



Control Number: 49660



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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 JOHNSON AND WISE
COUNTIES** §
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**PUBLIC UTILITY COMMISSION
OF TEXAS**

NOTICE OF APPROVAL

This Notice of Approval addresses the June 21, 2019 application of Ni America Texas, LLC and Monarch Utilities I L.P. for the transfer of facilities and certificate rights held under certificate of convenience and necessity (CCN) number 11922 in Johnson and Wise counties from Ni to Monarch. The Commission approves the transfer of all of Ni’s facilities and water service area under CCN number 11922 to Monarch, the cancelation of CCN number 11922, and the amendment of Monarch’s CCN number 12983 to include the area previously included in Ni’s water CCN number 11922.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Ni is a Delaware for-profit limited liability company registered with the Texas secretary of state under file number 800902877.
2. Ni owns, operates, and controls water facilities for providing water service under CCN number 11922 in Johnson and Wise counties.
3. Ni owns and operates six public water systems in Wise County registered with the Texas Commission on Environmental Quality (TCEQ) under identification numbers 2490044, 2490046, 2490050, 2490053, 2490058, and 2490061.
4. Ni is obligated to provide service to an area in Wise County known as the Las Brisas subdivision, which has no connections and is not served by any public water system.

5. Ni owns and operates one public water system in Johnson County registered with the TCEQ under identification number 1260103.
6. Monarch is a Texas limited partnership registered with the Texas secretary of state under file number 800034797.
7. Monarch owns, operates, and controls water facilities for providing water service under CCN number 12983 in Johnson and Wise counties.
8. Ni and Monarch are owned by SouthWest Water Company, a Delaware corporation.

Application

9. On June 21, 2019, the applicants filed the application at issue in this proceeding.
10. The applicants seek approval for the transfer of Ni's water service areas and facilities 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 requested areas to be transferred consist of the following public water systems and their corresponding water service areas:

Shaded Lane Estates (TCEQ identification 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 529, on the east by County Road 608, on the south by County Road 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.

Chisholm Hills Estates (TCEQ identification 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 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.

Coyote Ridge Addition (TCEQ identification number 2490053), **Sage Brush Estates** (TCEQ identification number 2490058), **Hills of Oliver Creek** (TCEQ

identification 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 Farm-to-Market Road 2264 on the east by Farm-to-Market Road 2464, on the south by a line 2,000 feet south of Happy Trail, and on the west by County Road 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.

Las Brisas (service area only): 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.

Sky View Ranch Estates (TCEQ identification number 2490061): the requested area is 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.

Windmill Trail (TCEQ identification 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 County Road 3355, on the south by County Road 3355, and on the west by County Road 3473. The requested area includes approximately 523 acres, 75 current customer connections, and encompasses the Windmill Trail Addition subdivision.

12. The requested area includes approximately 5,225 acres, 1,166 current customers, and nine subdivisions.
13. In Order No. 4 filed on September 30, 2019, the administrative law judge (ALJ) found the application administratively complete.

14. In Order No. 16 filed on December 11, 2020, the ALJ required clarification.
15. On December 29, 2020, Monarch filed an agreed response to Order No. 16, including Ni's water utility tariff as approved in Docket No. 48741¹ and an excerpt from Monarch's proposed water utility tariff in Docket No. 50944.²

Notice

16. On October 15, 2019, Monarch filed the affidavit of George Freitag, Texas regulatory manager for Monarch, attesting that notice was provided to all current customers of Ni, neighboring utilities, and affected parties on October 10, 2019.
17. In Order No. 5 filed on October 30, 2019, the ALJ found the notice sufficient.

Evidentiary Record

18. On February 6, 2020, the parties filed a joint motion to admit evidence into the record.
19. 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.
20. On October 6, 2020, the parties filed an agreed joint supplemental motion to admit evidence.
21. In Order No. 15 filed on December 2, 2020, the ALJ admitted the following evidence into the record: (a) applicants' closing documents filed on June 12, 2020; (b) applicants' documents addressing consumer deposits filed on June 24, 2020 under confidential seal; (c) applicants' additional documents addressing consumer deposits filed on July 6, 2020; (d) applicants' letter to the administrative law judge in response to Order No. 11 filed on July 16, 2020; (e) Monarch's consent form, filed on October 2, 2020; (f) Ni's consent form, filed on October 2, 2020; and (g) final map, certificate, and tariff, filed on October 6, 2020.

