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**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**DIVISION OF WATER AND AUDITS  
Water and Sewer Advisory Branch**

**RESOLUTION NO. W-4882  
July 14, 2011**

**R E S O L U T I O N**

**(RES. W-4882), APPLE VALLEY RANCHOS WATER COMPANY  
(AVR). ORDER AUTHORIZING APPROVAL OF AGREEMENT  
TO PROVIDE WATER SERVICE TO THE TOWN OF APPLE  
VALLEY (TOWN).**

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**SUMMARY**

By Advice Letter No. 165-W-A, filed on May 6, 2011, AVR seeks Commission approval to provide water service to the Town pursuant to a new water service tariff deviation agreement (Agreement), which the Town and AVR executed on March 10, 2011.

This Resolution grants AVR's request to provide water service to the Town under the Agreement once the Town closes escrow on the Apple Valley Golf Course.

**BACKGROUND**

AVR provides service to the Town for the irrigation of the golf course at the Apple Valley Country Club (AVCC). The Town operates the golf course through an operating agreement and is in the process of acquiring AVCC. Escrow is expected to close soon, at which point the golf course will be renamed the Apple Valley Golf Course (AVGC). For simplicity, the golf course is referred to in this resolution and the Agreement as AVGC.

AVR currently provides service to AVGC at rates and under conditions prescribed by AVR Schedule No. 3, Non-Residential General Metered Service (Schedule No. 3). The Town has determined that it is not economically feasible to continue to receive water service from AVR at current rates for the irrigation of AVGC. The Town has made plans to design and construct an irrigation well at AVGC. The Town contacted AVR regarding its plan to construct a well unless a lower water rate, similar to the tariff deviation agreement between AVR and the Town for service at James Woody Park, was available for service at AVGC. Following discussions between the Town and AVR, AVR and the Town developed the Agreement to allow AVR to continue to provide service to the Town at AVGC. Approval of the Agreement will allow the Town to cancel its plans to construct the irrigation well at AVGC.

Historically, the AVGC owned and operated a well to provide irrigation for the golf course. In 2009, shortly after the Town assumed operational control of the AVGC, the single irrigation well

failed and the well casing was compromised. The Town made several attempts to re-establish the production capacity of this well with only limited success. In the interim, the Town was forced to purchase its remaining irrigation water for the AVGC from AVR. In mid-2010 the Town entered into discussions with AVR regarding the possibility of a tariff deviation. Due to the difficulty in implementing a deviation before the end of the irrigation season, the mild and relatively wet summer that year, and issues that had arisen with the process of Town's acquisition of the AVGC, discussions were deferred to the following year.

In 2011 the Town informed AVR that it had determined that it would be more cost effective for the Town to construct a new irrigation well and irrigate the AVGC by pumping its own water than to continue to purchase water service from AVR unless a deviation from AVR's regular tariff could be arranged. The Town further informed AVR that until such time as the escrow closed, the Town would refrain from spending the funds necessary to construct a new irrigation well at the AVGC. The terms of escrow are nearing completion and closing of escrow is anticipated soon. With the warmer summer month's fast approaching, Town staff must make a recommendation to the Town Council to either enter into the Agreement with AVR for irrigation of the AVGC, or in the alternative, recommend to Town Council that the Town proceed with construction of a new irrigation well in time for it to be operational for the warmer summer months.

Based on discussions between the Town staff and AVR, the Town understood that any deviation from AVR's tariff rate for service to AVGC must be acceptable to the Commission. A deviation rate needs to be set such that it will not only remove the financial incentive for the Town to construct a new well, but it must also provide benefit to the ratepayers of AVR from the retention of a stream of revenues from the Town exceeding the incremental cost to AVR of providing service at the AVGC. AVR proposed to the Town the terms of the Agreement for which approval is requested herein and Town staff reviewed and accepted the tariff deviation proposed by AVR. Town requested that AVR finalize the Agreement so that it could be presented to the Town Council for approval to allow the Town and AVR to execute the Agreement so that AVR could submit it to the Commission for approval.

