



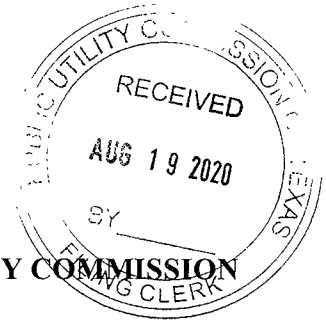
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DOCKET NO. 49732



COMPLAINT OF PAUL HAWKINS §
AGAINST MONARCH UTILITIES I, LP §
§

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER ON BRIEFING ISSUE AND REMANDING PROCEEDING

This Order addresses the complaint of Paul Hawkins against Monarch Utilities I, LP. In his complaint, Mr. Hawkins alleged improper billing practices on the part of Monarch, raised the issue of whether customers should be charged a pass-through rate, and sought a return to his old water rates. The Commission administrative law judge (ALJ) issued a proposal for decision in which he recommended dismissal of Mr. Hawkins’s complaint. The Commission declined to adopt the proposal for decision and requested briefing on certain issues. This Order addresses those issues and remands the proceeding for further processing consistent with the Commission’s discussion at its July 31, 2020 open meeting.

I. Complaint

Mr. Hawkins alleged that Monarch was charging rates that differed from those authorized in Monarch’s approved tariff. Mr. Hawkins further alleged that his water utility service was being serviced by a part-time employee three to five times a week. Mr. Hawkins requested a return to his prior rates and that the Commission review the rates charged to him by Monarch for violations.

At the time Mr. Hawkins’s complaint was filed, Monarch had recently implemented its initial pass-through rate of \$0.69 per 1000 gallons under the pass-through provision in its tariff.¹ Prior to that time, Monarch’s pass-through rate was effectively \$0.00. On August 6, 2019, Monarch filed its response denying all allegations asserted by Mr. Hawkins.² Monarch asserted that the bills provided in Mr. Hawkins’s complaint were consistent with Monarch’s tariff. Monarch further asserted that it is authorized to bill customers its proposed pass-through rate while Monarch’s application is being processed, by the Commission because Monarch’s Commission-

¹ *Application of Monarch Utilities I, L.P. for a Pass-Through Gallonage Charge*, Docket No. 49242, Commission Staff’s Agreed Recommendation on Final Disposition at 4 (Feb. 7, 2020).

² Monarch’s Response to Order No. 1 (Aug. 6, 2019).

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approved tariff allows it to charge a pass-through rate upon satisfaction of Commission notice requirements.³

Additionally, Monarch's response referenced a letter from the Commission's Customer Protection Division to Mr. Hawkins dated July 15, 2019.⁴ In that letter the Customer Protection Division indicated that Monarch's water pass-through rate had not been approved by the Commission, could not be charged, and that any pass-through rates billed by Monarch were to be credited back. Monarch asserted that the Customer Protection Division's position was in error and further asserted that language within its approved tariff permits Monarch to pass through certain costs to its customers via its proposed pass-through rate, subject to annual true-ups and contingent upon all notice requirements being met under 16 Texas Administrative Code (TAC) § 24.25.

It is Monarch's position that the application it filed with the Commission for a pass-through rate on February 20, 2019, in Docket No. 49242, complied with the notice requirements of 16 TAC § 24.25, and included an appropriate effective date of March 1, 2019. Therefore, Monarch asserted that it was authorized to charge its proposed pass-through rate beginning on March 1, 2019. Monarch has continued to bill customers its proposed pass-through rate following the conclusion of the Customer Protection Division's informal complaint process.⁵

II. Procedural History

Mr. Hawkins filed his formal complaint with the Commission on July 15, 2019. In response to Commission Staff's recommendation, the ALJ ordered Mr. Hawkins to cure the deficiencies in his complaint by September 27, 2019.⁶ Mr. Hawkins failed to comply with that order. Commission Staff then filed a motion requesting that Mr. Hawkins's complaint be dismissed.⁷ The ALJ ordered Mr. Hawkins to supplement his complaint by October 20, 2019.⁸ In addition, the ALJ informed Mr. Hawkins that, if he failed to comply with this deadline, his case could be dismissed by the Commission. Mr. Hawkins again failed to comply with the ALJ's order.

³ Monarch's Response to Order No. 1 at 2-3 (Aug. 6, 2019).

⁴ *Id.* at 2.

⁵ *Id.* at 2-3.

⁶ Order No. 2 (Sept. 27, 2019).

⁷ Commission Staff's Response to Order No. 2 (Oct. 11, 2019).

⁸ Order No. 3 (Oct. 14, 2019).