¹ *Application of Ni America Texas, LLC for Minor Tariff Revisions to Establish Rates for a Class of Customers 65 Years of Age or Older*, Docket No. 48741, Order (Aug. 8, 2019).

² *Application of Monarch Utilities I LP for Authority to Change Rates*, Docket No. 50944 (pending).

22. On February 25, 2021, the parties filed an agreed joint supplemental motion to admit evidence.
23. In Order No. 18 filed on March 9, 2021, the ALJ admitted the following evidence into the record: (a) Ni's water utility tariff as approved in Docket No. 48741, attached to agreed response to Order No. 16, filed on December 29, 2020; (b) excerpt from Monarch's proposed water utility tariff in Docket No. 50944, attached to agreed response to Order No. 16, filed on December 29, 2020; and (c) the amended tariff attached to the joint supplemental motion to admit evidence and proposed notice of approval as exhibit C filed on February 25, 2021.

Transfer

24. In Order No. 10 filed on March 3, 2020, the ALJ approved the transaction to proceed and required the applicants to file proof that the transaction had closed and that customer deposits had been addressed.
25. On June 12, 2020, the applicants filed documentation confirming that the transaction had closed effective June 8, 2020.
26. On June 24, 2020, Monarch filed, under confidential seal, a document attesting that all customer deposits had been properly addressed.
27. On July 16, 2020, the applicants filed supplemental information demonstrating that customer deposits had been properly addressed.
28. In Order No. 12 filed on August 21, 2020, the ALJ found the closing documents sufficient.

System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(h)(3)(A), (h)(5)(I)

29. Ni has minor violations associated with its public water systems listed in TCEQ databases and Monarch has contacted the TCEQ to address these violations.
30. 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.

31. Monarch has been the subject to enforcement actions by the TCEQ; however, Monarch has either resolved the violations or has entered into compliance agreements to resolve the violations.
32. 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.
33. There is no evidence that Monarch has a history of continuing mismanagement or misuse of revenues as a utility service provider.
34. Monarch has demonstrated a compliance history that is adequate for approval of the transaction.

Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(e)(1), 24.239(h)(5)(A)

35. 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.
36. Ni has been providing continuous and adequate service to the requested areas being transferred.

Need for Additional Service—TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2), 24.239(h)(5)(B)

37. Ni is currently serving 1,166 existing customers in the requested areas who have an ongoing need for service.
38. The application is to transfer only existing facilities, customers, and service area.
39. There is no evidence in the record indicating a need for additional service.

Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(C)

40. 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.
41. Ni and Monarch are the only utilities affected by this transfer.

42. There will be no effect on any other retail public utility serving the proximate area as the transaction is a transfer of assets between existing operating subsidiaries of the same parent company.

43. Customers in the transferred areas will experience no change in the quality of service.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), (b), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (e)(4), 24.239(e), (h)(5)(D)

44. With the exception of the Las Brisas Subdivision, which has no current connections and is not a registered public water system, each of Ni's systems being transferred are registered with the TCEQ, have access to adequate supply of water, and are capable of providing drinking water that meets the requirements of the chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and TCEQ rules.

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

46. Monarch employs TCEQ-licensed water operators who will be responsible for the operation of the public water system being transferred.

47. Monarch has sufficient capacity to provide continuous and adequate service to the 1,166 existing customers.

48. 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), (e)(6), 24.239(e), (h)(5)(F)

49. Monarch has a debt-to-equity ratio of 0.30, which is less than one, thus satisfying the leverage test.

50. 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.

51. 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(f), 24.239(f)

52. There is no need to require Monarch to provide a bond or other financial assurance to ensure continuous and adequate service to the requested area.

Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5), 24.239(h)(5)(E)

53. The requested areas are currently being served by Ni and there will be no changes to land uses or existing CCN boundaries. Therefore, it is not feasible to obtain service from another utility.

Environmental Integrity and Effect on the Land—TWC §§ 13.246(c)(7), (c)(9); 16 TAC §§ 24.227(e)(7), (e)(9), 24.239(h)(5)(G)

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

55. 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 in Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)

56. 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.³

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

57. Because the requested areas will not require construction of a physically separate water system, consideration of regionalization or consolidation is not required.

Certificates, Map, and Tariff

58. On September 8 and 24, 2020, Commission Staff emailed the applicants the final proposed maps and tariff related to this docket.

59. On October 1, 2020, Commission Staff emailed its proposed certificate to Monarch.

60. On October 2, 2020, Monarch filed its consent to the proposed maps, certificate, and tariff.

³ Ni has received approval of a new and superseding tariff since the date this application was filed. See *Application of Ni America Texas, LLC for Minor Tariff Revisions to Establish Rates for a Class of Customers 65 Years of Age or Older*, Order Following Demand (Aug. 8, 2019).

61. On October 2, 2020, Ni filed its consent to the proposed maps.
62. The final certificate, maps, and tariff were filed as attachments to the agreed joint motion to admit evidence on October 6, 2020.
63. On February 25, 2021, the parties filed a joint supplemental motion to admit evidence and proposed notice of approval with a revised version of Ni's tariff, amended to include Las Brisas.

Informal Disposition

64. More than 15 days have passed since the completion of notice provided in this docket.
65. No person filed a protest or motion to intervene.
66. Monarch, Ni, and Commission Staff are the only parties to this proceeding.
67. No party requested a hearing and no hearing is needed.
68. Commission Staff recommended approval of the application.
69. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.041, 13.241, 13.244, 13.246, 13.251, 13.254, and 13.301.
2. Monarch and Ni are retail public utilities as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
3. The applicants provided notice of the application that complies with TWC § 13.301(a)(2) and 16 TAC § 24.239 (a) through (c).
4. The Commission processed the application as required by the TWC, the Administrative Procedure Act,⁴ and Commission Rules.
5. Monarch and Ni have complied with the requirements of 16 TAC § 24.239(k) with respect to customer deposits.

⁴ Tex. Gov't Code §§ 2001.001–.903.

6. Monarch and Ni completed the transaction within the time required by 16 TAC § 24.239(m).
7. After consideration of the factors in TWC § 13.246(c), Monarch demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested area, as required by TWC § 13.301(b).
8. Monarch meets the requirements of TWC § 13.241(b) to provide water utility service.
9. It is not necessary for Monarch to provide a bond or other financial assurance under TWC §§ 13.246(d).
10. Monarch and Ni demonstrated that the transfer of Ni's facilities and service area under CCN number 11922 to Monarch will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public, as required by TWC §§ 13.246(b) and 13.301(d) and (e).
11. Monarch must record a certified copy of the certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Johnson and Wise counties within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording, as required by TWC § 13.257(r) and (s).
12. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs


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

1. The Commission approves the transfer of all of of Ni's facilities and water service area under CCN number 11922 to Monarch, the cancelation of CCN number 11922, and the amendment of Monarch's CCN number 12983 to include the area previously included in Ni's water CCN number 11922.
2. The Commission issues the certificate attached to this Notice of Approval.
3. The Commission approves the map attached to this Notice of Approval.

4. The Commission approves the tariff attached to the joint supplemental motion to admit evidence and proposed notice of approval filed on October 6, 2020, and the revised tariff pages attached to the joint supplemental motion to admit evidence and proposed notice of approval filed on February 25, 2021.
5. Monarch must provide service to every customer and applicant for service within the approved area under water CCN number 12983 that requests water service and meets the terms of Monarch's water service, and such service must be continuous and adequate.
6. Monarch must comply with the recording requirements in TWC § § 13.257 (r) and (s) for the areas in Johnson and Wise Counties affected by the application and submit to the Commission evidence of the recording no later than 45 days after receipt of this Notice of Approval.
7. Within ten days of the date of this Notice of Approval, Commission Staff must provide a clean copy of the tariff approved by this Notice of Approval to central records to be marked *Approved* and filed in the Commission's tariff books.
8. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the 9 day of March 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



KATIE MOORE
ADMINISTRATIVE LAW JUDGE



Public Utility Commission of Texas

By These Presents Be It Known To All That

Monarch Utilities I L.P.