The Agreement proposed in Advice Letter 165-W-A is similar in design to the tariff deviation agreement between Town and AVR for irrigation service to James Woody Park, submitted to the Commission in Advice Letter 126-W and approved by the Commission on September 23, 2004, in Res. No. W-4499. The rationale for both contract deviations is to avoid uneconomic bypass. The structure of both contract deviations is the same; a lower commodity rate conditioned upon the provision of the lease of water rights from the Town to AVR at no charge. Both contract deviations have a provision for future increases in rates if the applicable general metered service commodity rate increases. The lower commodity rate proposed in the Agreement is developed using a cost/benefit analysis that employs the same principles and basic methodology used previously.

Under the terms of the Agreement, AVR will continue to provide non-residential general metered water service to the Town for the irrigation of AVGC with the following deviations:

- a) The commodity rate is \$0.709 per hundred cubic feet (Ccf) and is subject to future pro

rata increases tied to changes in Schedule No. 3.

- b) The commodity rate is not subject to any surcharges that may be approved by the Commission from time to time.
- c) As a condition to service, the Town leases to AVR the amount of water rights used to provide water to irrigate AVGC at no charge to AVR.

Both AVR and the Town anticipate that in the future irrigation of the AVGC will be accomplished with reclaimed water. Under the Agreement, the availability of reclaimed water to irrigate the AVGC qualifies as a “changed circumstance” which allows a request to be made to the Commission that the deviations be modified or eliminated, or that the Agreement be terminated.

AVR believes that providing service to the Town at the revised rates and under the specific conditions of the Agreement is beneficial to the company and its ratepayers. If the Town constructs its own well and bypasses the AVR water system, the portion of AVR’s fixed costs recovered from the sales to the golf course under the Agreement must be recovered from AVR’s remaining customers.

The Staff of the Division of Water and Audits (DWA or Staff) has been provided with work papers that include a cost-benefit study. The cost-benefit analysis compares the present net benefit of the Agreement with the present net benefit of the Town’s construction of a new well. The analysis shows that the Agreement has a greater economic benefit to both AVR and the Town than from the Town constructing a well.

DWA has advised AVR of the following. The utility may provide service to the Town at a deviation from a tariff without prior Commission approval; however such service is subject to a subsequent Commission resolution. (See General Order 96-B, Water Industry Rule 7.3.1(9)).<sup>1</sup> Also, until the advice letter setting forth the service is approved, the utility would be at risk for refunds or additional adjustments as the Commission may require in its order for service provided pending the disposition of the advice letter. (See General Order 96-B, General Rule 7.3.3).<sup>2</sup>

If AVR were to implement the tariff deviation without Commission approval, it would be responsible for any refunds or adjustments resulting from a subsequent Commission finding that the Agreement required modification. AVR is therefore reluctant to provide service to the Town

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<sup>1</sup> This rule states that an advice letter to provide “[s]ervice to a government agency” is “effective pending disposition” (i.e., may be made effective on the date of filing): “but such advice letter shall be subject to disposition by Commission resolution as provided by General Rule 7.6.2”. (General Rule 7.6.2 addresses disposition of advice letters by Commission resolution.) Under the Commission’s rules, this type of advice letter is field as a Tier 1 advice letter. (General Order 96-B, Water Industry Rule 7.3.1.)

<sup>2</sup> General Order 96-B, General Rule 7.3.3, states in part: “If an advice letter is effective pending disposition, all service rendered pursuant to the advice letter before disposition [in this case before the Commission issues its resolution] will be subject to a Commission order requiring refunds or such other or additional adjustments as the Commission may require.”

under the Agreement prior to receiving Commission approval unless an amendment to the Agreement with the Town is reached whereby the Town would assume responsibility for any refund or additional adjustments the Commission may require.

