

ORIGINAL

Decision No. 67629

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 Direct Increased Costs for Water.

Application No. 46019

ORDER DENYING REHEARING

Harvey Aluminum (Incorporated), having filed a petition for rehearing of Decision No. 66763, and the Commission having considered said petition and each and every allegation therein, and being of the opinion that no good cause for granting a re-hearing has been made to appear;

IT IS ORDERED that said petition for rehearing be, and the same is, hereby denied.

Dated at San Francisco, California, this 28th day of July, 1964.

Fredrick B. Helshoff
President

Walter W. [Signature]

George T. Trover

Commissioners

I dissent, I would grant rehearing
Edna [Signature]

As my separate opinion will state and for the reasons therein given I would grant rehearing.
Shirley La [Signature]

COMMISSIONER PETER E. MITCHELL DISSENTING:

The petition for rehearing by Harvey Aluminum, Inc., should be granted. Without passing on the merits of the application of Dominguez Water Corporation for a rate increase, it is evident that Harvey Aluminum has been ordered by the majority decision to pay an increased annual amount of \$15,992 for its water as of July 1, 1964. This is an increase of 15%, making a yearly total of \$119,384.

Harvey Aluminum filed with the Commission a response, dated January 8, 1964, to the rate application, stating: "We are opposed to the application, consider that it is not supported by the law or the facts and request a public hearing on the matter." Harvey's petition for rehearing, filed March 2, 1964, raises several factual and legal points that must be resolved by the Commission prior to rate relief being granted Dominguez Water Corporation.

In fairness to Dominguez, it should be observed that its rate increase application did not demand ex parte action. Rather, it stated: "In the event Harvey does not wish to present evidence in connection with this application, applicant believes said application contains sufficient pertinent facts with respect to the order herein requested that the Commission may issue its order ex parte". But, Harvey did and does wish to present evidence (see Harvey's letter dated January 8, 1964, and petition for rehearing filed March 2, 1964). In Decision No. 66763, signed February 11, 1964,^{1/} the Commission was the

1/ Commissioners Bennett and Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

originator of ex parte action. By denial of Earvey's petition for rehearing, the majority has regenerated its annulment of due process.

There are important issues of retroactivity, discrimination, and contract relationship between the parties which are of moment. They have not been heard by the Commission; yet, they are disposed by the Commission. While I feel urged to express myself on these matters, it should be recognized that they, too, are part of an over-all responsibility of the Commission to adjudge in the lawful pursuance of its authority. Failure of such responsibility leaves the petitioner bereft of due process.

The denial of rehearing by the majority cannot be supported by me.


Peter E. Mitchell, Commissioner

San Francisco, California

July 31, 1964

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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BENNETT, William M., Commissioner, Dissenting Opinion:

Instant regulation has its advantages but due process and a full and fair hearing is not one of them. Upon the basis of an application and an accompanying financial statement, a decision increasing rates has been made despite the fact that a hearing was requested. Then, upon rehearing, that deficiency having been pointed out and a public hearing again specifically requested, the majority has denied that petition. It is impossible for me to determine the basis upon which the opinion and order of the majority herein was predicated. Despite the fact that the opinion and order herein itself refers to the fact that Harvey Aluminum declined to agree to the increase in rates, nonetheless such was imposed. The majority has ignored the requirements of Rule 23 of our Rules of Procedure. Further, the majority in reality is permitting a retroactive rate increase and so far as I can determine based upon no respectable precedent or authority but merely the arbitrary judgment so to do. I suggest that we are now compounding the error made in Decision No. 67369; Investigation of the rates, etc., of The Pacific Telephone and Telegraph Company, dated June 11, 1964, in Case No. 7409, and we are perpetuating it simply because to do otherwise would create an inconsistency with the error already made in that decision.

Noting the frequency with which petitions for rehearing are granted and taking note of the specific petition for rehearing filed herein, I would grant rehearing.


WILLIAM M. BENNETT
Commissioner

Dated at San Francisco, California, this 31st day of July, 1964.