



Control Number: 45570



Item Number: 75

Addendum StartPage: 0

APPLICATION OF MONARCH
UTILITIES I, L.P. FOR AUTHORITY
TO CHANGE RATES

§
§
§

PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
OF TEXAS

PRELIMINARY ORDER

Monarch Utilities I, L.P. filed an application to change its rates for water and sewer service. This preliminary order identifies the issues that must be addressed and makes a threshold legal determination.

According to its application, Monarch serves approximately 22,762 water customers in 24 counties and 3,650 sewer customers in eight counties. In this docket, Monarch seeks approval of increased water and sewer rates to be implemented in three phases over three years. The overall increase over the three phases would be \$4,787,169 in annual revenues or 18.66% over Monarch's adjusted test-year revenues. Through the increased rates, Monarch is requesting recovery of its full cost of service after having invested \$71 million since the company's acquisition in 2004 to bring the water and sewer systems up to state and federal regulatory standards and to improve customer service. Monarch is also seeking to change four of its tariff provisions and is requesting a determination of rate-base amount and a change in Monarch's depreciation method.

Monarch filed its application on February 29, 2016. The Office of Public Utility Counsel and several ratepayers have filed as intervenors. The docket was referred to the State Office of Administrative Hearings (SOAH) on March 3, 2016.

Monarch was directed, and Commission Staff and other interested persons were allowed, to file by March 10, 2016, a list of issues to be addressed in the docket and also to identify any issues not to be addressed and any threshold legal or policy issues that should be addressed. Monarch and Commission Staff each timely filed a list of issues.

I. Threshold Legal and Policy Determinations

The Commission states its position on the following threshold issue:¹

1. **Can a utility be both a Class A and a Class B utility under TWC § 13.002(4-a) and 16 TAC § 24.3(17)?**

The Commission did not request briefing on this issue because briefing was deemed unnecessary. Monarch claims to be a Class A water utility and a Class B sewer utility. While the Texas Water Code may be considered ambiguous on this point,² Commission rules clarify any ambiguity by providing that “[i]f a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.”³ A utility cannot be classified under one class for water and a different class for sewer. If a utility has a sufficient number of active water connections to be classified as a Class A utility, it is such for water and sewer purposes.

II. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.⁴ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Did the utility comply with the instructions in the Commission’s rate-filing package for Class A water utilities?⁵
2. Is the utility’s application administratively complete?⁶
3. What is the appropriate methodology to determine just and reasonable rates in this docket?

¹ Tex. Gov’t Code § 2001.058(c).

² TWC § 13.002(4-a).

³ 16 TAC § 24.3(17).

⁴ Tex. Gov’t Code Ann. § 2003.049(e) (West 2008 & Supp. 2015).

⁵ TWC § 13.187(d).

⁶ *Id.*; 16 TAC § 24.8(a).

4. What are the just and reasonable rates for the utility that are sufficient, equitable, and consistent in application to each customer class and that are not unreasonably preferential, prejudicial, or discriminatory?⁷
5. What revenue requirement will give the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses while preserving the utility's financial integrity?⁸
6. Are the utility's proposed revisions to its tariffs and rate schedules appropriate?
7. What is the reasonable and necessary cost of providing water service?⁹
8. What adjustments, if any, should be made to the utility's proposed test-year data?¹⁰
9. What is the appropriate debt-to-equity capital structure of the utility?
10. What is the appropriate overall rate of return, return on equity, and cost of debt for the utility?¹¹
11. What are the reasonable and necessary components of the utility's invested capital?¹²
12. What amount of the utility's invested capital has not previously been subject to a prudence review by the Commission or another regulatory authority?
13. What is the amount for an allowance for funds used during construction, if any, that is being transferred to invested capital in this proceeding? If such amounts are being transferred, for what facilities and at what rate did the allowance for funds used during construction accrue?
14. What is the appropriate weighted average cost of capital?

⁷ TWC § 13.182.

⁸ TWC § 13.183(a); 16 TAC § 24.32(a).

⁹ 16 TAC § 24.31.

¹⁰ TWC § 13.185(d)(1); 16 TAC § 24.31(b), (c)(5).

¹¹ 16 TAC § 24.31(c)(1).

¹² 16 TAC § 24.31(c)(2).

15. What is the original cost of the property used and useful in providing water service to the public at the time the property was dedicated to public use?¹³
 - a. What is the amount, if any, of the accumulated depreciation on such property?
16. Is the utility seeking the inclusion of construction work in progress? If so, what is the amount sought and for what facilities? Additionally, has the utility proven that the inclusion is necessary to the financial integrity of the utility and that major projects under construction have been efficiently and prudently planned and managed?¹⁴
17. Does the utility have any debt? If so, what is the cost of that debt?
18. What is the reasonable and necessary working capital allowance for the utility?¹⁵
19. Does the utility have any water and sewer property that was acquired from an affiliate or a developer before September 1, 1976? If so, has such property been included by the utility in its rate base, and has it been included in all ratemaking formulas at the actual cost of the property rather than the price set between the entities?¹⁶
20. Has the utility acquired any water or sewer property from an affiliate? If so, do the payments for that property meet the requirements of TWC § 13.185(e)?
21. Has the utility financed any of its plant with developer contributions?¹⁷
22. Has the utility included any customer contributions or donations in invested capital?¹⁸
What is the amount, if any, of accumulated depreciation on that property?
23. Are the utility's proposed pro forma rate-base and expense adjustments consistent with the requirements of 16 TAC § 24.31?
24. What are the utility's reasonable and necessary operations and maintenance expenses?¹⁹

¹³ TWC § 13.185(b); TWC § 24.31(c)(2)(A)-(B).

