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Decision 95-08-011 August 11, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Twin Valley Water Company, Inc. Application 94-10-022
for authority to increase its gross (Filed October 17, 1994)
annual revenues of \$93,320 (150%)
for test year 1994.

ORIGINAL

Robert A. Loehr, Attorney at Law, Steve Havens,
and Martin Abramson, for Twin Valley Water

Company, applicant
Britton Bigelow, for himself, interested

James Rood, Attorney at Law, and Art Gallegos,
for Division of Ratepayer Advocates

OPINION

Summary of Decision

Twin Valley Water Company, Inc. (TVWC), is authorized to increase rates by amounts designed to increase gross revenue to \$58,468 for 1995, including the interim raise granted on December 21, 1994, by Resolution W-3896. This rate increase allows TVWC to recover the bulk of its anticipated cost of operations, and will result in a 13.60% rate of return for the company for 1995.

Comments on Proposed Decision

Upon review of comments filed by TVWC, adjustment was made to increase the Rate of Return from 13.60% to 14.00% to reflect the Commission Advisory and Compliance Division (CACD) financial guidelines issued in May 1995. We note that 14.00% is at the low end of the discretionary band, but feel that a higher percentage figure is not warranted in this case.

We have also accepted TVWC's rate base figures as presented in its comments. This includes contributions of \$13,500 for 1993 and \$14,110 plant additions also in 1993. These adjustments result in an increase in gross revenues to \$61,387, an increase of 64.11% over the "as filed" figures of February 1994.

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Decision 92-08-011 August 11, 1992

and a 31.3% increase over the interim rates granted in December 1994 by Resolution W-3896. Any further requested adjustments are denied. The changes authorized are incorporated into Revised Attachment A. The changes herein do not alter our authorization for TVWC to make application for an additional General Rate Case (GRC) increase in one year based upon its experience under the increase here granted.

History

TVWC, a Class D (less than 500 connections) water company, first came to the Commission's attention in 1983 in Case (C.) 83-10-02 which involved, among other things, several lawsuits filed by customers concerning management of TVWC. TVWC had been in existence since 1965, operating outside Commission jurisdiction. The company was built and operated by its principal owner (the present owner's father) and his two associates, in order to provide water service for several new homes and other properties built by the owner and his partners. Case 83-10-02 was decided by Decision (D.) 85-09-007, which set the as-filed tariff rates and declared TVWC a public utility subject to California Public Utilities Commission (CPUC) jurisdiction.

In August 1994, the Commission issued D.94-08-021, which authorized the transfer of ownership of the company from the original owner to his son, Steven L. Havens, the current owner.

This is the first request the company has filed for a rate increase since 1983.

On February 7, 1994, in accordance with policy dictates contained in D.93-11-066, the decision which concluded the Commission's investigation into small water company operations and risks (Investigation 90-11-033), TVWC instituted this proceeding by filing an informal General Rate Case for a rate increase from its current "as-filed" rates which generate \$37,405 annual revenue to \$141,459, effective immediately. The CACD evaluated the filing and after a series of discussions with a CACD representative, TVWC indicated that it was willing to compromise its requested increase at \$93,320.

Hearings

On September 29, 1994, pursuant to notice, a public meeting was conducted by Commission Water Utilities Branch staff in Morgan Hill. Approximately 40 customers, half of TVWC's customer base, attended the meeting, and were unanimous in their opposition to, and criticism of, the requested increases. The ratepayers, mostly self-employed, sophisticated business owners, acrimoniously challenged the operational and sales data presented by the company and requested a formal Commission proceeding to resolve the many issues involved.

Following the above-described public meeting, TVWC's original advice letter filing was converted to a formal application for a GRC, which is the subject of this proceeding. On or about November 16, 1994, an Advice of Participation in this proceeding was filed by the Division of Ratepayer Advocates. On December 21, 1994, recognizing the pressing nature of TVWC's financial condition, the Commission issued Resolution W-3896, which authorized a 25% temporary rate increase, subject to refund if required by the terms of the decision disposing of the formal application. Resolution W-3896 authorizes a zero rate of return on ratebase, as well as zero profit and is subject to full refund in keeping with Commission policy in interim rate relief.

