

Control Number: 49732



Item Number: 28


Addendum StartPage: 0

Public Utility Commission of Texas

Commissioner Memorandum

2020 JUL 30 AM 11:27
PUBLIC UTILITY COMMISSION
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TO: Commissioner Arthur C. D’Andrea
Commissioner Shelly Botkin

FROM: Chairman DeAnn T. Walker 

DATE: July 30, 2020

RE: July 31, 2020 Open Meeting – Item No. 19
Docket No. 49732 – *Complaint of Paul Hawkins Against Monarch Utilities I, LP*

The Commission previously considered a proposal for decision (PFD) that recommended dismissal under 16 Texas Administrative Code (TAC) § 22.181(d)(7) for failure to amend the complaint such that it was sufficient after repeated determinations that the complaint was insufficient. The Commission did not act upon the PFD but instead concluded that there were issues to be considered more fully before the Commission could move forward with this complaint case.

The Commission issued a briefing order requesting that the parties address the following issues: 1) does a tariff change, under 16 TAC § 24.21(h) and now 16 TAC § 24.25(h), include a pass-through charge calculated under a tariff formula; and 2) if so, did the Commission specify an effective date for Monarch’s revised pass-through charge by order or rule?

It is my belief that the answer to both of these questions is in the affirmative. First, I recommend finding that the pass-through charge calculated under a tariff formula is a tariff change. Monarch’s pass-through tariff provision at issue in this docket contains what is in effect a formula rate, but any changes to the pass-through provision result in a change to the utility’s tariff. When Monarch implements or updates its combined pass-through rate, this necessarily results in a change to the tariff. Notice to customers is required regarding the update to the pass-through rate and the tariff is amended and updated in the tariff on file in Central Records.

Second, I recommend that the Commission find that the approved language in Monarch’s water tariff identifies the triggering mechanism for the effective date of a water pass-through charge. In Docket No. 45570¹, Monarch proposed pass-through provision tariff language that states “[t]he utility may begin to charge the new filed [water pass-through charge] on the proposed effective date in the notice” and the Commission issued an order approving this provision in Monarch’s tariff. Therefore, by approving the pass-through provision language in Monarch’s tariff, which allows Monarch to begin charging customers the pass-through rate beginning on the

¹ *Application of Monarch Utilities I, LP for Authority to Change Rates*, Docket No. 45570, Order (Aug. 21, 2017).

28

proposed effective date, the Commission by order specified the effective date for Monarch's revised pass-through charge.

If the Commission reaches agreement on these briefing issues, the next step is to address the pending PFD. I disagree with Commission Staff that Mr. Hawkins failed to meet the requirements of 16 TAC § 22.242(e)(2)(C). I believe that the Commission should favorably interpret pleadings of a pro se complainant. In reviewing the filings in this proceeding, it appears that Mr. Hawkins provided sufficient information for the complaint to move forward. Therefore, I do not recommend dismissing the complaint for the reason cited in the PFD.

Instead, I recommend remanding this proceeding to Docket Management for further processing. Following the issuance of a briefing order from the Commission, if one or more parties take the position that there is no genuine issue as to any material fact and that the party is entitled to a decision in its favor as a matter of law, then a motion for summary decision may be appropriate.

If the Commission agrees with my conclusions regarding the briefing issues and with the recommendation to remand this proceeding to Docket Management for further processing, I recommend directing the Office of Policy and Docket Management to issue an order consistent with this memorandum.

I look forward to discussing this matter with you at the open meeting.