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DOCKET NO. 49660

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APPLICATION OF NI AMERICA  
TEXAS, LLC AND MONARCH  
UTILITIES I L.P. FOR SALE,  
TRANSFER, OR MERGER OF  
FACILITIES AND CERTIFICATE  
RIGHTS IN TRAVIS COUNTY

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PUBLIC UTILITY COMMISSION

2019  
PUBLIC UTILITY COMMISSION  
OF TEXAS  
FILING SECRET

**COMMISSION STAFF'S AMMENDED RECOMMENDATION ON  
APPROVAL OF SALE**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Commission Staff's Amended Recommendation on Approval. Staff recommends that the application be approved, and in support, shows the following:

**I. BACKGROUND**

On June 21, 2019, NI America Texas, LLC (NI America Texas) and Monarch Utilities I L.P. (Monarch) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger (STM) of facilities and certificate and convenience and necessity rights (CCN) in Johnson and Wise Counties. The STM is for the purpose of consolidation. Specifically, the Applicants seek approval for the transfer of water facilities and water service area under CCN No. 11922, the cancellation of Ni America Texas's CCN No. 11922, and the amendment of the water CCN No. 12983 to include the area currently under CCN No. 11922. SouthWest Water Company is the parent company of both Monarch and Ni America Texas, to whom they provide operations and customer service via the Texas Utilities Group of SouthWest Water. The requested transfer area includes approximately 5,225 acres, with 1,166 current customers. The Applicants filed supplemental information on August 22, 2019; September 6, 2019; and September 11, 2019. On September 23, 2019, Staff filed a recommendation that the application be found administratively complete along with proposed notice.

On September 30, 2019, Order No. 4 was issued, finding the application sufficient and establishing a deadline of 10 days after the Applicants' filing of proof of notice for Staff to file a recommendation on that notice. On October 15, 2019, Applicants filed information attesting to notice for this application, which established a deadline of October 25, 2019 for Staff to file a

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recommendation on notice. On that date, Staff submitted a filing recommending that notice be found sufficient. Order No. 5, issued on October 30, 2019, found that notice was sufficient.

In Order No. 7, the ALJ issued an amended procedural schedule and set a deadline of January 16, 2020 for Staff to request a hearing or file a recommendation on the approval of the sale and on the CCN amendment. Staff filed its recommendation but failed to attach the requisite memo. That memo is attached here.

## **II. RECOMMENDATION ON APPROVAL OF SALE**

As supported by the attached memorandum of Fred Bednarski III of the Commission's Rate Regulation Division and Patricia Garcia of the Commission's Infrastructure Division, Staff recommends that the ALJ find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction.

Staff notes that 616 customers' deposits are held by Ni America Texas for the customers currently served by Ni America Texas. If there are outstanding customer deposits, 16 TAC §§ 24.239(m)(1-4) require that, within 30 days of the actual effective date of the transaction, the transferor and transferee to file with the Commission, under oath a list showing:

1. the names and addresses of all customers who have a deposit on record with the transferor;
2. the date such deposit was made;
3. the amount of the deposit; and
4. the unpaid interest on the deposit. All such deposits shall be refunded to the customer or transferred to the transferee, along with all accrued interest.

Staff therefore recommends that the Applicants be required to file with the Commission, under oath, a list showing the above.

Staff further recommends that a public hearing is not necessary.

## **III. CONCLUSION**

For the reasons discussed above, Staff respectfully requests that the ALJ issue an order approving the sale and allowing the transaction to proceed.

Dated: January 22, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Thomas S. Hunter  
Division Director

Rachelle Nicolette Robles  
Managing Attorney

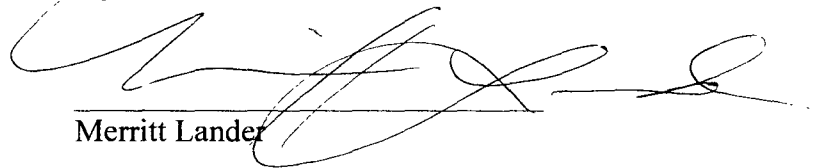


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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record  
January 22, 2020, in accordance with 16 TAC § 22.74.



Merritt Lander

## PUC Interoffice Memorandum

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**To:** Merritt Lander, Attorney  
Legal Division

**From:** Patricia Garcia, Engineering Specialist  
Infrastructure Division

Fred Bednarski III, Financial Analyst  
Rate Regulation Division

**Date:** January 16, 2020

**Subject:** **Docket No. 49660:** *Application of Ni America Texas, L.L.C. and Monarch Utilities I L.P. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Johnson and Wise Counties*

On June 21, 2019 Ni America Texas, L.L.C. (Ni America Texas) and Monarch Utilities I L.P. (Monarch) (collectively, Applicants) filed an application for the sale, transfer, or merger (STM) of facilities and certificate rights in Johnson and Wise Counties, Texas, pursuant to Texas Water Code (TWC) § 13.301 and § 13.246, and the 16 Texas Administrative Code (TAC) § 24.239.