Eight protests to the application were received from TVWC customers. The general tone of these protests is that TVWC does not merit an increase of any type until all of the merits of the application have been heard. Of particular note is one protest that does not agree with the interim increase authorized by Resolution W-3896. Additionally, the protests speak of the extremely high service charges (9 to 15 times present rates) that would be generated from the original draft advice letter as filed; however, these service charges would result from applying the unmodified "as filed" request to the present tariff rates, without any mitigating measures being applied. An increase of that magnitude does not occur as a result of this decision. High fixed costs, ever-increasing operating costs, a very

A prehearing conference was held before the assigned Administrative Law Judge (ALJ) on February 16, 1995, and an evidentiary hearing was held by the ALJ at Morgan Hill on February 22, 1995. Simultaneous briefs were submitted by the parties on March 13, 1995, at which time the case stood submitted. Limitation on Amount of Increase Sought

In preparation for the hearing on its application, TVWC sought the assistance of Commission staff in preparing the notice which was TVWC's duty to prepare to be published or otherwise served upon TVWC's ratepayers. In response, staff prepared the notice (Exhibit 1, p. 2) and forwarded the same to TVWC with instructions directing how service was to be made. The notice as prepared contained an error in that it indicated that TVWC was seeking a rate increase in the amount of \$93,320, the amount of TVWC's compromise offer, rather than \$141,459, TVWC's original and still-desired request amount. TVWC recognizes that it is bound by the amount stated in the notice and the amount of its present increase must be limited by the amount specified in the notice as published (\$93,320), even though the rejection of its compromise at that figure by CACD had the legal effect of reinstating the increase sought to its original figure of \$141,459. While the error is regrettable, the responsibility for its occurrence must be shared by both CACD and TVWC. While the error was CACD's, its effect could have been prevented if TVWC personnel had noted the discrepancy in the stated dollar amount of the increase sought and called the error to CACD's attention prior to service of the notice. In any event, since the notice is ultimately the responsibility of the applicant, the figure contained in the notice (\$93,320) limits the size of the maximum permissible increase under this application.

Discussion

TVWC suffers from problems typical of virtually every Class D water company in this state. It has a small, aging, minimally effective physical plant in serious need of repair and updating; high fixed costs; ever-increasing operating costs; a very

small ratepayer base (approximately 80, mainly residential, "domestic" customers) which will not increase in size absent new construction in the service area, which is not anticipated; and a need to drill new wells due to degradation of existing water quality.

In late 1993, the Department of Health Services (DHS) issued Compliance Order 02-086 against TVWC's system, as a result of repeated chemical test failures of the water supply. TVWC's sources of water are two wells approximately 100 feet apart, the water from which is treated by hand-fed chemicals at the storage tanks. It is these two wells that have been ordered closed by the DHS order due to excessively high levels of nitrates. The acceptable upper level of nitrates is 45 milligrams per liter (mg/l). TVWC's water supply registers in the neighborhood of 60 mg/l. According to Commission staff, any nitrate content above 45 mg/l is known to be hazardous to infants up to 12 months old as well as to pregnant women. The violation was first noticed by DHS in 1991.

By Compliance Order 02-086, DHS ordered TVWC's water well system replaced, which will necessitate a \$150,000 Safe Drinking Water Bond Act loan by the State Department of Water Resources (DWR), the amortization of which will be borne by the ratepayers in addition to this general rate increase. TVWC initiated the loan process in October 1994, and the Commission authorized TVWC to obtain the loan by Resolution F-633 (dated December 21, 1994). The loan is to be administered by DWR. An appropriate surcharge has been added to TVWC's tariffs to amortize the loan over a 25-year period. The loan is therefore not a part of this formal procedure.

All replacement work under Compliance Order 02-086 was to be completed by March 31, 1995.

