Decision No. 27366

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

The Berkeley Olive Association, Complainant, vs. California Water Service Company, Defendant.	Case No. 3558.
In the Matter of the Investigation on the Commission's own motion into the rates, charges, service, rules, regulations, classifications, contracts, practices and operations, or any of them, of the water system owned and operated by California Water Service Company, a corporation, in and in the vicinity of Oroville, County of Butte, California.	Case No. 3612.

S.T. Harding, for complainant.

McCutchen, Olney, Mannon & Greene, by Carl I. Wheat, for defendant.

Raymond A. Leonard and Hubert Townsend, by Hubert Townsend, for Thermalito Irrigation District and Table Mountain Irrigation District, Interveners.

George F. Jones, City Attorney, for the City of Oroville.

WHITSELL, COMMISSIONER:

OPINION ON REHEARING

The Commission, in its Decision No. 26351 dated September 18, 1933, in the above entitled proceedings, modified

certain provisions in a contract between complainant and defendant as to rates and fixed a charge of 10 cents per miner's inch per day, a miner's inch being equal to 1/40th of a cubic foot per second. The agreement provided for the delivery of water at a rate of 10 cents per miner's inch day (a miner's inch being equal to 1/50th of a cubic foot per second) and also required complainant to pay for 150 miner's inches for a 150-day period each season whether the water was used or not. The Commission's decision also set aside this latter provision and permitted complainant to pay only for the water actually delivered. A twenty per cent decrease in rates for complainant resulted from this decision.

Complainant asked for a rehearing claiming that it did not obtain the relief to which it was clearly entitled on the evidence. It is alleged further in the petition for rehearing that complainant is entitled to a refund of twenty per cent of the charges paid for irrigation for the seasons 1930 to 1933, inclusive, and a rate of 7.5 cents per miner's inch day (on a basis of 1/40th of a cubic foot per second).

A rehearing in these proceedings was granted and was held at Oroville.

Complainant's request for a refund covering the period 1930 to 1933, inclusive, is founded upon the fact that on October 7, 1931, defendant filed revised rules and regulations and a rate covering irrigation service from its Powers Canal. The newly filed rate provided for irrigation service at 10 cents a miner's inch on the 1/40th unit of measurement. Nevertheless, several consumers were billed at the 1/50th rate. The discrepancy in the charges and filed tariff was discovered by defendant during the course of the hearing of these proceedings in

July of 1933 and a refund was subsequently made to all consumers so charged, except complainant, for the years 1930, 1931, 1932 and to July of 1933. This resulted in a twenty per cent refund in the amounts charged and paid by the consumers involved.

As pointed out in the original decision, Berkeley Olive Association has been operating under a special service contract for a great many years and, although legally entitled to terminate said agreement at any time upon the giving of sixty days' notice, has never done so and still insists on retaining all advantageous portions of the contract, desiring only to have the rate established therein reduced. This agreement was not modified until Decision No. 26351 was issued on the eighteenth day of September, 1933. Defendant had no course open to it other than to bill complainant under the contract until it was terminated by either of the parties thereto or modified by this body. As set out in our previous decision, complainant therefore is not entitled to reparation and in this case is entitled to no such refund as claimed for the period 1930 to 1933, inclusive.

Complainant contends that the 6-cent per miner's inch rate charged the two Irrigation Districts amounts to an unfair discrimination against it and that, if this rate be not given it, at least it is entitled to a rate not in excess of 7.5 cents per miner's inch, further contending that, as it is a large user, accordingly it should be entitled to a lower rate than charged the small irrigators along the canal.

The question of discrimination in the rates charged Thermalito Irrigation District and Table Mountain Irrigation District was thoroughly covered in great detail in our original decision. Nothing has been presented in this rehearing which would

warrant any change in the ruling thereon. Similarly, the effort on the part of complainant to treat the irrigation service as a separate unit and to ignore the joint operation with the domestic system in Oroville and vicinity is wholly unjustified. This matter was discussed at considerable length in the original decision in this proceeding. The record conclusively shows that this water works has always been operated as a single unit and that under existing conditions cannot reasonably be segregated into two separate units, either upon the basis proposed by Professor Harding or upon any other scheme that would not work an injustice against the citizens of Oroville using domestic water service. The utility is entitled to a fair net return upon its investment and, in view of the fact that the evidence shows that its operations have resulted in an average net yield of but 5.2 per cent for the past five years, it is obvious that a general reduction in irrigation revenues should in fairness necessarily demand an equivalent or possibly an even greater increase in the domestic rates for the inhabitants of Oroville and vicinity. This is not justified by the record.

This system was first installed in the early mining days and, when reconstructed, for the supply of domestic and irrigation water, certain concessions were given to a few prospective water users in the way of free or reduced rates in exchange for rights of way, easements, reservoir sites, etc. Officials of the former owners, Pacific Gas and Electric Company, and also of defendant company stated they could find no records in their archives showing when or for what specific reasons these preferences had been granted originally but that their respective organizations, when operators

of the system, had always recognized these deviations and allowed the service claims. With the possible exception of the Rancho Golden Grove, practically all the rights were for inconsequential amounts of water for domestic purposes from the main canal, such as the flow of a one-inch pipe from the open ditch to a cemetery. By reason of the fact that these so-called preferential rights, less than a dozen in number, had been in existence for such a long period of years, it was not possible to obtain any definite or conclusive evidence from living witnesses of their own knowledge on their origin, especially upon the point as to whether the purported rights had arisen prior or subsequent to the dedication of the service to the public use. As long as the amount of water involved is of no consequence and not only would make no substantial difference in the net revenues of the utility or in any of the contentions of the Berkeley Olive Association, it is apparent that nothing would be gained at this time in attempting to secure additional evidence on this phase of the case or in now, under the evidence in this record, ordering any change in the charges now in effect. Should occasion arise in the future, this Commission gladly will inquire further into this purported unreasonable discrimination, provided assurance is given that the necessary evidence will be adduced, disclosing and establishing the facts necessary for the fair and proper determination of this issue.

After once more exhaustively considering the evidence in these proceedings regarding unfair discrimination, preferential rates, and the cost of irrigation service as submitted by both complainant and defendant, it is concluded that our original Decision No. 26351, supra, has granted this complainant all the

relief to which it is entitled upon the evidence presented.

The following form of Order is hereby recommended.

O R D E R

Berkeley Olive Association having filed a petition for a rehearing in the above entitled matters, a rehearing having been granted and held thereon, the matters having been again submitted and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that this Commission's Decision No. 26351, dated September 18, 1933, be and it is hereby affirmed.

The effective date of this Order shall be twenty (20) days from and after the date hereof.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of September, 1934.

Leon Whitsell
W. J. Carr
M. B. Harris
Wm. Stern Ryan

Commissioners.