

ORIGINAL

Decision No. 65893

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Dominguez Water Corporation for an order amending applicant's special contract with Harvey Aluminum (Incorporated) to increase applicant's rates for water service to offset applicant's increased direct cost for water.

Application No. 44564
(Filed June 19, 1962)

Ralph B. Helm, for applicant.
Henry F. Lippitt, II, for Harvey Aluminum
(Incorporated), protestant.

O P I N I O N

This is an application of Dominguez Water Corporation (hereinafter called Dominguez) for an order amending applicant's special contract with Harvey Aluminum (Incorporated) (hereinafter called Harvey) to increase applicant's rates for water service in order to offset applicant's increased direct cost for water.

Public hearings on the application were held before Examiner Kent C. Rogers in Los Angeles on August 6 and 20, 1962, and the matter was submitted.

By Decision No. 60032, dated May 3, 1960, on Application No. 41993, as amended, Dominguez was authorized to carry out the terms and conditions of an agreement dated February 15, 1960, and continuing through February 28, 1965, with Harvey. This agreement provides that Harvey will, during said period, pay a minimum charge of \$2,166 per month for water up to and including 2,000,000 cubic feet and 8 cents per 100 cubic feet for all additional monthly consumption. Paragraph 6 of said agreement provides, in part:

"In the event of any change in the average yearly rate paid by Supplier to the West Basin Municipal District for Colorado River water during the life of this Agreement, Supplier and Consumer will, upon request of either, made within sixty days after the effective date of such change, forthwith renegotiate in good faith for adjustments in the rates and charges provided for in paragraph 5 hereof, taking into consideration Supplier's then prevailing costs for such water...."

Paragraph 11 of said agreement provides:

"This Agreement shall be subject to the approval of the Public Utilities Commission and shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction."

Applicant obtains its water from two sources: (1) pumped water, subject to assessments levied by Central and West Basin Water Replenishment District (hereinafter called Replenishment District), and (2) Colorado River water purchased from West Basin Municipal Water District (hereinafter called Municipal District). On July 1, 1961, Replenishment District increased its assessment from \$3.19 per acre-foot to \$5.75 per acre-foot. On January 1, 1962, Municipal District increased the price of purchased water from \$25.50 to \$27.50 per acre-foot. During 1961 the total water supplied by Dominguez to all of its customers was 37 percent purchased water and 63 percent pumped water, and it is estimated that as of January 1, 1962, the water supplied by Dominguez to all of its customers was 45 percent purchased water and 55 percent pumped water. For the period September 1, 1962 through October 31, 1963, the percentage is estimated at 50 percent purchased water and 50 percent pumped water.

In order to offset these increases Dominguez entered into negotiations with Harvey for an increase in rates pursuant to

Paragraph 6 of their agreement. Dominguez claimed that Harvey's rate should be increased by \$2.00 (or 4.6 mills per 100 cubic feet of water) for all water supplied to Harvey because all of Harvey's water is taken from a Municipal District connection. Harvey countered with an offer to pay the \$2.00 Municipal District increase for only 37 percent of the water sold to Harvey, on the grounds that only 37 percent of Dominguez' total water is purchased water, that Harvey did not contract for water from a specific source, and that Paragraph 6 of the agreement obligates it to pay only its proportionate share of any Municipal District increase. Negotiations between the two companies proved fruitless and Dominguez filed the instant application for authority to increase its charges to Harvey.

We take official notice of Decision Nos. 61396, 62656 and 64653 involving rate increases for Dominguez. In January of 1961 in Application No. 42262, Decision No. 61396, Dominguez was granted a rate increase for its general metered and metered irrigation service customers. This increase was based on a cost of water of \$25.50 per acre-foot for Municipal District water and an assessment of \$3.19 per acre-foot for Replenishment District water. At the time this decision was rendered we took into consideration the revenue obtained from special contract customers (of which Harvey was one).

In October of 1961 in Application No. 43615, Decision No. 62656, we again authorized Dominguez to increase its rates to its general metered and metered irrigation customers. At this time the Replenishment District had increased its assessment by \$2.56 per acre-foot. We found that the total offset needed to meet this increase was \$47,300, of which approximately \$22,500

should be obtained from the general metered and metered irrigation customers and that approximately \$25,000 might be obtained from the special contract customers. This division of the offset was reached by taking the total amount of water delivered by Dominguez to all of its customers and determining the percentage thereof delivered to the general metered and metered irrigation customers. We did not consider the actual source of water which each type customer received. We authorized Dominguez to renegotiate its contracts with its special contract customers to make up the additional \$25,000 of the increased costs.

While Dominguez was renegotiating with its special contract customers, there was an increase of \$2.00 per acre-foot in Municipal District water (January 1, 1962) and an increase of \$.88 in the Replenishment District assessment (July 1, 1962). In Decision No. 64653 dated December 18, 1962, in Application No. 44569, Dominguez was authorized to increase its rates to general metered and metered irrigation customers to offset a portion of the increase in the Replenishment District assessment and the increase in the cost of water purchased from the Municipal District. We recognized the fact that part of this increase should be borne by the special contract customers of Dominguez and that Dominguez had applications pending before this Commission (including this application) for increases to those customers.

The finding in Decision No. 64653 that increased rates were necessary for Dominguez was based on evidence that Dominguez' rate of return would be only 4.9 percent after giving effect to the rate increase; such return is substantially less than the 6 percent

found reasonable for this utility in Decision No. 61396, its most recent general rate increase proceeding.