On November 12, 2019, Commission Staff filed its supplemental statement of position that recommended Mr. Hawkins's complaint be dismissed. On February 7, 2020, the ALJ filed a proposal for decision that recommended Mr. Hawkins's complaint be dismissed under 16 TAC § 22.181(d)(7) for failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient.⁹ In response to the proposal for decision Mr. Hawkins filed an amended complaint.¹⁰

At its March 12, 2020 open meeting, the Commission considered Mr. Hawkins's complaint. The Commission concluded it should not adopt the proposal for decision as there were issues that needed to be more fully considered. The Commission issued an order requiring briefing on the effective date of Monarch's pass-through rate. On March 26, 2020, Mr. Hawkins filed comments and Commission Staff and Monarch filed briefs on the issues. Monarch filed an unsolicited reply brief on April 3, 2020, and Mr. Hawkins filed comments in response on April 6, 2020. At its July 31, 2020 open meeting, the Commission considered the parties' briefs.

III. Discussion

The Commission requested briefing on the following issues.

1. **Does the following language in Monarch's current tariff constitute Commission authorization for an effective date of a pass-through charge other than the date of approval of that charge by the Commission under 16 TAC § 24.25(h):**

To implement, all notice requirements must be met. The utility may begin to charge the new filed WPC on the proposed effective date in the notice. Implementation of this WPC adjustment provision shall be governed by 16 TAC § 24.21(h).¹¹

In answering this issue, please address whether the Commission order approving Monarch's tariff is the type of order referenced in 16 TAC § 24.25(h).

2. **Does any other language in Monarch's current tariff constitute such authorization? In answering this issue, please identify any such language.**

The Commission concludes that its order approving Monarch's water and sewer tariffs in Docket No. 45570¹² established the effective date for the implementation of Monarch's

⁹ Proposal for Decision (Feb. 7, 2020).

¹⁰ Amended Complaint of Paul Hawkins (Feb. 28, 2020).

¹¹ 16 TAC § 25.21 was repealed and replaced with 16 TAC § 24.25 on October 17, 2018.

¹² *Application of Monarch Utilities I, LP for Authority to Change Rates*, Docket No. 45570, Order (Aug. 21, 2017).

pass-through rate as the effective date contained in the notice provided to customers.¹³ In making this determination, the Commission concludes that its order approving Monarch's tariff is the type of order referenced in 16 TAC § 24.25(h). However, the Commission does not decide here whether the implementation of, or a revision to, a pass-through rate as provided in Monarch's tariff constitutes a tariff change under 16 TAC § 24.25(h). Given its decision, the Commission does not address issue 2.

A. Monarch's Tariff

Monarch filed its application for a base-rate increase in Docket No. 45570 on February 29, 2016. A settlement was filed in that case on June 29, 2017, which included the tariff at issue here. The Commission issued its final order on August 21, 2017, in which the Commission approved Monarch's tariff.¹⁴ Monarch's approved pass-through provision contained the following language:

To implement, all notice requirements must be met. The utility may begin to charge the new filed WPC [water pass-through charge] on the proposed effective date in the notice. Implementation of this WPC adjustment provision shall be governed by 16 TAC § 24.21(h).

When the application was filed in Docket No. 45570, the Commission's rule for purchased-water provisions was located at former 16 TAC § 24.21(h). On June 15, 2016, the Commission proposed amendments to this rule and adopted these changes in November. This amendment changed the requirements for pass-through provisions and reorganized them in different subdivisions of the rule. The final order in Docket No. 45570 approving Monarch's tariff was issued eight months after the 2016 amendment was adopted. In addition, in May 2018, Monarch filed an application to amend its tariff to establish a rider to credit to ratepayers overcollection of tax expenses after the reduction in the federal income tax rate for corporations. Monarch's tariff was last approved—including the reference to § 24.21(h)—in February 2019.

B. Issues Presented

Monarch's tariff states that its pass-through provision is governed by 16 TAC § 24.21(h). This subsection states:

¹³ See 16 TAC § 24.25(b)(2)(F)(ii). To revise or implement a pass-through rate, a utility must provide notice to its customers containing certain information, including the effective date of the change.

¹⁴ Docket No. 45570, Order at 8.

(h) Effective date. The effective date of a tariff change is the date of approval by the regulatory authority, unless otherwise specified by the regulatory authority, in a commission order, or by rule. The effective date of a proposed rate increase under TWC §13.187 or §13.1871 is the proposed date on the notice to customers and the regulatory authority, unless suspended by the regulatory authority.

This subsection addresses the effective date of a tariff change. The Commission has never addressed whether a revision to a pass-through rate—in a manner as provided in Monarch’s tariff—is a tariff change. Further, the Commission has never addressed what is the type of order or rule that can otherwise specify an effective date for a tariff change. These matters were raised in the issues on which the Commission requested briefing.