¹⁴ TWC § 13.185(b); 16 TAC § 24.31(c)(4).

¹⁵ 16 TAC § 24.31(c)(2)(C).

¹⁶ TWC § 13.185(i).

¹⁷ TWC § 13.185(j); 16 TAC § 24.31(b)(1)(B).

¹⁸ TWC § 13.185(j); 16 TAC §§ 24.31(c)(2)(B)(v).

¹⁹ 16 TAC § 24.31(b)(1)(A).

25. What are the utility's reasonable and necessary administrative and general expenses?
26. What is the reasonable and necessary amount for the utility's advertising expense, contributions, and donations?²⁰
27. If the utility has a self-insurance plan approved by the Commission or other regulatory authority, what is the approved target amount for the reserve account, and is it appropriate to change that amount? What is the amount of any shortage or surplus for the reserve account for the approved plan, and what actions, if any, should be taken to return the reserve account to the approved target amount?
28. What are the utility's reasonable and necessary expenses, if any, for pension and other post-employment benefits?
29. Are any expenses, including but not limited to, executive salaries, advertising expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines, unreasonable, unnecessary, or not in the public interest?²¹
30. What is the reasonable and necessary depreciation expense? For each class of property, what are the proper and adequate depreciation rates (including service lives and salvage values) and methods of depreciation?²²
31. Is the utility's other depreciation-related proposal reasonable?
32. Are any tax savings derived from liberalized depreciation and amortization, investment tax credits, or similar methods? If so, are such tax savings apportioned equitably between customers and the utility, and are the interests of present and future customers equitably balanced?
33. What is the reasonable and necessary amount, if any, for assessment and taxes other than federal income taxes?²³

²⁰ 16 TAC § 24.31(b)(1)(F).

²¹ TWC § 13.185(h)(3); 16 TAC § 24.31(b)(2)(I).

²² TWC § 13.185(j); 16 TAC § 24.31(b)(1)(B).

²³ 16 TAC § 24.31(b)(1)(C).

34. What is the reasonable and necessary amount for the utility's federal income tax expense?²⁴
- a. Is the utility a member of an affiliated group that is eligible to file a consolidated income tax return?²⁵
 - b. If so, have income taxes been computed as though a consolidated return had been filed and the utility realized its fair share of the savings resulting from the consolidated return?²⁶
 - c. If not, has the utility demonstrated that it was reasonable not to consolidate returns?²⁷
35. What is the reasonable and necessary amount of the utility's accumulated reserve for deferred federal income taxes, unamortized investment tax credits, contingency reserves, property insurance reserves, contributions in aid of construction, customer deposits, and other sources of cost-free capital? What other items should be deducted from the utility's rate base?
36. What is the reasonable and necessary amount of municipal franchise fees, if any, to be included in rates?
37. What regulatory assets are appropriately included in the utility's rate base? If such assets are included in rate base, what is the appropriate treatment of them?
38. Is the utility seeking rates for both water and sewer service? If so, is the revenue requirement properly allocated between water and sewer services?
39. What is the appropriate allocation of the revenue requirement among rate classes?
40. What is the appropriate rate design for each rate class?²⁸

²⁴ 16 TAC § 24.31(b)(1)(D); TWC § 13.185(f).

²⁵ TWC § 13.185(f).

²⁶ *Id.*

²⁷ *Id.*

²⁸ 16 TAC § 24.32.

41. What are the utility's expenses incurred in this rate proceeding that are just, reasonable, necessary, and in the public interest?²⁹ Does that amount include any anticipated expenses to appeal this docket that are just, reasonable, necessary, and in the public interest? Should the utility be able to recover its reasonable and necessary rate-case expenses from ratepayers? If so, how should such expenses, if any, be recovered by the utility?
42. What are the intervening cities' reasonable rate-case expenses?³⁰
43. Has the utility made any payments to affiliates?
 - a. For affiliate transactions that affect the cost of service, are these transactions reasonable and necessary?³¹
 - b. For all affiliated transactions affecting the cost of service, what are the costs to the affiliate of each item or class of items in question, and is the price for each transaction no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations?³²
44. How should gains on the sale of Blue Mound and Midway water systems be treated?
45. If a refund or surcharge results from this proceeding, how and over what period of time should that be made?³³
46. Has the utility met the requirements for a request for interim relief in the form of interim rates? If so, what are the appropriate levels of the interim rates?³⁴
47. What is the appropriate effective date of the rates fixed by the Commission in this proceeding?³⁵

²⁹ 16 TAC § 24.33.

³⁰ TWC § 13.084.

³¹ TWC § 13.185(e).

³² *Id.*

³³ TWC § 13.187.

³⁴ 16 TAC § 24.29.

³⁵ TWC § 13.187.

48. Is it reasonable and appropriate for the utility to phase in rates over three years, as proposed?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed.³⁶

III. Effect of Preliminary Order

The Commission's discussion and conclusions in this order regarding threshold legal and policy issues should be considered dispositive of those matters. Questions, if any, regarding threshold legal and policy issues may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, this order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

³⁶ Tex. Gov't Code Ann. § 2003.049(e).

Signed at Austin, Texas the 25th day of March 2016.

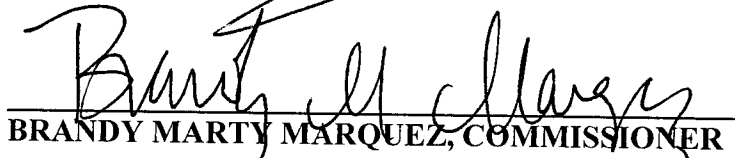
PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER

W2013
q:\cadm\orders\prelim\45000\45570 po.docx