

Control Number: 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 JOHNSON AND WISE §
COUNTIES §

PUBLIC UTILITY COMMISSION
OF TEXAS

PUBLIC UTILITY COMMISSION
FILING CLERK

**JOINT MOTION TO ADMIT EVIDENCE AND ADOPT PROPOSED
FINAL ORDER**

Ni America Texas, LLC and Monarch Utilities I L.P. (collectively, Applicants) and Staff of the Public Utility Commission of Texas (Staff), representing the public interest, (collectively, the Parties), file this Joint Motion to Admit Evidence and Adopt Proposed Final Order, and in support thereof, would show the following:

I. BACKGROUND

On June 21, 2019, Applicants filed an application for sale, transfer or merger of facilities and certificate rights in Johnson and Wise counties (Application) pursuant to Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.109.

Pursuant to Order No. 8, issued February 4, 2020, the Parties timely file this Joint Motion to Admit Evidence and Adopt Proposed Order.

II. JOINT MOTION TO ADMIT EVIDENCE

The Parties move to admit the following into the record evidence of this proceeding:

1. The Application of Ni America Texas, LLC and Monarch Utilities I, LP, filed on June 21, 2019 and supplemented on August, 22, September 6, and September 11, 2019;
2. The Applicants' proof of notice and supporting documentation, filed on October 15, 2019;
3. Applicants' response to Commission Staff's First Request for Information, filed December 18, 2019;
4. Commission Staff's amended recommendation on approval of sale, filed on January 22, 2020.

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III. JOINT PROPOSED FINAL ORDER

The attached Joint Proposed Order Approving Sale/Transfer to Proceed would grant Applicants' Application for sale, transfer, or merger of facilities and certificate rights in Johnson and Wise counties.

IV. CONCLUSION

The Parties respectfully request that the Commission grant the Motion to Admit Evidence and adopt the attached Joint Proposed Order Approving Sale/Transfer to Proceed.

Dated: February 6, 2020

Respectfully submitted,

**ATTORNEYS FOR NI AMERICA TEXAS, LLC
AND MONARCH UTILITIES I L.P.**

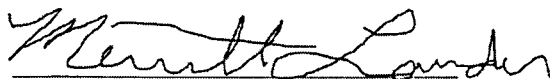
By: 

Lambeth Townsend
State Bar No. 20167500
William A. Faulk, III
State Bar No. 24075674
Reid Barnes
State Bar No. 24101487
LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532
ltownsend@lglawfirm.com
cfaulk@lglawfirm.com
rbarnes@lglawfirm.com

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Thomas S. Hunter
Division Director

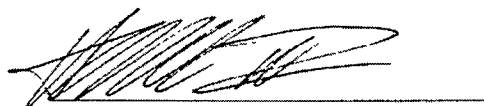
Rachelle Nicolette Robles
Managing Attorney



Merritt Lander
State Bar No. 24106183
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7290
(512) 936-7268 (facsimile)
Merritt.Lander@puc.texas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on February 6, 2020, in accordance with 16 TAC § 22.74.



William A. Faulk, III

DOCKET NO. 49660

APPLICATION OF NI AMERICA	§	PUBLIC UTILITY COMMISSION
TEXAS, LLC AND MONARCH	§	
UTILITIES I L.P. FOR SALE,	§	OF TEXAS
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN JOHNSON AND WISE	§	
COUNTIES	§	

JOINT PROPOSED ORDER APPROVING SALE/TRANSFER TO PROCEED

This Order addresses the June 21, 2019, Application of Ni America Texas, LLC (Ni) and Monarch Utilities I, L.P. (Monarch) (collectively, Applicants) for the sale, transfer, or merger of facilities and certificate rights in Johnson and Wise counties (Application) pursuant to Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.109. Ni and Monarch are both owned by the same parent company, SouthWest Water Company (SWWC), which is seeking to consolidate operations through this Application. Specifically, Applicants seek approval for the transfer of water facilities and water service areas under Certificate of Convenience and Necessity (CCN) No. 11922, an amendment to include the same within Monarch’s CCN No. 12983, and the cancellation of Ni’s CCN No. 11922.