Summary of Financial Data

DRA's preliminary investigation reveals that TVWC is currently losing money because its filed rates have been in effect without modification since 1985 under D. 85-09-007. The present interim rates were, as noted above, put in place by Resolution W-3896 in December 1994 to help alleviate the company's financial

"pinch" occasioned by the ever-widening gap between income and outgo. Great variations exist between TVWC's August 17, 1994 resubmittal, and recent Commission approved rates for 19 Class D water companies processed by the Commission from January 1994 through January 5, 1995. (As examples) in the area of labor costs, TVWC asks \$456 annually per customer compared to \$113 average for the above noted 19 other Class D companies. Similarly, TVWC asks revenue of \$1,196 annually per customer compared to an average of \$337 for the other Class D companies. (TVWC's main problem appears to be that it suffers from runaway costs which desperately need to be brought under control. For example, in account category 670, \$18,700 is presently allocated to office salaries, and an additional \$7,000 is sought in that category. According to testimony elicited at the hearing, the office staff consists of three part-time employees, including the owner's wife. These few charges are in addition to \$19,000 for employee salaries (category 630), in which an increase of \$6,000 is sought. Once again, the employees covered in this category are part-time employees. In addition, an increase in management salaries (category 671) currently at \$18,800 is sought in the amount of \$8,400. In short, the total amount currently allocated to salaries is \$56,500, which exceeds the total revenue by some \$19,095. TVWC requests that those salaries be increased to a total of \$77,900 out of total revenues of \$93,320. Given the size of TVWC, these figures are simply unrealistic. Similar problems are apparent in several other expense item categories.

At the hearing held on February 22, 1995, a great deal of testimony was devoted to TVWC's need for immediate as well as long-term additional funding, and the Commission recognizes and is sympathetic to TVWC's plight; however, the bulk of the applicant's requests are not supported by "hard" evidence. At best, the testimony offered by TVWC was vague and lacking in both specificity and foundation in fact. As a result, we are not comfortable in basing a decision having long-term application on those figures -

and/or estimates. We believe a better approach would be to grant a conservative increase and allow a later application to be made based upon the actual experience of TVWC under the increase here granted. While this may impose something of a hardship on the applicant, we believe the public would best be served by taking a conservative approach and requiring TVWC to achieve its revenue goal by a series of incremental applications based on real financial performance data rather than by means of applications for multi-hundred percent increases filed a decade apart. We will, and require TVWC to perform, for a year under the terms of this decision, at the conclusion of that period it may apply for an additional increase, if necessary, based on the experience gained during the year.

Revenue Authorized

In conformity with our views expressed above, we hereby adopt the revenue increase schedule recommended by DRA set forth in Appendix 3 to the February 1995 DRA Report on the Results of Operations For Twin Valley Water Company (Exhibit 9, Appendix 3) a copy of which is appended hereto as Attachment A.

We readily admit that experience over the next year may prove our estimates to be flawed in some instances, and some future adjustment, up or down, may be required. However, given the imprecise nature of the financial data contained in the record, we feel that the schedule set forth in Attachment A is realistic and reflects an honest attempt to balance the interests of TVWC and its ratepayers while at the same time preserving TVWC as a viable entity performing a necessary service for the consumers of its services.

Findings of Fact

1. In Late 1993, DHS issued Compliance Order 02-086, against TVWC's system, as a result of repeated chemical test failures (excessively high concentration of nitrates) of the water supply, and ordered the wells closed and new source provided (new wells drilled).

2. On February 7, 1994, TVWC filed an advice letter providing for a general rate increase to increase its gross revenue from \$37,405 to \$141,459 effective immediately.

3. Following a public meeting held by Commission staff on September 29, 1994, at which vigorous opposition to the advice letter filing was expressed, the advice letter filing was converted to a formal application for a general rate increase which is the subject of this proceeding.

4. The present application for rate increase is the first filed by TVWC since D:85-09-007, which set the "as filed" tariff rates and declared TVWC a public utility subject to Commission jurisdiction, was issued.

5. Eight protests to the application for general rate increase were filed by TVWC customers, each expressing concern over the size of the requested increase or expressing some negative comment concerning TVWC's operations.

6. In October 1994, TVWC initiated an application with DWR under the Safe Drinking Water Bond Act seeking a \$150,000 well replacement loan. By Resolution F-633 dated December 21, 1994, the Commission authorized TVWC to obtain the loan. The loan is to be administered by DWR. An appropriate surcharge has been added to TVWC's tariffs to amortize the loan over a 25-year period. The loan is not a part of this application.

7. On December 21, 1994, the Commission issued Resolution W-3896, which authorized TVWC a 25% temporary general rate increase, subject to refund if required by the terms of the decision disposing of the formal application.

8. The formal notice of hearing on the application which was to be served on TVWC's customers was prepared, as an accommodation to TVWC, by Commission staff.

9. The notice as prepared and as published, contained an error in that it indicated that the application sought a rate increase. The notice was corrected and reissued.

increase sufficient to generate gross revenue of \$93,230 rather than \$141,459 actually sought.

10. Rather than republish the notice, TVWC elected to be bound by the \$93,320 request as specified in the published notice, thus in this application, TVWC seeks a general rate increase to increase its gross annual revenue to \$93,320.

11. TVWC has a small, aging physical plant in serious need of repair and updating; high fixed costs; ever-increasing operating costs; a very small ratepayer base (approximately 80, mainly residential customers) which will not increase in size absent new construction in the service area which is not anticipated and a need to drill new wells due to degradation of water quality.

12. TVWC is currently losing money because the rates in effect at the time of application were set in 1985 under D.85-09-007 and have not been increased to the date of this application.

13. An appropriate surcharge has been added to TVWC's tariffs to amortize the Clean Drinking Water Bond Act loan over a 25-year period. The loan is therefore not a part of this formal proceeding.

14. The 25% interim increase granted in Resolution W-3896, dated December 21, 1994, was allowed to help alleviate TVWC's financial pinch occasioned by the ever-widening gap between income and outgo.

15. We are unable to grant the requested rate increase in its entirety because the request seems excessive.

16. TVWC's costs and expenses appear to be out of control and are high for a Class D water company of its size, and need to be brought under control.

17. Testimony offered by TVWC at the hearing held on February 22, 1995, was vague and lacking in both specificity and "hard" evidence. As a result, the Commission lacks confidence in basing any long-term rates on said testimony, and prefers to grant

a conservative increase at this time and allow an additional application a year from date of this decision based on experience gained during the coming year under the increase granted herein.

18. TVWC may apply for a rate increase next year. 19. A rate increase is necessary, but, since precise financial details are unavailable, the Commission may grant an increase based on a reasonable estimate of need.

Conclusions of Law

1. The amount of increase sought in this application is limited to \$93,320, the amount set forth in the published notice of application and notice of hearing.

2. TVWC requires and is entitled to a rate increase. 3. Because financial information produced at the hearing was vague and lacking in both specificity and hard evidence, the Commission is able to grant only a limited increase, based upon an estimation of demonstrated need.

4. TVWC should reapply after gaining experience under the increase here granted.

5. Based on the evidence of record, TVWC should be allowed a rate increase sufficient to generate gross revenue in the amount of \$58,468, including the 25% increase granted by Resolution W-3896, for test year 1995, as set forth in Attachment A.

6. TVWC should be allowed to file another request for rate increase, should it be necessary, not less than one year from the date of this decision.

12. We are unable to grant the request in its entirety because the request seems excessive. 13. TVWC's costs appear to be out of control and are high for a Class B water company of its size, and need to be brought under control.

IT IS ORDERED that:

1. Twin Valley Water Company, Inc. (TVWC) is granted an increase in rates sufficient to generate gross revenue of \$58,468, including the 25% increase granted by Resolution W-3896, for test year 1995.

2. TVWC may, if necessary and not less than one year from the date of this decision, apply for an additional increase based upon its experience under the increase granted herein.

3. Twin Valley Water Company, Inc. is authorized to file the revised schedule attached to this order in Appendix A. This filing shall comply with General Order 96-A. The effective date of the revised schedules shall apply five days after the date of filing. The revised schedules shall apply to service rendered on or after the effective date.

This order is effective today.

Dated August 11, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY

Wesley Franklin

Acting Executive Director

A.94-10-022 /ALJ/RLR/CACD/ddy

APPENDIX A

Twin Valley Water Company

Schedule No. 1

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all general metered water service.

TERRITORY

The unincorporated area in Santa Clara County, west of the City of Morgan Hill as delineated on the filed service area map.

RATES

Quantity Rates:

	Per Meter Per Month
For all water delivered, per 100 cu. ft.	\$1.410 (I)

Service Charge:

For 3/4-inch meter	18.60 (I)
For 1-inch meter	27.80 I
For 1-1/2-inch meter	37.00 I
For 2-inch meter	50.00 (I)

The service charge is a readiness-to-serve charge applicable to all metered service and to which is added the charge for water used computed at the quantity rates.