In their agreement, the parties provided that if Dominguez incurred certain increased costs of water, the charges to Harvey would be renegotiated; the contract itself, however, does not provide a means for resolving the disagreement that has developed in the course of the parties' negotiations. In any event, and notwithstanding the contract between the parties, this Commission has continuing jurisdiction over the rates and charges for water supplied to Harvey by Dominguez, a public utility. (Law v. Railroad Commission, 184 Cal. 737; Atchison, Topeka & Santa Fe Railway v. Railroad Commission, 173 Cal. 577; see also City of San Bernardino v. Railroad Commission, 190 Cal. 562; Live Oak etc. Association v. Railroad Commission, 192 Cal. 132.) The exercise of that jurisdiction is necessary here. Based on this record, we find that the present rates and charges to Harvey are inadequate and should be increased.

Three different theories have been advanced for determining the amount of such an increase. (1) Dominguez argues that all of the water Harvey receives comes from the Municipal District, and that therefore Harvey should pay its proportionate share of the increase based on the amount of water Harvey uses compared to the total amount of Municipal District water purchased by Dominguez. (2) Harvey contends that, at most, it should bear the burden of the increased Municipal District assessment as to only 37 percent of the water purchased by Harvey, for only 37 percent of Dominguez' total supply was from the Municipal District; Harvey is opposed

to bearing any of the expense of the Replenishment District assessment.* (3) Dominguez counters that, if the fact that Harvey receives only Municipal District water is to be disregarded, then Harvey should also share in the burden of the Replenishment District assessment, with a total increase to Harvey greater than that resulting from the first theory.

On this record, we believe that the first theory is the correct one. The record does not disclose whether Dominguez would have entered into a special contract with Harvey had Municipal District water not been available for the full amount of Harvey's needs. We do find, however, that Harvey does receive water exclusively from that source and that it is reasonable that Harvey reimburse Dominguez for the increased cost of that water to the extent Harvey uses it. If the record made by the parties had more completely explored the background of the service to Harvey, we might conclude that Harvey should share in Dominguez' total increased cost of water, including the Replenishment District assessment. We cannot agree, however, that Harvey should be charged with less than the full burden of its use of Municipal District water unless it were also to be charged with a share of the burden of the Replenishment District assessments. Both types of assessments relate to the over-all water supply problem of this utility, and indeed, of the entire Los Angeles area; it is only fair, and the public interest requires, that Dominguez be reimbursed through

*During the trial, Harvey also contended that there is no evidence to warrant any increase in rates and that in fact there is evidence that Harvey's rates are too high and should be lowered. In view of our Decision No. 64653, in Application No. 44569, and the findings hereinafter set forth, there is no merit to these latter arguments.

rates for the increasing cost of its water supply. The fact that the parties did not mention the Replenishment District assessments in their contract is not binding on this Commission when exercising its jurisdiction to determine reasonable rate levels. If Harvey were to be charged for the Municipal District assessment on the reduced basis which Harvey suggests, and if at the same time Harvey were to be wholly excused from sharing in the costs associated with the program of the Replenishment District, an unreasonably heavy burden on other customers of Dominguez would result.

The Commission finds:

1. Subsequent to the agreement of February 15, 1960 between Dominguez and Harvey, and prior to the filing of this application, there was an increase in the cost of water to Dominguez of \$2.00 per acre-foot for Municipal District water, equivalent to 4.6 mills per 100 cubic feet.
2. Harvey is located on a Municipal District connection and receives water exclusively from that source. It is reasonable that Harvey reimburse Dominguez for the increased cost of that water to the extent Harvey uses it.
3. An increase in the rates and charges which Harvey pays to Dominguez, for water as hereinafter ordered, is reasonable and necessary to offset the increased cost of water that Dominguez is obligated to pay and to prevent impairment of Dominguez' ability to serve the public.
4. The increases in rates and charges authorized herein are justified and the present rates and charges, insofar as they differ from those herein prescribed, are for the future unjust and unreasonable.

5. The rates and charges authorized herein are not unduly discriminatory and will not place a burden on the general metered service customers, metered irrigation service customers, or other special contract customers of Dominguez.

6. The rates and charges for water served to Dominguez' other special contract customers are not, as to Harvey, unjust, unreasonable or unduly discriminatory.

Based on the foregoing findings of fact, we conclude that the application should be granted to the extent set forth in the following order.

O R D E R

IT IS ORDERED that:

1. Dominguez Water Corporation is authorized to increase its rate for water to Harvey Aluminum (Incorporated) by 4.6 mills per 100 cubic feet for all water actually delivered to Harvey, including water taken pursuant to the minimum charge specified in the contract dated February 15, 1960.

2. Except as herein modified, the written agreement between Dominguez Water Corporation and Harvey Aluminum (Incorporated), dated February 15, 1960, shall continue in effect.

3. Dominguez Water Corporation shall notify this Commission of the date of termination of said agreement within thirty days from and after any such termination.

The effective date of this order shall be September 1, 1963.

Dated at San Francisco, California, this 20th day of August, 1963.

William W. Bennett
President

Carl W. Lane

George T. Hoover

Frederick B. Hallock
Commissioners

Commissioner Peter E. Mitchell
present but not voting.