Commission Staff argues that Monarch’s tariff has two contradictory statements:¹⁵ First, it states that Monarch may begin charging a pass-through rate on the effective date in the notice provided to customers. Second, Commission Staff states that implementation of the pass-through rate is governed by 16 TAC § 24.25(h), which establishes the effective date of a tariff change as the date of approval by the Commission, unless otherwise specified by the Commission in an order or rule.¹⁶ Thus, Commission Staff presumes that the revision to the pass-through rate is a tariff change and concludes that Monarch’s pass-through rate can only be effective when the Commission approves the rate (which the Commission has not done),¹⁷ and that the language in subsection (h), *unless otherwise specified by the regulatory authority, in a commission order, or by rule* does not apply.¹⁸ Commission Staff concludes that the unless-otherwise-specified language does not apply because Monarch’s tariff was last approved in a proceeding to include a credit for federal income taxes related to the change in tax rate,¹⁹ although Commission Staff suggested that, if the docket had been “directly related to the subject of the tariff language,” it would be reasonable to treat the order approving the tariff as an order that otherwise specified an effective date.²⁰

¹⁵ Commission Staff’s Brief at 3 (May 26, 2020).

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 4-5.

¹⁹ *Id.* at 5.

²⁰ *Id.*

Monarch asserts in its brief that the pass-through provision approved by the Commission in Docket No. 45570 requires it to collect increases in purchased water costs through a pass-through rate and that the language of the tariff is clear that the effective date of that rate is the date provided in the notice to customers.²¹ Monarch also asserts that, because the Commission approved its tariff and the tariff language provides for an effective date as stated in the notice, the Commission has otherwise specified that the effective date of the pass-through rate is the date provided in the notice.²²

Monarch further argues that the pass-through formula in the tariff is itself the rate and that any changes are “merely provided to the commission to ensure the formula was applied accurately.”²³ Thus, Monarch argues that the Commission-approved rate is being charged to Mr. Hawkins. And, finally, Monarch contrasts the pass-through provision with the provision in its tariff for surcharging governmental, testing, and inspection costs, which expressly provides that such costs may be passed through to customers “after notice and upon written approval by the PUC.” Consequently, Monarch asserts, the Commission’s decision to omit the approval language in the pass-through provision “reveals the Commission’s intent” that the pass-through charge is “not subject to those approval requirements.”²⁴

C. Commission Decision

The Commission may approve the implementation or modification of a pass-through provision calculation as a minor tariff change in accordance with the provisions of 16 TAC § 24.25(b)(2)(C) through (F).²⁵ A utility that wishes to revise or implement a pass-through provision must meet certain requirements, including providing notice to the Commission, which must contain a copy of the notice provided to customers.²⁶ The notice provided to customers must

²¹ Monarch’s Brief at 3-4.

²² *Id.* at 4.

²³ *Id.* at 6.

²⁴ *Id.* at 7-8.

²⁵ 16 TAC § 24.25(b)(2)(A).

²⁶ *Id.* § 24.25(b)(2)(F)(i)(III).

include the effective date of the changed rate.²⁷ In addition, the notice must inform customers that the change is being made in accordance with 16 TAC § 24.25.²⁸

Monarch's pass-through provision approved by the Commission states that the pass-through rate will be adjusted annually and contains a formula by which the rate is calculated. The provision further states that all notice requirements must be met to implement the pass-through rate and that the utility may begin to charge the "new filed WPC [water pass-through charge] on the proposed effective date in the notice." The tariff also states that implementation of this provision "shall be governed by 16 TAC § 24.21(h)."

While Monarch's pass-through provision references 16 TAC § 24.21(h), that provision was renumbered and is now located at 16 TAC § 24.25(h).²⁹ As noted above, 16 TAC § 24.25(h) states that the effective date of a tariff change is the date of approval by the regulatory authority, unless otherwise specified by the regulatory authority, in a commission order, or by rule. That provision, however, only applies to a tariff change. If the implementation of Monarch's pass-through rate is not a tariff change, then the effective date of the pass-through rate is specified by the tariff; the reference in § 24.21(h) (now § 24.25(h)) is not implicated. However, if the revision to the pass-through rate is a tariff change, by approving the language in Monarch's tariff that the utility may begin to charge the revised pass-through rate "on the proposed effective date in the notice" to customers, the Commission by order has otherwise specified an effective date. Thus, whether Monarch's implementation of its pass-through rate is a tariff change cannot affect the outcome here and the Commission deems it unnecessary to determine whether such implementations, or revisions to such rates, are tariff changes. Accordingly, the Commission determines that the effective date for Monarch's pass-through rate is the date specified in the notice Monarch provided to its customers.

²⁷ 16 TAC § 24.25(b)(2)(F)(ii)(I).

²⁸ *Id.* § 24.25(b)(2)(F)(ii)(VI).

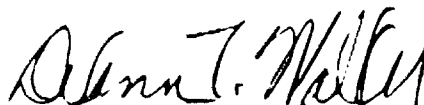
²⁹ *Rulemaking to Amend Chapter 24 for the Sole Purpose of Renumbering Certain Sections, Renaming and Relettering Certain Subchapters, and Adding a New Subchapter*, Project No. 48526, Order Adopting Repeal and New Provisions (Sep. 27, 2018).

IV. Remand to Docket Management for Further Processing

Consistent with the discussion at the July 31, 2020 open meeting, the Commission remands this proceeding to Docket Management for further processing.

Signed at Austin, Texas the 19th day of August 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER