

ORIGINALDecision No. 59363

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of DOMINGUEZ WATER CORPORATION,
a California corporation.
In re water main extensions.

) Application No. 37685
(As Amended)

In the Matter of the Investigation
on the Commission's own motion
into property, operations, con-
tracts, service, tariff rules and
regulations and main extension
rules of DOMINGUEZ WATER CORPORATION.

) Case No. 5919

ORDER MODIFYING DECISION NO. 58144
AND DENYING PETITIONS FOR REHEARING

Upon considering the petition of the City of Torrance and the petition of intervenors in the above-entitled proceedings and upon further consideration of Decision No. 58144, the Commission is of the opinion that said decision should be modified.

The application of Dominguez Water Corporation heretofore filed prayed that the Commission determine whether the public interest would be benefited by the approval of its agreement with the City of Torrance to transfer certain of its plant to the City without charge at the expiration of ten years, and, if so, that the Commission make its order approving the agreement and, if not, that it make an order refusing to approve it. The City of Torrance in its petition for rehearing alleged that the Commission erred in failing to act upon said issue. The intervenors allege that by virtue of the filed main extension rules of Dominguez Water Corporation they are entitled to refund of their advances.

The record discloses that Dominguez Water Corporation accepted advances totaling \$363,775.00 from the subdivider-intervenors

herein or from their predecessors in interest for the construction of certain water utility plant within the City of Torrance, but disregarded and failed to comply with the terms of its filed main extension rules in that it failed to enter into agreements provided by said main extension rules to refund said advances.

Dominguez Water Corporation is admonished that its lawfully filed and effective tariff, containing its filed extension rules, has the force and effect of a statute. (Pensylvania R.R. Co. v. International Coal Min. Co., 230 U.S. 184, 33 S. Ct. 893, 57 L. ed. 1446, 1451). Deviation therefrom is not permitted upon any pretext (Louisville and R. Co. v. Maxwell, 237 U.S. 95, 97; 59 L. ed. 853, 855) without authority of this Commission. That authority has not been sought. The burden is upon Dominguez Water Corporation forthwith to take appropriate steps to effect compliance with its extension rules applicable at the time of the making of said advances by said subdividers.

With reference to the petition of the City of Torrance for rehearing, the record discloses that Dominguez Water Corporation heretofore entered into the aforementioned contract with the City of Torrance, the terms of which have been partially performed, without having first sought or obtained the authorization of the Commission, despite the fact that Section 851 of the Public Utilities Code provides in part: "No public utility shall . . . assign . . . or otherwise dispose of . . . the whole or any part of its . . . plant, system, or other property necessary or useful in the performance of its duties to the public, . . . without first having secured from the Commission an order authorizing it so to do." Said Code section further provides "Every such . . .

assignment . . . [or] disposition . . . made other than in accordance with the order of the commission authorizing it is void." Nevertheless said contract was by its terms made subject to the "approval" of the Commission.

The record herein discloses that the full amount of subdividers' advances, if refunded by Dominguez Water Corporation in accordance with its applicable tariff rules, would be refunded prior to the expiration of the period at which Dominguez, in accordance with its agreement with Torrance, should transfer the system without charge to Torrance, subject to the authorization of the Commission. Dominguez is ordered herein to comply with its applicable extension rules, the effect of which is to require investment in its operative property of the amount of refund, totaling \$363,775, or approximately one-tenth of its total rate base.

To authorize an agreement which would have the result of transferring to the City of Torrance that portion of rate base represented by this sum without any payment therefor to Dominguez would cast a burden upon either the ratepayers or the stockholders of Dominguez which the Commission finds and concludes to be contrary to the public interest.

For the foregoing reasons, it is hereby ordered that Decision No. 58144 herein is modified as follows:

Dominguez Water Corporation is ordered to take appropriate steps to refund advances heretofore made by subdivider-intervenors herein, or their predecessors in interest, in accordance with its main extension rules which were filed and effective at the time of making such advances.

It is further ordered that authority to enter into or to carry out the terms of the contract between Dominguez Water Corporation and the City of Torrance (Ex. "B", application herein) be and it is hereby denied.

It is further ordered that the petitions of the City of Torrance and of the subdivider-intervenors for rehearing herein be, and the same are, hereby denied.

Dated at San Francisco, California, on this 8th day of November, 1959.

[Signature]
 President

[Signature]

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[Signature]

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 Commissioners