On January 22, 2020, Commission Staff recommended that the transaction proceed in this docket. Consistent with Commission Staff’s recommendation, the administrative law judge (ALJ) grants that the transaction between Applicants may proceed and be consummated.

I. FINDINGS OF FACT

The Commission makes the following findings of fact:

Applicants

1. SouthWest Water Company (SWWC) is the parent company of both Ni and Monarch.
2. Ni is a wholly owned subsidiary of Monarch Utilities, Inc., a for profit limited liability company registered with the Texas Secretary of State under Filing No. 0800902877.
3. Ni is a retail public utility that provides water service in Texas under CCN No. 11922 in Johnson and Wise Counties.
4. Ni owns and operates six public water systems in Wise County registered with the Texas Commission on Environmental Quality (TCEQ) under Public Water System (PWS) Identification Nos. 2490044, 2490053, 2490046, 2490058, 2490061, and 2490050.
5. Ni owns and operates one public water system in Johnson County registered with the TCEQ under PWS Identification No. 1260103.
6. Monarch is a Texas limited partnership registered with the Texas Secretary of State under File No. 800034797.

Procedural History and Application

7. On June 21, 2019, Applicants filed an application for sale, transfer, or merger of facilities and certificate rights in Johnson and Wise counties, pursuant to TWC § 13.301 and 16 TAC § 24.109.
8. Applicants are seeking the approval of the sale of PWS Identification Nos. 2490044, 2490046, 2490050, 2490053, 2490058, 2490061, and 1260103 and transfer of the corresponding portion of service area held under CCN No. 11922 in Johnson and Wise Counties from Ni to Monarch under CCN No. 12983.

9. Ni's CCN No. 11922 consists of nine subdivisions: eight in Wise County and one in Johnson County. The Wise County subdivisions are Chisholm Hills Estates, Coyote Ridge Addition, Sage Brush Estates, Prairie View Estates, Hills of Oliver Creek, Las Brisas, Sky View Ranch Estates, and Windmill Trail Addition. The Johnson County subdivision is Shaded Lane Estates. This transaction involves all nine subdivisions.
10. The requested service area subject to this transaction for the Shaded Lane Estates System is located approximately five miles southeast from Burleson, Texas and is generally bounded on the north by County Road (CR) 529, on the east by CR 608, on the south by CR 328, and on the west by Merrell Court.
11. The total area affected by the transfer for the Shaded Lane Estates System comprises approximately 197 acres and 243 current customer connections.
12. The requested service area subject to this transaction for the Chisholm Hills Estates is located approximately 1.6 miles north of downtown New Fairview, Texas and is generally bounded on the north by the New Fairview city limits, on the east by Farm to Market Road (FM) 2264, on the south by 500 feet south of Wilson Court, and on the west by Private Road 4726.
13. The total area affected by the transfer for the Chisholm Hills Estates System comprises approximately 711 acres and 269 current customer connections.
14. The requested service area subject to this transaction for the Coyote Ridge, Sage Brush, and Hills of Oliver Creek Systems is located approximately 3.5 miles north of the town of New Fairview, Texas and is generally bound on the north by FM 2464, on the east by FM 2464, on the south by 2,000 feet south of Happy Trail, and on the west by CR 4421.

15. The total area affected by the transfer for the Coyote Ridge, Sage Brush, and Hills of Oliver Creek Systems comprises approximately 3,202 acres and 508 current customer connections.
16. The requested service area subject to this transaction for the Las Brisas System is located approximately four miles southwest of Decatur, Texas and is generally bounded on the north by Eastridge Road and Waggoner Creek, on the east by Wild Wood Drive and Acorn Drive, on the south by Hlavek Road, and on the west by Mission Oak Trail.
17. The total area affected by the transfer for the Las Brisas System comprises approximately 234 acres and does not currently have any customer connections.
18. The requested service area subject to this transaction for the Sky View Ranch Estates System is located approximately one-half mile west of the town of New Fairview, Texas, and is generally bounded on the north by 3,200 feet north of intersection of FM 407 and Pioneer Road, on the east by FM 2264, on the south by Illinois Drive, and on the west by U.S. Highway 287.
19. The total area affected by the transfer for the Sky View Ranch Estates System comprises approximately 358 acres and 71 current customer connections.
20. The requested service area subject to this transaction for the Windmill Trail System is located approximately 7.5 miles southeast of Bridgeport, Texas, and is generally bounded on the north by Garrett Creek, on the east by School House Road, on the south by CR 3355, and on the west by CR 3473.
21. The total area affected by the transfer for the Windmill Trail System comprises approximately 523 acres and 75 current customer connections.

