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ORIGINAL

Decision No. 72065

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JAMES R. BOHAN,
Complainant,

-vs-

SAN MIGUEL TELEPHONE
COMPANY OF CALIFORNIA,
a corporation,

Defendant.

Case No. 8548
(Filed October 13, 1966)

O P I N I O N

This is a complaint by James R. Bohan (hereinafter referred to as Bohan) against San Miguel Telephone Company of California (hereinafter referred to as San Miguel). The complaint alleges that commencing from April 1, 1960, San Miguel billed and collected from Bohan charges for telephone service in excess of its tariff rates on file with this Commission. Bohan alleges that he has paid San Miguel \$10.70 per month whereas the appropriate tariff rate was and is \$6.60 per month, which has resulted in an overpayment of \$4.10 per month. Bohan requests (1) an order directing San Miguel to refund the amount of the alleged overcharges with interest thereon together with costs of suit, and (2) an order permanently enjoining San Miguel from billing Bohan at other than its lawful rates filed with the Commission.

San Miguel did not respond to the complaint. (See Rules of Procedure, Rule 13.) The matter was set for hearing before Examiner Jarvis at Guerneville on January 24, 1967. On January

20, 1967, San Miguel filed with the Commission a stipulation that the Commission could enter an order against it requiring San Miguel "to refund or credit to the account of the complainant an amount equal to \$4.10 per month plus applicable Federal Taxes for each month, for the period allowed by §736 of the California Public Utilities Code and enjoining the defendant as prayed for." In view of the stipulation, the matter was removed from the Commission's hearing calendar on January 20, 1967, and an appropriate order will hereinafter be entered.

It is conceded that San Miguel has overcharged Bohan \$4.10 per month since April 1, 1960. This was a clear violation of Section 532 of the Public Utilities Code. Section 736 of the Public Utilities Code in part provides that:

"All complaints for damages resulting from the violation of any of the provisions of Sections 494 or 532 shall either be filed with the commission, or, where concurrent jurisdiction of the cause of action is vested in the courts of this State, in any court of competent jurisdiction within three years from the time the cause of action accrues, and not after."

The complaint was filed on October 13, 1966. In the light of the statute-of-limitations contained in Section 736, the Commission has no jurisdiction to make an award for any damages prior to October 13, 1963. (Kaiser Steel Corp. v. S.P. Co., 56 Cal.P.U.C. 580.)

Among the items of relief requested, Bohan seeks costs and interest on the overcharges. There is no statutory authority authorizing the Commission to award costs. Therefore, none can be awarded in this proceeding. (See Williams v. P.T. & T. Co.,

Decision No. 69606 in Case 8036, partially reported at 64 Cal.P.U.C. 736.) Section 734 of the Public Utilities Code in part provides that:

"When complaint has been made to the commission concerning any rate for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an unreasonable, excessive, or discriminatory amount therefor in violation of any of the provisions of this part, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection if no discrimination will result from such reparation."
(Emphasis added)

Sections 532 and 734 are included in Part I of the Public Utilities Code. Therefore, the Commission may award interest in this proceeding if no discrimination will result. The Commission is of the opinion that no discrimination would result from an award of reparations herein and that interest should be awarded on the overcharges collected at the rate of 7 percent per annum. (Cal. Constit., Art. XX, Sec. 22 (interest rates).) No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. At all times herein mentioned, San Miguel's lawful tariff rate filed with this Commission called for a charge for the service rendered to Bohan of \$6.60 per month, plus any applicable taxes.

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2. From October 13, 1963 until January 1, 1967, San Miguel demanded and collected from Bohan a charge of \$10.70 per month, plus applicable taxes, which charge was in excess of the rates in San Miguel's tariff on file with this Commission.

3. Bohan is entitled to reparations for the overcharges hereinafter set forth. If Bohan is awarded such reparations, no discrimination will result therefrom.

