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Item Number: 32

Addendum StartPage: 0

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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

**ORDER NO. 10
APPROVING SALE AND 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. On January 22, 2020, Commission Staff recommended that the transaction proceed in this docket. The administrative law judge (ALJ) grants that the transaction proposed in this application may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Ni is a for-profit limited liability company registered with the Texas secretary of state under file number 800902877.
2. Ni is a retail public utility that provides water service in Texas under certificate of convenience and necessity (CCN) number 11922 in Johnson and Wise counties.
3. Ni owns and operates six public water systems (PWS) in Wise County registered with the Texas Commission on Environmental Quality (TCEQ) under PWS identification numbers 2490044, 2490046, 2490050, 2490053, 2490058, and 2490061, and owns one PWS in Wise County that is not registered with the TCEQ.
4. Ni owns and operates one PWS in Johnson County registered with the TCEQ under PWS identification number 1260103.

5. Monarch is a Texas limited partnership registered with the Texas secretary of state under file number 800034797.
6. Monarch is an investor-owned water utility that provides water service in Texas under CCN number 12983 in Johnson and Wise counties.
7. Ni and Monarch are owned by SouthWest Water Company, a Delaware corporation.

Application

8. On June 21, 2019, the applicants filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Johnson and Wise counties.
9. Ni's service areas under CCN number 11922 encompasses nine subdivisions: eight subdivisions in Wise County and one subdivision in Johnson County: 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 in Wise County; Shaded Lane Estates in Johnson County.
10. The applicants seek approval for the sale of Ni's water facilities and the transfer of water service areas under CCN number 11922 to Monarch, an amendment to include the same within Monarch's CCN number 12983, and the cancellation of Ni's CCN number 11922.
11. The facilities and requested service areas subject to this transaction consists of the following PWS and their corresponding water service areas:
 - a) **Shaded Lane Estates** (PWS number 1260103): the requested area is located in Johnson County, approximately 4.8 miles southeast of downtown 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 528, and on the west by Merrell Court. The requested area includes approximately 197 acres, 243 current customer connections, and encompasses the Shaded Lane Estates subdivision.
 - b) **Chisholm Hills Estates** (PWS number 2490044): the requested area is located in Wise County, approximately 1.6 miles north of downtown New Fairview, Texas, and is generally bounded on the north by a line 1,000 feet north of Chisholm Hills Drive, on the east by Farm-to-Market Road (FM) 2264, on the south by a line 500

feet south of Wilson Court, and on the west by a line 600 feet west of Layfield Lane. The requested area includes approximately 711 acres, 269 current customer connections, and encompasses the Chisholm Hills Estates subdivision.

- c) **Coyote Ridge Addition** (PWS number 2490053), **Sage Brush Estates** (PWS number 2490058), and **Hills of Oliver Creek** (PWS number 2490046): the requested areas are located in Wise County, approximately 3 miles north of downtown New Fairview, Texas, and is generally bound on the north by FM 2464, on the east by FM 2464, on the south by a line 2,000 feet south of Happy Trail, and on the west by CR 4421. The requested areas include approximately 3,202 acres, 508 current customer connections, and encompasses the Coyote Ridge Addition, Sage Brush Estates, Prairie View Estates, and Hills of Oliver Creek subdivisions.
- d) **Las Brisas** (no PWS number): the requested area is located in Wise County approximately four miles southwest of downtown 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. The requested area includes approximately 234 acres, does not have any active customer connections, and encompasses the Las Brisas subdivision.
- e) **Sky View Ranch Estates** (PWS number 2490061): the two requested areas are located in Wise County, approximately three miles northeast of downtown Rhome, Texas, and is generally bounded on the north by a line 3,200 feet north of the intersection of FM 407 and Pioneer Road, on the east by FM 2264, on the south by FM 407, and on the west by U.S. Highway 287. The requested areas include approximately 358 acres, 71 current customer connections, and encompasses the Sky View Ranch Estates subdivision.
- f) **Windmill Trail** (PWS number 2490050): the requested area is located in Wise County, approximately 7.4 miles southeast of downtown Bridgeport, Texas, and is generally bounded on the north by Garrett Creek, on the east by CR3355, on the south by CR 3355, and on the west by CR 3473. The requested area includes

approximately 523 acres, 75 current customer connections, and encompasses the Windmill Trail Addition subdivision.

12. The total area requested to be transferred includes approximately 5,225 acres, 1,166 current customers, and all nine subdivisions.
13. In Order No. 4 filed on September 30, 2019, the ALJ deemed the application administratively complete.

Notice

14. On October 15, 2019, Monarch filed the affidavit of George Freitag, Texas Regulatory Manager of Monarch, attesting that notice was provided to all current customers of Ni, neighboring utilities, and affected parties on October 10, 2019.
15. In Order No. 5 filed on October 30, 2019, the ALJ deemed the notice sufficient.