22. On July 23, 2019, the ALJ issued Order No. 3, finding the Application incomplete and deficient and ordering Applicants to supplement and cure the deficiencies in the Application on or before August 22, 2019.
23. On August 22, 2019, Applicants submitted a letter to the Commission containing the requisite mapping data to cure the Application's deficiency. Applicants then supplemented this information with additional filings on September 6, 2019, and September 11, 2019.
24. On September 23, 2019, Commission Staff filed a supplemental recommendation on administrative completeness, and on September 30, 2019, the ALJ issued Order No. 4 finding the Application administratively complete.

Notice

25. On October 15, 2019, Applicants filed the affidavit of George Freitag on behalf of Monarch, attesting that notice was provided to all current customers of Ni, neighboring utilities, and affected parties on October 10, 2019.
26. The ALJ issued Order No. 5 on October 30, 2019, finding notice sufficient.

Evidentiary Record

27. On February 5, 2020, the parties jointly moved to admit evidence.
28. In Order No. ___ issued on February __, 2020, the ALJ admitted the following evidence into the record: (a) the application of Ni America Texas, LLC and Monarch Utilities I, L.P., filed on June 21, 2019 and supplemented on August 22, September 6, and September 11, 2019; (b) the Applicants' proof of notice and supporting documentation, filed on October 15, 2019; (c) Applicants' response to Commission Staff's First Request for Information,

filed December 18, 2019; and (d) Commission Staff's amended recommendation on approval of sale, filed on January 22, 2020.

System Compliance – TWC § 13.301(e)(3)(A); 16 TAC §§ 24.227(a), 24.239(j)(3)(A), (j)(5)(A)

29. There were some minor violations regarding Ni's PWS Identification Nos. 2490044, 2490046, 2490050, 2490053, 2490058, and 1260103, and those systems are now reported to be in compliance after addressing those violations with the TCEQ.
30. Ni has not been subject to any enforcement action by the Commission, TCEQ, the Texas Health and Human Services Commission, the Office of Attorney General, or the United States Environmental Protection Agency.
31. Monarch has been subject to enforcement actions by the Commission, TCEQ, Texas Department of Health, the Office of the Attorney General, or the Environmental Protection Agency in the past five (5) years for non-compliance with rules, orders, or state statutes. Monarch has either resolved the non-compliance issues or has entered into compliance agreements that are leading to resolution of the violations.

Adequacy of Existing Service – TWC § 13.246(c)(1); 16 TAC §§ 24.227(d)(1), 24.239(j)(5)(B)

32. No additional facilities or improvements are currently needed to meet the TCEQ and Commission's minimum requirements or to provide continuous and adequate service to the requested service area.

Need for Additional Service – TWC § 13.246(c)(2); 16 TAC §§ 24.227(d)(2), 24.239(j)(5)(C)

33. The Application is for an inter-company transfer of assets from Ni to Monarch.
34. Monarch is not requesting to add additional uncertificated area.

Effect of Approving the Transaction and Granting the Amendment – TWC § 13.246(c)(3); 16

TAC §§ 24.227(d)(3), 24.239(j)(5)(D)

35. Ni and Monarch are the only utilities affected by this sale and transfer.

Ability to Serve: Managerial and Technical – TWC §§ 13.241(a), 13.246(c)(4), 13.301(b), (e)(2);

16 TAC §§ 24.227(a), (d)(4), 24.239(g), (j)(5)(E)

36. Monarch has a sufficient number of licensed water operators and the managerial and technical capability to provide adequate and continuous service to the requested water service area.

37. Monarch has sufficient facilities to serve the 1,166 customers transferred into Monarch's CCN No. 12983 as a result of this transaction.

