school district. Riverside water district, on the south side of Peconic river and opposite Riverhead, is some ten miles north of the pumping station. It purchases water from Riverhead water district (Water Supply Application No. 491, approved February 4, 1929).

Southampton franchise covers the village of that name "and vicinity." The west boundary of the village is eight miles due east of Weesuck creek; the southeast corner of the town is some 7.5 miles distant from the corresponding corner of the village and the most northerly point of the town—Hog Neck—is some eleven miles distant from the nearest point of the village boundary. It may well be doubted whether the town board, in 1892, considered that "vicinity" was subject to such a liberal definition. In this area are the plants of the Sag Harbor Water Company—affiliated with the objector—and that supply Bridgehampton, which is not specifically mentioned in the record. The objector has wells and a pumping station near and north of the village of Southampton. It supplies water in the village and about it; some lines extend as far west as the Shinnecock Golf Club, somewhere near, but east of the east boundary of school district No. 5.

We do not think the objector's claim to an all inclusive franchise is substantiated by the record. The fact that it recently applied for additional franchises must be considered. Unless the objector has a valid franchise permitting it to supply water in the area under discussion, we fail to see how any action we may take with regard to it can injure its vested rights.

Even if the claim were substantiated, these franchises are not exclusive and the provisions of section 522 of the Conservation Law appear to give us jurisdiction over the extension of mains into new territory.

This objector has submitted no definite plans for extension of its mains into the school district. It stated, in general terms, that it proposed eventually to make physical connection between its various plants. It was intimated that it would not consider the supplying of water to this area by extension of existing mains, but by the installation of a new plant, thus, in a measure, duplicating the plant of the applicant.

The people of this area desire water and it is our duty to see that their needs therefor are met. So far as they have been articulate in the matter, they have chosen to be supplied by the applicant rather than by the objector. Except for convincing reasons to the contrary, the desires of the local people should have preference.

Pon Quogue Water Corporation has filed no plans showing how it is proposed to distribute water in this area. There was some suggestion that it might not lay the required mains, but that a water district or districts might be formed and buy water from it. Whatever method may be followed, the applicant can supply this area and should be authorized so to do. Such approval should be so safeguarded as to leave open for future determination the exact method of distributing water and should not be exclusive, especially as to parts of this area which, for any reason, it may fail to supply.

#### ADDITIONAL AREA ON SOUTH BEACH

We have already authorized the applicant to supply water to the lands on South beach now or formerly

owned by Southampton Bay and Beach Corporation and to certain other lands lying between such holdings. To the east the remainder of the beach is in the village of Southampton and we find that it should be supplied by South Bay Consolidated Water Company. On the west, that company claims a franchise and has already extended its mains easterly along the beach from Ocean avenue over half way to the present limits of the territory of the applicant. Here again we see no reason for extending the area in which Pon Quogue Water Corporation may supply water.

A decision should be drawn in conformity with the above.

---

In the Matter of the Application of the CITY OF NEW YORK to the Water Power and Control Commission for Approval of Its Plans for Securing a Water Supply in the Fifth Ward of the Borough of Queens in the City of New York

#### Fifteenth Application

Purchase of Plant of Long Island Water Corporation  
Water Supply Application No. 540

(Water Power and Control Commission, December 19, 1929)

Approved.

BY THE COMMISSION.—James J. Walker, mayor of the city of New York, acting on behalf and in the name of said municipality, on October 15, 1929, made application to the Water Power and Control Commission for approval of the plans of said city for the acquisition or taking of an additional water supply, the taking or condemnation of lands for new or additional