Specifically, the Applicants seek approval for the transfer and cancellation of Ni America Texas's certificate of convenience and necessity (CCN) No. 11922. The CCN and the associated seven public water systems are to be transferred to Monarch's CCN No. 12983. The STM is for the purpose of consolidation. SouthWest Water Company is the parent company of both Monarch and Ni America Texas, to whom they provide operations and customer service via the Texas Utilities Group of SouthWest Water.

### **Notice**

The comment period ended January 16, 2020, and no protests or opt-out requests were received.

### **Criteria Considered**

TWC §§ 13.246(c), 13.246(d), and 13.241 require the Commission to consider twelve distinct criteria when granting or amending a water or sewer CCN. Therefore, the following criteria were considered:

#### **TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.**

There are currently 1,166 existing customers in the requested areas. The customers are currently receiving water from Ni America Texas's seven public water systems. Four of Ni America Texas's public water systems have minor violations listed in the Texas Commission on Environmental Quality's (TCEQ) databases. Monarch stated that it has contacted the TCEQ to discuss how to address the violations.

**TWC § 13.246(c)(2) requires the Commission to consider the need for additional service in the requested area.**

The application is to transfer only existing facilities and customers. There are 1,166 existing customers in the requested areas; therefore, there is a need for service.

**TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient of the certificate or amendment on the landowners in the area and on any other retail public utility of the same kind already servicing the proximate area.**

There will be no effect on any retail public utility servicing the proximate area. Any landowners in the area that do not currently receive service from NI America Texas will need to request service from Monarch if they will be requiring service after the transaction has been completed.

**TWC §§ 13.246(c)(4) and 13.241(b) require the Commission to consider the ability of the applicant to provide adequate service.**

Monarch has several public water systems registered with the TCEQ and is able to provide adequate service.

**TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.**

As a result of the present application, the requested water service area will transfer to Monarch's CCN number. The requested area is currently being served by NI America Texas. There will be no changes to land uses or existing CCN boundaries. It is not feasible to obtain service from another utility.

**TWC § 13.246(c)(6) requires the Commission to consider the financial ability of an applicant to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant.**

The following analysis is based on NI America Texas's 2018 and 2017 annual reports and Monarch's audited financial statements, which contained an unqualified auditor's opinion from Price Waterhouse Cooper, LLP. The auditor's opinion states that the financial statements fairly present, in all material respects, the financial position of the Applicants as of December 31, 2018. The audit and the related opinion indicate the transparency of Monarch and indicate sound management capabilities.

16 TAC § 24.11 establishes the criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service area. The financial tests include a leverage test and operations test. Monarch meets one out of the five leverage tests, and an applicant is required to meet only one. The debt to equity ratio equals 0.30 as calculated in Attachment FB-1. Therefore, Monarch meets the leverage test.

The operations test requires that the owner or operator demonstrate that sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. Monarch has not submitted projected financial statements, but Monarch and NI America Texas have existing utilities and facilities that are necessary to serve the customers being transferred. Additionally, Monarch and NI America Texas reported no shortages for 2018 and 2017,

respectively, as listed in Attachment FB-1. Monarch indicated that it will budget for the improvements in its Capital Expenditures Plan. Monarch reported positive net income amounts for 2018 and 2017 that could be used to help pay for any future capital improvements and cover any operational shortages. Based on income reflected for 2017 and 2018 in Attachment FB-1, no shortages are predicted for future periods. Therefore, the Monarch meets the operations test.

**TWC §§ 13.246(c)(7) and (9) require the Commission to consider environmental integrity and the effect on the land to be included in the certificated area.**

Construction of a physically separate water system is not required to provide service to the requested area. Therefore the environmental integrity of the land will not be affected by this application.

**TWC § 13.246(c)(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.**

Monarch will provide water service to the existing customers in the requested area. There will be no changes to the customer's monthly charges as a result of the transfer to Monarch.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Staff concludes that the Applicants' request for the transfer of water facilities and the water service area under CCN No. 11922, the cancellation of CCN No. 11922, and amendment of the water CCN No. 12983 to include the area currently under CCN No. 11922 is necessary for the service, accommodation, convenience and safety of the public.

**TWC § 13.246(d) allows the Commission to require an applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided.**

Staff does not recommend that Monarch be required to provide a bond or other financial assurance to ensure continuous and adequate service.

**TWC § 13.241(d) requires the applicant to demonstrate to the Commission that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area.**

Construction of a physically separate water system is not required to provide service to the requested area. Seven public water systems currently held by NI America Texas will be transferred to Monarch.

**16 TAC §§ 24.239(m)(1-4) require that, within 30 days of the actual effective date of the transaction, the transferor and transferee to file with the Commission, under oath a list showing:**

1. the names and addresses of all customers who have a deposit on record with the transferor;
2. the date such deposit was made;
3. the amount of the deposit; and
4. the unpaid interest on the deposit. All such deposits shall be refunded to the customer or transferred to the transferee, along with all accrued interest.

**Recommendation on approval of sale**

Staff recommends that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. Staff notes that 616 customers' deposits are held by NI America Texas for the customers currently served by NI America Texas; Staff recommends that NI America Texas be required to fulfill the requirements of 16 TAC §§ 24.239(m)(1-4). Staff further recommends that a public hearing is not necessary.