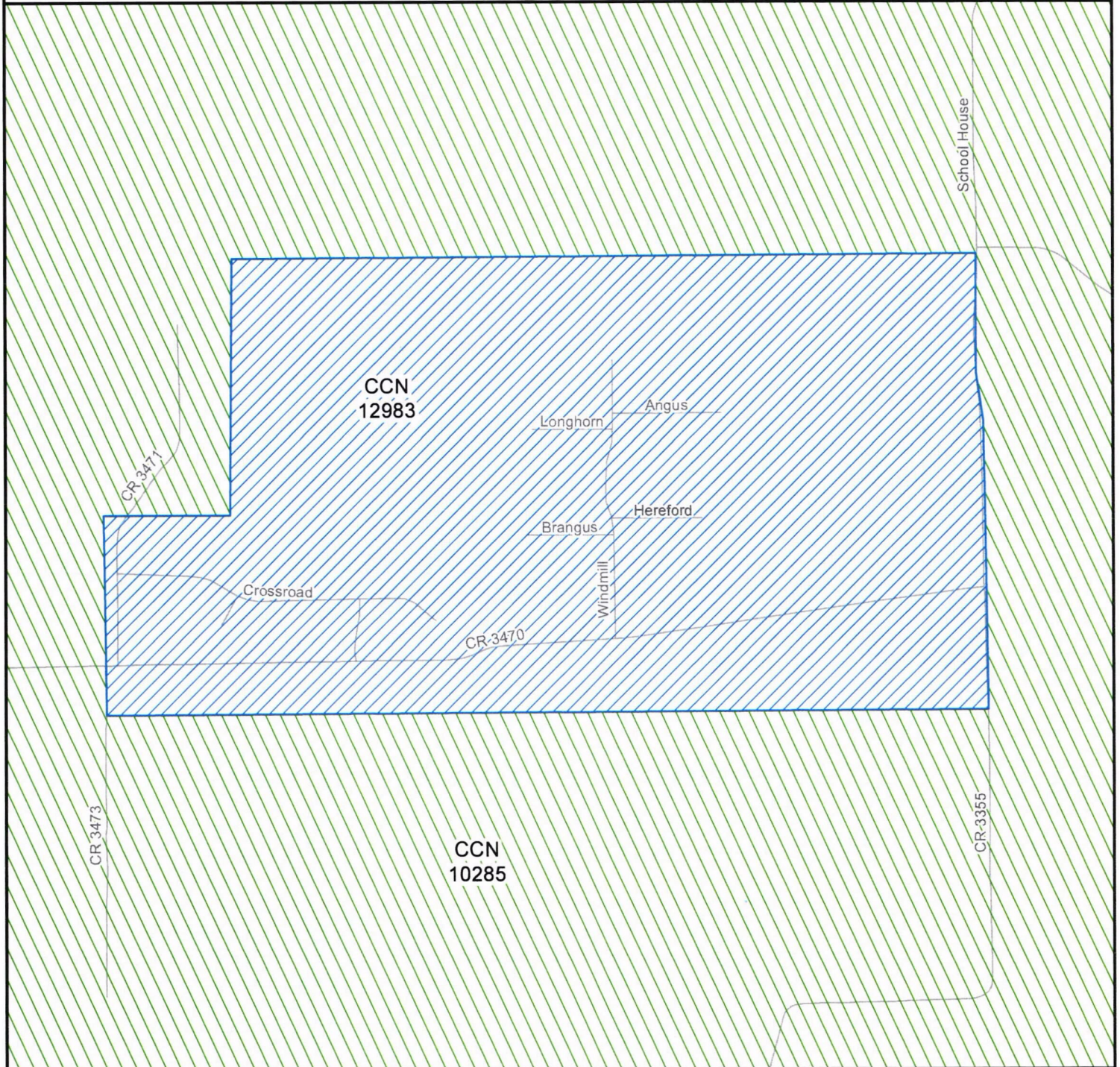
having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Monarch Utilities I L.P. is entitled to this

Certificate of Convenience and Necessity No. 12983

to provide continuous and adequate water utility service to that service area or those service areas in Bandera, Brazoria, Chambers, Denton, Grayson, Harris, Hays, Henderson, Hood, Johnson, Liberty, Marion, Matagorda, Medina, Montgomery, Parker, Polk, San Jacinto, Smith, Tarrant, Trinity, Tyler, Van Zandt, Wise, and Wood Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 49660 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Monarch Utilities I L.P. to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.



Issued at Austin, Texas, this 9th day of March 2021.

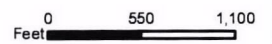
Monarch Utilities I L.P.
Portion of Water CCN No. 12983
PUC Docket No. 49660
Transferred all of Ni America Texas, LLC, CCN No. 11922 in Wise County



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Water CCN

-  12983 - Monarch Utilities I LP
-  10285 - Walnut Creek SUD



Map by: Komal Patel
Date created: July 20, 2020
Project Path: n:\finalmapping\
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Monarch Utilities I L.P.
Portion of Water CCN No. 12983
PUC Docket No. 49660
Transferred all of Ni America Texas, LLC, CCN No. 11922 in Wise County