AVR has informed Town of the circumstances of this supplemental filing but at this time an amendment to the Agreement has yet to be worked out. Therefore, AVR proposes to make the tariff deviation effective upon the execution of an amended agreement with the Town whereby the Town assumes the risk and liability for any refund or additional adjustments required by the Commission or upon Commission approval of the tariff deviation agreement, assuming that such an amended agreement is not executed prior to Commission approval of the Agreement.

An original copy of the Agreement is provided in the work papers.

AVR currently provides water to AVGC to irrigate the golf course through a 4-inch meter. AVR also provides potable water to the AVGC through smaller meters for non-irrigation purposes. The tariff deviation proposed in this advice letter applies only to water provided to AVGC by AVR for irrigation purposes.

### **NOTICE AND PROTESTS**

AVR filed Advice Letter 165-W-A pursuant to Water Industry Rule 7.3.1(9) of General Order 96-B. Advice Letter 165-W-A was submitted with a Tier 1 designation. This advice letter is, however, subject to disposition by Commission resolution as provided by General Rule 7.6.2. of General Order 96-B. AVR believes that since Advice Letter 165-W-A requests a deviation from the tariff rate for a government agency, notification to the service list is sufficient pursuant to General Order 96-B, General Rules Section 4.3 and 7.2 and Water Industry Rule 4.1. Advice Letter 165-W-A was distributed to service list on May 6, 2011. Approval of the Agreement will not result in an increase in tariff rates for customers in AVR from those levels currently adopted in AVR's General Rate Case. Accordingly, Advice Letter 165-W-A was properly served without the need for customer notice.

On May 8, 2011, the Division of Water and Audits (DWA), suspended Advice Letter 165-W-A for an initial period of 120 days. Advice Letter 165-W-A was suspended because additional information was required to complete review of the filing.

No protests were received to Advice Letter 165-W-A.

### **DISCUSSION**

Initially, AVR filed Advice Letter 165-W on April 7, 2011, pursuant to Section X of General Order 96-A.<sup>3</sup> AVR filed Advice Letter 165-W as Tier 2 advice letter and requested that the filing become effective 30 days from its filing date. Subsequently AVR, at DWA's direction, filed Advice Letter 165-W-A as a Tier 1 filing pursuant to General Order 96-B, Water Industry

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<sup>3</sup> AVR's initial filing, Advice Letter 165-W, was in error in its reference to an earlier version of General Order 96 that is no longer applicable.

Rule 7.3.1(9). However, as discussed above, Water Industry Rule 7.3.1(9) provides that an advice letter to provide service to a government agency shall be subject to disposition by Commission resolution as provided for in General Rule 7.6.2, and here disposition by the Commission is necessary because the Commission must determine the reasonableness of the Agreement.

Staff evaluated the work papers submitted by AVR with its filing.

***The provision of supplying water under the Agreement***

According to the Agreement, AVR will provide water for irrigation purposes to AVGC at rates negotiated with the Town pending Commission approval. The source of water will be treated groundwater through a 4-inch meter only for irrigation purpose. AVR also provides potable water to the AVGC through smaller meters for non-irrigation purposes. The tariff deviation proposed in Advice Letter 165-W-A and the cost/benefit analysis applies only to water provided to AVGC by AVR for irrigation purposes.

Apple Valley Ranchos Water Company (AVR)  
 Town of Apple Valley (Town)  
**Revenue Calculation at Deviation Rates**

	Schedule 3	Tariff Deviation
Account No	117310	
Meter Size	4"	4"
Service Charge (\$)	518.75	518.75
Annual Service Charge Revenue (\$)	6,225.00	6,225.00
Current Rate (\$/Ccf) - Schedule 3	2.257	
Sales (Ccf)	143,748	143,748
Production Cost (\$)	166,683	45,672
Rate (\$/Ccf)	2.257	0.709
Commodity Revenue (\$)	324,439.24	101,917.33
Total Revenue (\$)	330,664.24	108,142.33
Net Revenue (\$)	163,981.24	62,470.33