Evidentiary Record

16. On February 6, 2020, the parties jointly moved to admit evidence.
17. In Order No. 9 filed on February 12, 2020, the ALJ admitted the following evidence into the record: (a) the application filed on June 21, 2019, and supplemented on August 22 and September 6 and 11, 2019; (b) the applicants' proof of notice and supporting documentation, filed on October 15, 2019; (c) the 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)

18. Each system requested for transfer is a TCEQ-approved PWS that is capable of providing drinking water that meets the requirements of the Texas Health and Safety Code, Chapter 341, and the applicable TCEQ rules.
19. Monarch will have access to an adequate supply of water to meet the needs of the transferred customers because all of the existing infrastructure, which was already providing an adequate supply, will be transferred.
20. Ni has minor violations associated with their PWS listed in TCEQ databases. Monarch has contacted the TCEQ to address these violations.

21. Ni has not been subject to any enforcement action by the Commission, the Texas Health and Human Services Commission, the Office of Attorney General, or the United States Environmental Protection Agency.
22. Monarch has been the subject to enforcement actions by the TCEQ. Monarch has either resolved the violations or has entered into compliance agreements to resolve the violations.
23. Monarch has not been subject to any enforcement action by the Commission, the Texas Health and Human Services Commission, the Office of the Attorney General, or the Environmental Protection Agency.
24. The applicants have demonstrated a compliance status that is adequate for approval of the transaction.

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

25. No additional facilities or improvements are currently needed to meet the TCEQ's and Commission's minimum requirements or to provide continuous and adequate service to the requested service areas.
26. Ni has been providing adequate service to the areas being transferred.

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

27. Ni is currently serving 1,166 existing customers in the requested areas.
28. Ni's existing customers in the requested areas have a continuing need for service.

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)

29. If the transaction is approved, it will allow for the inter-company transfer of assets from Ni to Monarch through an inter-company accounting entry.
30. Ni and Monarch are the only utilities affected by this sale and transfer.
31. There will be no effect on any other retail public utility serving the proximate area as the transaction is a sale and transfer of assets between existing operating subsidiaries of the same parent company.
32. Customers in the transferred areas will experience no change in the quality of service.

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)

33. It is not expected for the proposed transaction to have any effect on the operation of the PWS because service is already being provided to Ni's PWS alongside Monarch's PWS out of nearby regional field offices.
34. The transfer involves only existing infrastructure and new construction is currently unnecessary to serve the requested transfer areas as a result of the transaction.
35. Monarch has several PWS registered with the TCEQ and is able to provide adequate service.
36. Monarch has the managerial and technical capability to provide continuous and adequate 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)

37. Monarch has a debt-to-equity ratio of 0.30, which is less than one, thus satisfying the leverage test.
38. Monarch demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations, thus meeting the operations test.
39. 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)

40. There is no need to require Monarch to provide bond or other financial assurance to ensure continuous and adequate service.

Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC §§ 13.246(c)(5); 16 TAC §§ 24.227(d)(5), 24.239(j)(5)(F)

41. It is not feasible for an adjacent utility to provide service to the requested areas because Ni's current facilities possess sufficient capacity to provide continuous and adequate service.

Regionalization or Consolidation—TWC §§ 13.241(d); 16 TAC § 24.227(b)

42. Because Monarch does not currently anticipate building any new facilities to continue serving the requested areas, it is not necessary to consider regionalization or consolidation.

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

43. The proposed transaction will not adversely impact the environmental integrity of the requested areas because the requested areas are currently receiving service.

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

44. The effect on the land should be minimal as the requested areas will be served by existing systems and facilities and no additional construction is currently needed.

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

45. Monarch will provide water service to the existing customers in the requested areas and there will be no changes to the customers' monthly charges or quality of service as a result of the proposed transaction.

II. Conclusions of Law

The Commission makes the following conclusions of law.

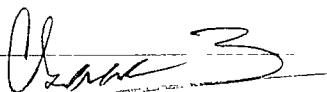
1. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2) and 16 TAC § 24.239.
2. After consideration of the factors in TWC § 13.246(c), Monarch has demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested area. TWC § 13.301(b).
3. The applicants have demonstrated that the sale of Ni's water facilities and the transfer of water service areas under CCN number 11922 to Monarch, an amendment to include the same within Monarch's CCN number 12983, and the cancellation of Ni's CCN number 11922 will serve the public interest and are necessary for the service, accommodation, convenience, and safety of the public. TWC §§ 13.246(b) and 13.301(d), (e).

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The sale is approved and the transaction between the 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.
3. The applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(o), if the transaction is not consummated within this 180-day 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 Ni's facilities and their corresponding service areas will remain under CCN number 11922 and be 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 must 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 must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

Signed at Austin, Texas the 3 day of March 2020.



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ADMINISTRATIVE LAW JUDGE

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