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Water CCN

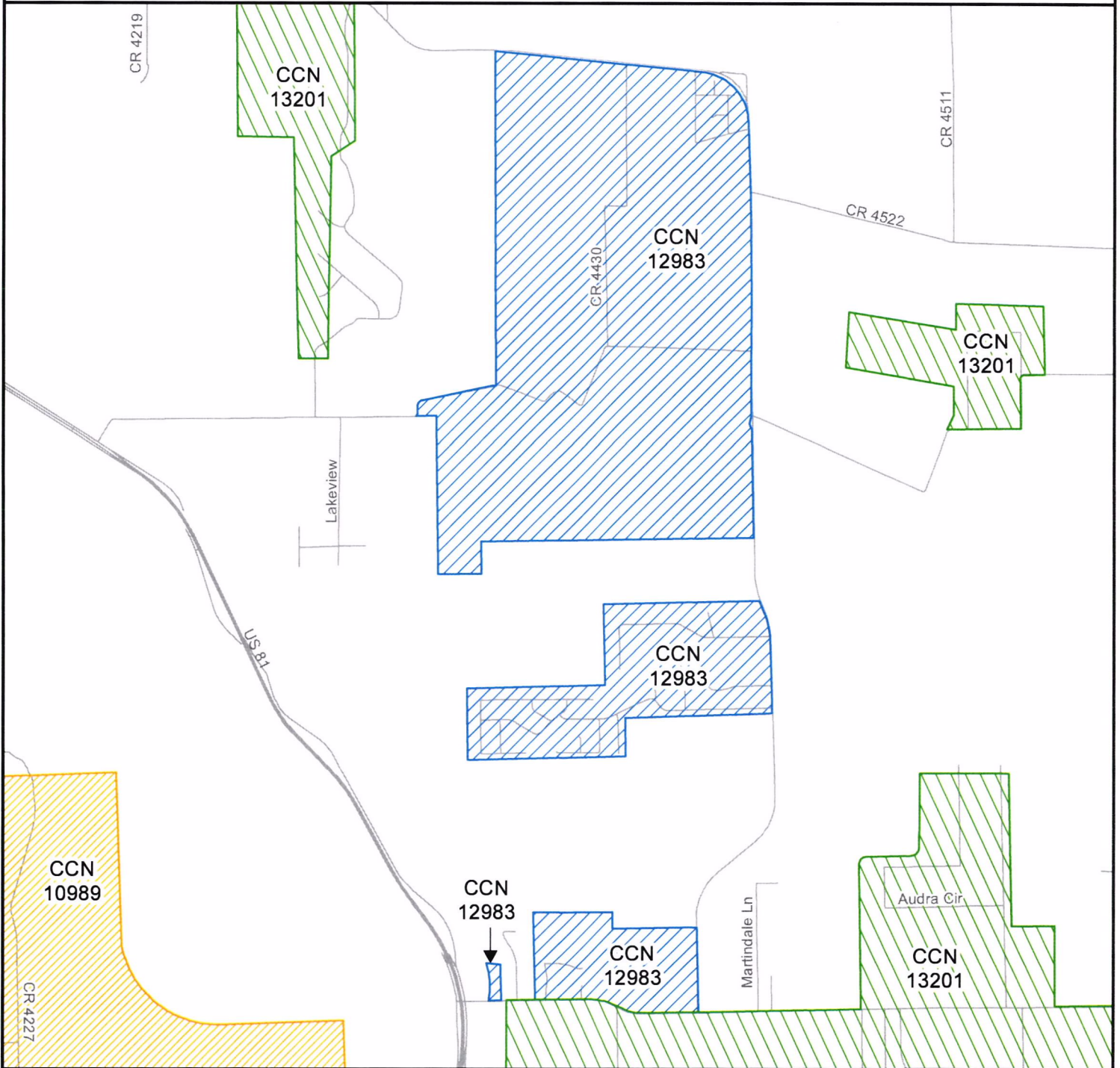
 12983 - Monarch Utilities I LP

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Monarch Utilities I L.P.
 Portion of Water CCN No. 12983
 PUC Docket No. 49660
 Transferred all of Ni America Texas, LLC, CCN No. 11922 in Wise County