***Impact of new rates on ratepayers***

AVR estimates that the amount of water supplied under the Agreement will be same as the Town currently purchases for golf course irrigation. The town currently purchases water on an interim basis under tariff rates until such time as it can either repair its existing well or drill a new well for irrigation of the golf course. The Town has indicated it will continue purchasing water from AVR only if it can obtain reduced rates so that it is indifferent to whether it purchases water from AVR or develops its own source. AVR and the Town have agreed that the reduced rate of \$0.709 per Ccf will be mutually beneficial for the Town and AVR's other existing customers. At this quantity rate along with the monthly service charge, the Town will contribute to the recovery

of AVR's fixed costs over and above the variable cost of water supply. A comparison of expected revenues under the tariff schedule and tariff deviation is shown in the table above. Loss of the Town as a customer through bypass will lead to shortfall in revenue which would adversely affect all other AVR customers through an increase in their water bills.

***Implementation of Tariff Rule 14.1 and Schedule 14.1***

In case of shortage of available water supplies, AVR may reduce the amount of water allocations to customers through voluntary or mandatory rationing. The procedures are described in the Division of Water and Audits' Standard Practice (SP) 40. The applicable Tariff and Schedule are Tariff Rule 14.1, Mandatory Water Conservation and Rationing Plan (Rule 14.1)<sup>4</sup> and Schedule 14.1, Mandatory Water Conservation and Rationing, (Schedule 14.1).<sup>5</sup>

AVR has indicated that in the case of rationing, it will implement all directives as required under Tariff Rule 14.1 and Schedule 14.1.

It is reasonable to require that potable water should be made available to AVGC only after the needs of all other customers have been met. In the case of voluntary or mandatory water rationing, all directives under Tariff Rule 14.1 or Schedule 14.1 will be applicable.

**COMMENTS**

Public Utilities Code Section 311(g)(1) generally requires that resolutions must be served on all parties and be subject to at least 30 days public review and comment prior to a vote of the Commission. However, Public Utilities Code Section 311(g) (2) permits the reduction or waiver of the 30-day public review and comment period requirement for an uncontested matter in which the decision grants the relief requested. It is reasonable to waive the review and comment period requirement for this resolution since Advice Letter 165-W-A is uncontested and this resolution grants the relief requested.

**FINDINGS**

1. The Town of Apple Valley (Town) and Apple Valley Ranchos Water Company (AVR) entered into a new water service tariff deviation agreement (Agreement) on March 10, 2011.
2. Under terms of the Agreement, AVR will provide water to the Apple Valley Golf Course (AVGC) for irrigation of a golf course at rates to be approved by the California Public Utilities Commission.

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<sup>4</sup> Tariff Rule 14.1 is implemented in response to a utility's request for voluntary rationing from customers in order to reduce consumption. This may be accomplished by voluntary compliance with water use restrictions.

<sup>5</sup> Schedule 14.1 is activated in response to a governing agency such as a water wholesaler declaring a water shortage and imposing mandatory rationing on a utility's reduction of customer water allocations based on a percentage of the customer's historical usage.