4. Bohan is entitled to reparations in the sum of \$197.49, which is computed as follows:

Month	Prev. Mo. Balance (1)	Over- Payment (2)	7% Per Yr. Interest (3) = (1) x 0.005833	Overpay. Plus Int. (4) = (2) + (3)	Overpay. Balance (5) = (1) + (4)	10% Fed. Tax (6) = (2) x 0.10	Total Tax Paid (7) = Σ(6)	Total Amt. Due (8) = (5) + (7)
<u>1963</u>								
OCT.	0.000	* 2.51	0.000	2.510	2.510	0.25	0.25	2.76
NOV.	2.510	4.10	.015	4.115	6.625	.41	.66	7.28
DEC.	6.625	4.10	.039	4.139	10.764	.41	1.07	11.83
<u>1964</u>								
JAN.	10.764	4.10	.063	4.163	14.927	.41	1.48	16.41
FEB.	14.927	4.10	.087	4.187	19.114	.41	1.89	21.00
MAR.	19.114	4.10	.111	4.211	23.325	.41	2.30	25.62
APR.	23.325	4.10	.136	4.236	27.561	.41	2.71	30.27
MAY	27.561	4.10	.161	4.261	31.822	.41	3.12	34.94
JUNE	31.822	4.10	.186	4.286	36.108	.41	3.53	39.64
JULY	36.108	4.10	.211	4.311	40.419	.41	3.94	44.36
AUG.	40.419	4.10	.236	4.336	44.755	.41	4.35	49.10
SEP.	44.755	4.10	.261	4.361	49.116	.41	4.76	53.88
OCT.	49.116	4.10	.286	4.386	53.502	.41	5.17	58.67
NOV.	53.502	4.10	.312	4.412	57.914	.41	5.58	63.49
DEC.	57.914	4.10	.338	4.438	62.352	.41	5.99	68.34
<u>1965</u>								
JAN.	62.352	4.10	.364	4.464	66.816	.41	6.40	73.22
FEB.	66.816	4.10	.390	4.490	71.306	.41	6.81	78.12
MAR.	71.306	4.10	.416	4.516	75.822	.41	7.22	83.04
APR.	75.822	4.10	.442	4.542	80.364	.41	7.63	87.99
MAY.	80.364	4.10	.469	4.569	84.933	.41	8.04	92.97
JUNE	84.933	4.10	.495	4.595	89.528	.41	8.45	97.98

* Partial Month - October 13-31 19/31 x 4.10 = 2.51

(Continued)

Month	Prev. Mo. Balance (1)	Over- Payment (2)	7% Per Yr. Interest (3)	Overpay - Plus Int. (4)	Overpay. Balance (5)	10% Fed. Tax (6)	Total Tax Paid (7)	Total Amt. Due (8)
<u>1965</u>								
JULY	89.528	4.10	.522	4.622	94.150	.41	8.86	103.01
AUG.	94.150	4.10	.519	4.649	98.799	.41	9.27	108.07
SEP.	98.799	4.10	.576	4.676	103.475	.41	9.68	113.16
OCT.	103.475	4.10	.604	4.704	108.179	.41	10.09	118.27
NOV.	108.179	4.10	.631	4.731	112.910	.41	10.50	123.41
DEC.	112.910	4.10	.659	4.759	117.669	.41	10.91	128.58
<u>1966</u>								
JAN.	117.669	4.10	.686	4.786	122.455	** .12	11.03	133.48
FEB.	122.455	4.10	.714	4.814	127.269	** .12	11.15	138.42
MAR.	127.269	4.10	.742	4.842	132.111	** .12	11.27	143.38
APR.	132.111	4.10	.771	4.871	136.982	.41	11.68	148.66
MAY	136.982	4.10	.799	4.899	141.881	.41	12.09	153.97
JUNE	141.881	4.10	.828	4.928	146.809	.41	12.50	159.31
JULY	146.809	4.10	.856	4.956	151.765	.41	12.91	164.68
AUG.	151.765	4.10	.885	4.985	156.750	.41	13.32	170.07
SEP.	156.750	4.10	.914	5.014	161.764	.41	13.73	175.49
OCT.	161.764	4.10	.944	5.044	166.808	.41	14.14	180.95
NOV.	166.808	4.10	.973	5.073	171.881	.41	14.55	186.43
DEC.	171.881	4.10	1.003	5.103	176.984	.41	14.96	191.94
<u>1967</u>								
JAN.	176.984	4.10	1.032	5.132	182.116	.41	15.37	197.49

** Tax Comp. at 3%

5. Daily interest at 7 percent on \$197.49 is 4 cents.

Conclusions of Law

1. San Miguel should be ordered to pay Bohan reparations in the sum of \$197.49 and the sum of 4 cents per day from February 1, 1967 until the date such reparations are paid.

2. San Miguel should be permanently enjoined from charging or receiving from Bohan, for telephone service furnished, compensation different than the applicable rate provided in its tariff as it presently exists or is in the future lawfully changed or modified.

O R D E R

IT IS ORDERED that:

1. Within ten days after the effective date of this order San Miguel Telephone Company of California shall pay to James R. Bohan as reparations the sum of one hundred ninety-seven dollars and forty-nine cents (\$197.49) with interest at the rate of four cents (\$.04) per day from February 1, 1967 until the date of payment.

2. San Miguel Telephone Company of California is hereby permanently enjoined from charging or receiving from Bohan, for