Public Utility Commission of Texas
 1701 N. Congress Ave
 Austin, TX 78701

Water CCN

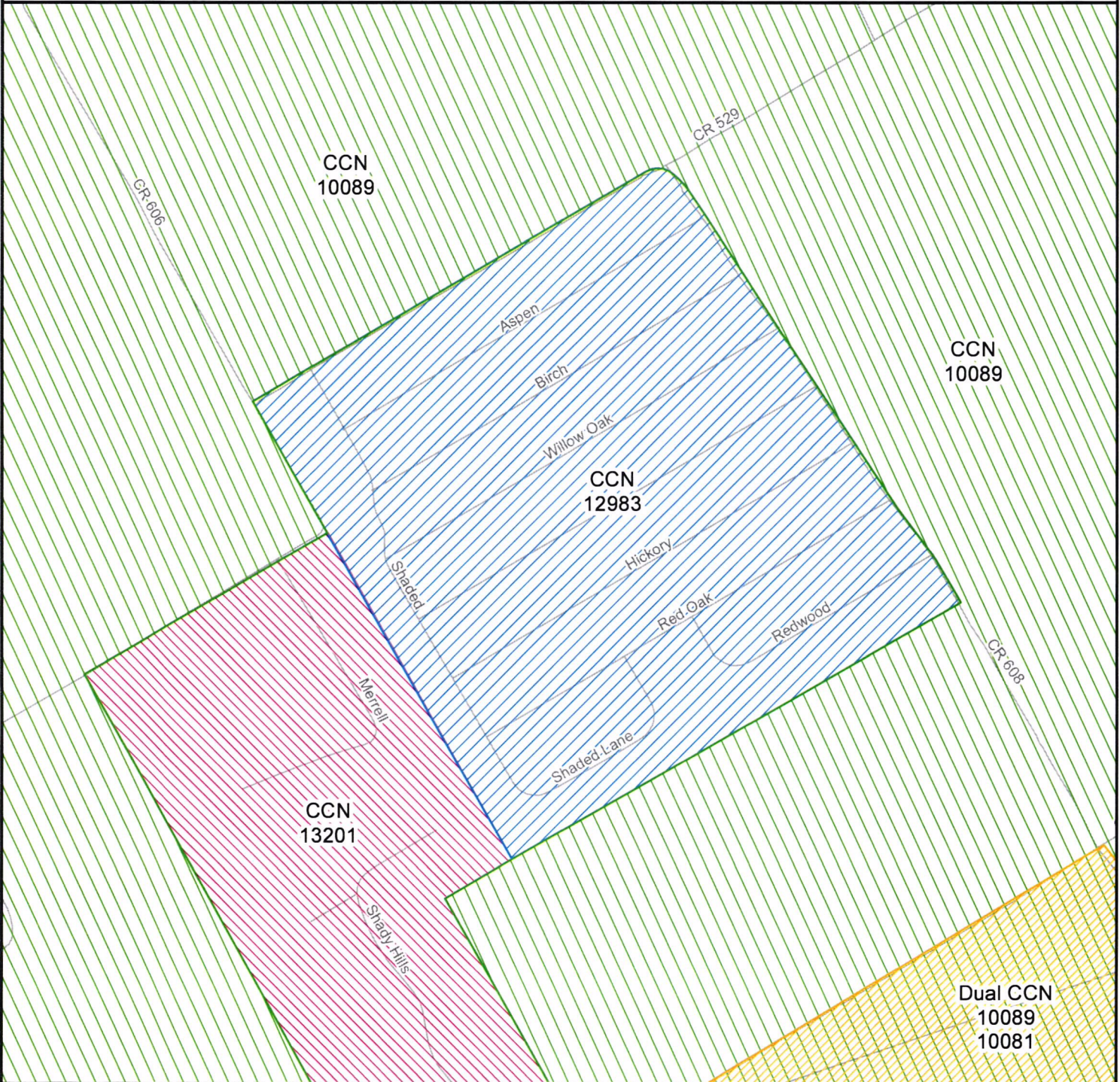
-  12983 - Monarch Utilities I LP
-  13201 - Aqua Texas Inc
-  10989 - City of Rhome

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 Date created: July 20, 2020
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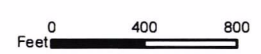
Monarch Utilities I L.P.
Portion of Water CCN No. 12983
PUC Docket No. 49660
Transferred all of Ni America Texas, LLC, CCN No. 11922 in Johnson County



Public Utility Commission of Texas
 1701 N. Congress Ave
 Austin, TX 78701

Water CCN

	12983 - Monarch Utilities I LP
	13201 - Aqua Texas Inc
	10089 - Bethesda WSC
	10081 - Johnson County SUD



Map by: Komal Patel
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