3. In mid-2010, the Town entered into discussions with AVR regarding the possibility of a tariff deviation. Due to the difficulty in implementing a deviation before the end of the irrigation season, the mild and relatively wet summer that year, and issues that had arisen with the process of Town's acquisition of the AVGC, discussions were deferred to the following year.
4. In 2011, the Town informed AVR that it had determined that it would be more cost effective for the Town to construct a new irrigation well and irrigate the AVGC by pumping its own water than to continue to purchase water service from AVR unless a deviation from AVR's regular tariff could be arranged.
5. A deviation rate needs to be set such that it will not only remove the financial incentive for the Town to construct a new well but it must also provide benefit to the ratepayers of AVR in the form of a retention of a stream of revenues from the Town exceeding the incremental cost to AVR of providing service at the AVGC.
6. Under the terms of the Agreement, AVR will continue to provide non-residential general metered water service to the Town for the irrigation of AVGC with the following deviations:
  - a. The commodity rate is \$0.709 per hundred cubic feet subject to future pro rata increases tied to changes in Schedule No. 3.
  - b. The commodity rate is not subject to any surcharges that may be approved by the Commission from time to time.
  - c. As a condition to service, the Town leases to AVR the amount of water rights used to provide water to irrigate AVGC at no charge to AVR.
7. Staff believes that providing service to the Town at the revised rates and under the specific conditions of the Agreement is beneficial to the company and its ratepayers. If the Town constructs its own well and bypasses the AVR water system, the portion of AVR's fixed costs recovered from the sales to the golf course under the Agreement must be recovered from AVR's remaining customers.
8. The rates for water provided under the Agreement are subject to approval by the California Public Utilities Commission.
9. The Division of Water and Audits' Standard Practice (SP) 40 outlines the general procedure for utilities to request and implement Tariff Rule 14.1 and Schedule 14.1 in case of imposition of voluntary or mandatory water rationing on water utility customers.
10. In case of voluntary or mandatory water rationing, all directives under Tariff Rule 14.1 or Schedule 14.1 will be applicable to the Agreement.
11. It is reasonable to require that potable water should be made available to the golf course only after the needs for potable water by individual customers of the Town have been met.
12. AVR notified the General Order 96-B service list regarding Advice Letter 165-W-A.
13. The Agreement between AVR and the Town will not result in an increase in tariff water rates for AVR's customers.
14. If the Town bypasses AVR by installing its own water supply for the AVGC, the rates for all other customers will increase to cover the fixed cost contribution under the Agreement that would otherwise be lost through bypass.

15. The Agreement between AVR and the Town is reasonable and should be approved subject to the Town closing escrow on the AVGC.
16. It is reasonable to waive the 30-day review and comment period requirement for this resolution since this is an uncontested matter and the relief requested is being granted.

**THEREFORE IT IS ORDERED THAT:**

1. The agreement between Apple Valley Ranchos Water Company and the Town of Apple Valley to provide water for irrigation purposes to irrigate the Apple Valley Golf Course at tariff deviation rates is granted subject to the Town of Apple Valley closing escrow on the Apple Valley Golf Course.
2. Pursuant to Public Utilities Code Section 454, the Tariff Sheets 664-W and 665-W listing contracts and deviations and the new table of contents attached to this Resolution are approved, effective five days after the Town of Apple Valley closes escrow on the Apple Valley Golf Course.
3. Apple Valley Ranchos Water Company will notify the Division of Water and Audits once the Town of Apple Valley closes escrow on the Apple Valley Golf Course.
4. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on July 14, 2011; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

Paul Clanon  
Executive Director

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON  
Commissioners

APPLE VALLEY RANCHOS WATER COMPANY 21760 OTTAWA ROAD P. O. BOX 7005 APPLE VALLEY, CALIFORNIA 92307	Canceling	REVISÉD	Cal. P.U.C. Sheet No.	664-W
		REVISÉD	Cal. P.U.C. Sheet No.	517-W

<u>LIST OF CONTRACTS AND DEVIATIONS</u>						
Name & Location Of Customer	Type or Class Of Service	Execution & Expiration	Commission Authorization	Most Comparable Schedule No.	Regular Tariff Contract	
Town of Apple Valley James Woody Park Apple Valley	Public Authority	April, 2004 Indeterminate term With 90 day Cancellation		1	Commodity rate determined by contract rate	
Town of Apple Valley Golf Course Apple Valley	Public Authority	March, 2011 Indeterminate term With 30 day cancellation		3	Commodity rate determined by contract rate	

Advice No.	<u>165-W-A</u>	<u>LEIGH K. JORDAN</u>	Date Filed	_____
		Name		
Decision No.	_____	<u>EXECUTIVE VICE PRESIDENT</u>	Effective	_____
		Title	Resolution No.	_____