SPECIAL CONDITIONS:

1. All bills are subject to the reimbursement fee set forth in Schedule No. UF.

(END OF APPENDIX A)

ATTACHMENT A-REVISED

SUMMARY OF EARNINGS
TWIN VALLEY WATER COMPANY MORGAN HILL, CALIFORNIA
TEST YEAR 1995
A94-10-022

ITEM CPUC ACCT #	PRES RATES		REQ RATES	
	UTILITY	STAFF	UTILITY	RECOMMENDED STAFF
	AS FILED FEB 1994	AS PER RES. W-3896 DEC 1994	AS REVISED BY TWINV AUG 1994	
400 OPERATING REVENUES				
470 METERED	\$37,405	\$46,752	\$93,320	\$61,387
400 TOTAL REVENUE	\$37,405	\$46,752	\$93,320	\$61,387
% INCREASE OVER RATES OF W-3896.			99.6%	31.3%
% INCREASE TO "AS FILED"		24.99%	149.49%	64.11%
401 OPERATING EXPENSES				
403 DEPRECIATION	\$2,679	\$0	\$8,900	\$8,900
408 TAXES, OTHER	\$7,172	\$2,262	\$5,100	\$3,000
615 PURCHASED PWR	\$16,102	\$15,000	\$15,000	\$15,000
618 OTHER VOL RELATED	\$190	\$200	\$200	\$200
630 EMPLOYEE LABOR	\$19,000	\$16,000	\$6,000	\$2,400
640 MATERIALS	\$4,000	\$2,750	\$2,750	\$2,750
650 CONTRACT WORK	\$2,500	\$0	\$10,000	\$2,000
660 TRANSPORTATION	\$1,422	\$1,000	\$1,200	\$1,000
664 OTHER PLANT MNTCE	\$250	\$250	\$250	\$250
670 OFFICE SALARIES	\$18,720	\$0	\$7,000	\$0
671 MANAGEMENT SALARY	\$18,800	\$0	\$8,400	\$1,200
674 EMPLOYEE BENEFITS	\$12,504	\$0	\$5,090	\$250
676 UNCOLLECTIBLES	\$363	\$360	\$360	\$360
678 OFFICE SERVICES & RENTAL	\$557	\$500	\$500	\$500
681 OFFICE SUPPLIES & EXP	\$348	\$350	\$350	\$350
682 PROF SVCS-LEG & ACCTG	\$7,650	\$3,000	\$6,070	\$4,800
684 INSURANCE	\$3,050	\$2,780	\$2,780	\$2,500
688 REG COMM FEES	\$563	\$1,000	\$560	\$560
689 GENERAL EXPENSES	\$515	\$500	\$500	\$500
TOTAL EXPENSES	\$116,385	\$45,952	\$81,010	\$46,520
STATE TAXABLE INCOME	(\$78,980)	\$800	\$12,310	\$14,867
409 STATE INCOME TAX	\$2,331	\$800	\$1,145	\$1,383
FED TAXABLE INCOME	(\$81,311)	\$0	\$11,165	\$13,484
410 FED TAX	\$3,412	\$0	\$1,675	\$2,023
NET REVENUE	(\$84,723)	\$0	\$9,490	\$11,462
RATE BASE				
101 AVERAGE PLANT	\$124,993	\$0	\$351,220	\$351,220
108 AVG DEPREC RESERVE	\$2,679		\$139,850	\$139,850
NET PLANT	\$122,314		\$211,370	\$211,370
252 LESS ADVANCES	\$0		\$27,000	\$13,500
271 LESS CONTRIBUTIONS	\$0		\$129,400	\$129,907
131 PLUS WORKING CASH	\$8,878		\$8,880	\$8,880
151 PLUS MATERIALS	\$12,000	\$0	\$5,000	\$5,000
ADJUSTED RATE BASE	\$143,192	\$0	\$68,850	\$81,843
RATE OF RETURN	-59.17%		13.78%	14.00%
TOTAL EXPENSES	\$122,128	\$46,752	\$83,830	\$49,925

(END OF ATTACHEMENT A)