38. The requested area has existing facilities and is currently being served by Ni.

39. Utilities within a two-mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction.

40. It is not feasible for an adjacent utility to provide service to the requested area.

Ability to Serve: Financial Ability and Stability – TWC §§ 13.241(a), 13.246(c)(6), 13.301(b);

16 TAC §§ 24.11(e), 24.227(a), (d)(6), 24.239(g), (j)(5)(G)

41. Monarch's projected net operating income for a year, plus the depreciation and non-cash expenses for the year, divided by the projected debt service payments for the year, results in a debt service-coverage ratio of more than 1.25.

42. Monarch demonstrated that it has the available cash levels to serve the requested service area.

43. Monarch has demonstrated the financial capability and stability to provide continuous and adequate water service.

Financial Assurance – TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(e), 24.239(h)

44. Monarch's projected operating revenues are sufficient to cover the projected operations and maintenance expense for the first five years after the completion of the proposed sale and transfer.
45. There is no need to require Monarch to provide a bond or other financial assurance to ensure continuous and adequate service.

Environmental Integrity – TWC § 13.246(c)(7); 16 TAC §§ 24.227(d)(7), 24.239(j)(5)(H)

46. The proposed transaction is an inter-company accounting transfer of assets and will not involve any changes in the daily operations or physical components of the affected water systems; therefore, the transfer should not have an effect on the environmental integrity of the requested area.

Effect on the Land – TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)

47. The proposed transaction is an inter-company accounting transfer of assets and will not involve any changes in the daily operations or physical components of the affected water systems; therefore, the transfer should not have an effect on the land.

Improvement of Service or Lowering Cost to Consumers – TWC § 13.246(c)(8); 16 TAC §§ 24.227(d)(8), 24.239(j)(5)(I)

48. The proposed transaction will improve both water service and customer service, and all customers will be charged the same rates they were charged before the transaction.

II. CONCLUSIONS OF LAW

The Commission makes the following conclusions of law:

1. Monarch is a water and sewer utility as defined in TWC § 13.002(23) and 16 TAC § 24.3(76) and provides water and sewer service under CCN No. 12983.

2. The Commission has jurisdiction over the application filed in this docket under TWC § 13.041 and 16 TAC § 24.21(b)(2)(A).
3. Monarch provided notice of the petition in compliance with 16 TAC § 24.21(b)(2)(F).
4. This docket was processed in accordance with the requirements of the TWC, the APA,¹ and Commission rules.
5. After consideration of the factors in TWC § 13.246(c), Monarch has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area.²
6. Applicants have demonstrated that transferring PWS Identification Nos. 2490044, 2490046, 2490050, 2490053, 2490058, 2490061, and 1260103 and the corresponding water service areas held under CCN No. 11922 from Ni to Monarch's CCN No. 12938 will serve the public interest and are necessary for the service, accommodation, convenience, and safety of the public.³

III. ORDERING PARAGRAPHS

In accordance with the preceding findings of fact and conclusions of law, the Commission issues the following Orders:

1. The sale is approved, and the transaction between Applicants may proceed and be consummated.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the Applicants shall file proof that the transaction has been consummated and customer deposits have been addressed.

¹ Administrative Procedure Act. Tex. Gov't Code Ann. §§ 2001.001-.902 (West 2016 & Supp. 2017) (APA).

² TWC § 13.301(b).

³ TWC § 13.301(d), (e).

3. The Applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.109(o), if the transaction is not consummated within this period, or an extension is not granted, this approval is void and the Applicants will have to reapply for approval.
5. The Applicants are advised that PWS Identification Nos. 2490044, 2490046, 2490050, 2490053, 2490058, 2490061, and 1260103 and the corresponding service area will remain under CCN No. 11243 and held by Ni until the sale and transfer transaction is complete in accordance with Commission rules.
6. In an effort to finalize this case as soon as possible, the Applicants shall continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
7. Within 15 days following the filing of the Applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff shall file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

SIGNED _____, 2020.

[name]

**ADMINISTRATIVE LAW JUDGE
PUBLIC UTILITY COMMISSION**