

Decision No. 69488**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HARVEY ALUMINUM (INCORPORATED)

vs.

DOMINGUEZ WATER CORPORATION.

Case No. 8170
(Filed May 3, 1965) ✓OPINION AND ORDER

Harvey Aluminum (Incorporated), ^{1/} a very large industrial water customer of Dominguez Water Corporation, ^{2/} a public utility water corporation under the jurisdiction of this Commission, seeks repayment of \$3,846.76 ^{3/} plus interest covering Dominguez' water deliveries to it for the period January 1, 1964 through February 28, 1965. Harvey alleges that it was overcharged because, although the specific rates set forth in its contract with Dominguez were applied under said contract's terms as modified from time to time, it was entitled to be charged according to Dominguez' filed general metered service tariffs which were lower than the contract rates during said period.

The parties stipulated to the facts set forth in the complaint and answer thereto. The Commission finds that a public hearing is not necessary.

By Decision No. 60032, dated May 3, 1960, in Application No. 41993 Amended, Dominguez was authorized to carry out the terms

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- ^{1/} Hereinafter also referred to as Harvey.
^{2/} Hereinafter also referred to as Dominguez.
^{3/} Exhibit "B" shows an overcharge of \$6.72 due to an error in calculation of invoiced amount based on usage of 81,719 (100) cu. ft. for April, 1964.

and conditions of the written agreement with Harvey, dated February 15, 1960, and attached to said application as Exhibit "A". Said agreement provided, among other things, that the minimum charge and the rates and charges for quantities of water under the contract should not exceed, in any event, the rates and charges payable for comparable quantities of water pursuant to Dominguez' then prevailing regular schedule of water use and rates. The rates set forth in said contract provided for a minimum charge of \$2,166 per month for the first 2,000,000 cu. ft. of water usage, and 8 cents per 100 cu. ft. for all consumption over 2,000,000 cu. ft.

By Decision No. 65893, dated August 20, 1963, in Dominguez' Application No. 44564 for authority to increase the contract rates, the quantity rate was authorized to be and was increased by 4.6 mills per 100 cu. ft. for all water actually delivered to Harvey including water taken pursuant to the monthly minimum charge of \$2,166 specified in the contract dated February 15, 1960. Except as modified in said decision, said contract remained in effect. This authorized contract rate was less than Dominguez' general metered service rates.

By Decision No. 66763, dated February 11, 1964, in Dominguez' Application No. 46019 to again increase the contract rates, Dominguez was authorized to increase its rates to Harvey as follows:

- a. For all water actually delivered during the period from January 1, 1964 to June 30, 1964:

Minimum Charge, per month \$ 2,166

Quantity Rates:

First 2,000,000 cu.ft. per mo., per 100 cu.ft. \$ 0.1244
All over 2,000,000 cu.ft. per mo., per 100 cu.ft. .0961

- b. For all water actually delivered after June 30, 1964:

Minimum Charge, per month \$ 2,166

Quantity Rates:

First 2,000,000 cu.ft. per mo., per 100 cu.ft. \$ 0.1290
All over 2,000,000 cu.ft. per mo., per 100 cu.ft. .1007

Said decision provided that, except as modified therein, the agreement, dated February 15, 1960, between Dominguez and Harvey remained in effect. These contract rates, commencing January 1, 1964, and continuing through February 28, 1965 (the contract termination date), were higher than Dominguez' general metered service rates which were effective from January 1, 1963 to November 16, 1964, pursuant to Decision No. 64653 and from November 16, 1964 through February 28, 1965, pursuant to Decision No. 68075.

We find that the complaint has merit. The Commission had not altered the contract of February 15, 1960, providing that Harvey's rates would be governed by the contract or Dominguez' general metered service tariffs, whichever are the lesser, despite reasons justifying increases in the contract rates and Dominguez' general metered service tariffs.

A customer is entitled to avail himself of tariff terms most favorable to him, and it is the utility's responsibility to apprise him of them.

We conclude that the relief prayed for should be granted.

IT IS ORDERED that Dominguez Water Corporation shall, within ten days after the effective date hereof, refund to Harvey Aluminum (Incorporated) the amount of \$3,846.76 plus 6 per cent cumulative interest on the monthly invoiced differential amounts for the period from January 1, 1964 through February 28, 1965, as shown in the last column of Exhibit "B", and on the total differential amount shown in said column, from March 1, 1965 to date of refund,

and shall, within five days thereafter, report to the Commission in writing its compliance herewith.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 3rd day of AUGUST, 1965.

Frederick B. Holliff
President

George G. Grover

William B. ...

Commissioners

*I will file a
concurring opinion
C. G. Grover*

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.

COMMISSIONER PETER E. MITCHELL - CONCURRING OPINION:

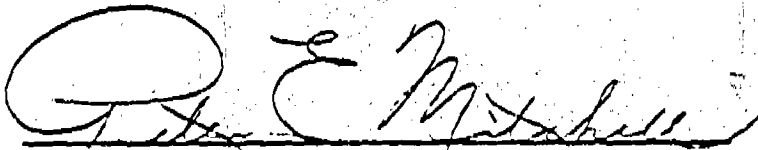
I concur in the findings and order.

Inasmuch as the rates approved by the Commission in Decision No. 66673, Application No. 46019, dated February 11, 1964,^{1/} were never examined at a public hearing, the attempt to modify the rates at this late date merely indicates the inadequacy of the said ex parte decision.

A petition for rehearing of Decision No. 66673 was filed on March 2, 1964, by Harvey Aluminum (Incorporated), requesting the ex parte decision be set aside and a hearing held. By a three to two vote, the Commission denied the petition for rehearing,^{2/} and as a result, rates were established which are now attacked in the instant complaint.

My dissent in Decision No. 67629, Application No. 46019, stated: "There are important issues of retroactivity, discrimination and contract relationship between the parties which are of moment". Obviously, the complaint in Case No. 8170 concerns the contract relationship between the parties. This should have been explored in a rehearing of Decision No. 66673.

Both parties herein have agreed to certain facts entered in the complaint and answer. With those circumstances in mind, I reluctantly concur quod hoc in the findings and order contained herein.


Peter E. Mitchell, Commissioner

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- 1/ Commissioners Mitchell and Bennett being necessarily absent did not participate in the disposition of this proceeding.
2/ Decision No. 67629, Application No. 46019, July 28, 1964, Commissioners Mitchell and Bennett dissenting.