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PUC DOCKET NO. 49732

COMPLAINT OF PAUL HAWKINS
AGAINST MONARCH UTILITIES I
L.P.

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PUBLIC UTILITY COMMISSION
OF TEXAS

**MONARCH UTILITIES I L.P.'S
MOTION FOR SUMMARY DISPOSITION**

Monarch Utilities I L.P. (Monarch) files this Motion for Summary Disposition of the above-styled complaint, and in support thereof would show as follows:

I. EXECUTIVE SUMMARY

Monarch's tariff authorized it to implement a pass-through charge on the effective date provided in its notice to customers. That authority was affirmed by the Commission Order on Threshold Issue and Remanding Proceeding.¹ Therefore, as a matter of law, Monarch is entitled to a decision finding it properly collected the amounts disputed in Mr. Hawkins' complaint and dismissing the complaint because no genuine issue of material fact exists in this matter.

II. BACKGROUND

On July 15, 2019, Paul Hawkins filed a complaint against Monarch regarding charges for water service.² Before the complaint, Monarch implemented a pass-through charge and began collecting the charge on the effective date as indicated in its notice to customers, March 1, 2019. On July 17, 2019, the Commission issued Order No. 1 Requiring Responses from Monarch on specific issues.³ On August 6, 2019, Monarch filed a Response to Order No. 1 noting that Monarch's current tariff allows for pass-through charges subject to an annual true-up adjustment

¹ Order on Briefing Issue and Remanding Proceeding at 7 (Aug. 19, 2020).

² Formal Complaint of Paul Hawkins against Monarch Utilities I L.P. (Jul 15, 2019).

³ Order No. 1 Requiring Responses (Jul. 17, 2019).

and contingent on all notice requirements being met per 16 TAC § 24.25(b)(2)(F).⁴ On August 13, 2019, the Commission Staff filed a statement of position, noting that Mr. Hawkins' complaint failed to include the information required under 16 TAC § 22.242(e)(2)(C) through (I).⁵ In Order No. 2 issued on August 15, 2019, the Administrative Law Judge (ALJ) ordered Mr. Hawkins to cure the deficiencies in his complaint by September 27, 2019.⁶ Mr. Hawkins did not comply with Order No. 2. On October 11, 2019, Commission Staff filed a response to Order No. 2 recommending that this case be dismissed because Mr. Hawkins had not filed a complete complaint.⁷ On October 14, 2019, the ALJ issued Order No. 3, requesting that Mr. Hawkins cure the deficiencies in his complaint by October 30, 2019.⁸ Mr. Hawkins did not comply with Order No. 3. On November 12, 2019, Commission Staff filed its response to Order No. 3, recommending again that this case be dismissed because Mr. Hawkins had not filed a complete complaint.⁹ On February 7, 2020, the ALJ filed a Proposal for Decision (PFD) recommending that Mr. Hawkins' complaint be dismissed due to lack of response.¹⁰ On February 28, 2020, Mr. Hawkins filed a supplement to his complaint.¹¹ On March 11, 2020, Chairman Walker issued a memorandum recommending that the Commission not adopt the PFD, that the proceeding be remanded for further processing, and that the Commission direct the issuance of a briefing order to address certain issues specified in the memorandum.¹²

⁴ Monarch's Response to Order No. 1 (Aug. 6, 2019).

⁵ Commission Staff's Statement of Position (Aug 13, 2020)

⁶ Order No. 2 Establishing Deadlines for Supplements and Entering Protective Order (Aug. 15, 2019).

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

⁸ Order No 3 Establishing Deadlines for Supplements (Oct 14, 2019).

⁹ Commission Staff's Response to Order No. 3, Supplemental Statement of Position (Nov. 12, 2019).

¹⁰ Proposal for Decision (Feb. 7, 2020)

¹¹ Supplemental Complaint of Paul Hawkins (Feb. 28, 2020)

¹² Chairman Walker's Memorandum (Mar. 11, 2020).

The Commission adopted the Chairman's recommendation at its March 12, 2020 open meeting, and the Order Requesting Briefing was issued. That order requested that the parties address the issue of whether the language in Monarch's tariff constituted Commission authorization to begin collecting a pass-through charge on the effective date provided by notice instead of the date of approval of that charge by the Commission under 16 TAC § 24.25(h).¹³ The parties filed briefing on March 26, 2020,¹⁴ and Monarch filed reply briefing on April 3, 2020.¹⁵ On July 30, 2020, Chairman Walker issued a memorandum recommending 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 and that by approving this language the Commission by order specified the effective date for Monarch's revised pass-through charge.¹⁶ Chairman Walker did not recommend dismissing Mr. Hawkins' complaint for failing to meet the requirements of 16 TAC § 22.242(e)(2)(C) as recommended in the PFD, believing instead the Commission should favorably interpret pleadings of a pro se complainant.¹⁷ However, Chairman Walker suggested that the proceeding be remanded for further processing, and that if after the issuance of a briefing order consistent with her other recommendations if one or more parties take the position that there is no genuine issue as to any material fact then a motion for summary decision may be appropriate.¹⁸

¹³ Order Requesting Briefing at 2 (Mar 12, 2020).

¹⁴ Comments of Paul Hawkins (Mar. 26, 2020); Commission Staff's Brief on Effective Date Issues (Mar. 26, 2020), Brief of Monarch Utilities I L P. (Mar. 26, 2020).

¹⁵ Reply Brief of Monarch Utilities I L.P. (Apr. 3, 2020).

¹⁶ Commissioner Memorandum from Chairman Walker (Jul. 30, 2020).

¹⁷ *Id.* at 2.

¹⁸ *Id.*

On August 19, 2020, the Commission issued the Order on Briefing Issue and Remanding Proceeding stating “the effective date for Monarch’s pass-through rate is the date specified in the notice Monarch provided to its customers” and remanded the proceeding to Docket Management for further processing.¹⁹ Commission Staff then filed a supplemental statement of position maintaining that the Commission has answered the central questions at issue in this docket and recommending a procedural schedule that contemplates a motion for summary disposition.²⁰ The ALJ acknowledged this recommendation, and on September 25, 2020 issued Order No. 5, setting a deadline for any party to file a motion for summary disposition by October 23, 2020.²¹

III. LEGAL STANDARD

“Any party to a proceeding may move for summary decision on any or all of the issues,” and such a motion “may be filed at any time before the close of the hearing on the merits.”²²

Summary decision is proper when:

the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion.²³

IV. ARGUMENT AND AUTHORITY

A. Hawkins’ Complaint and Monarch’s Position

Mr. Hawkins alleged in his February 28, 2020, letter that Monarch was charging rates that differed from those authorized in Monarch’s approved tariff, and that a part-time employee

¹⁹ Order on Briefing Issue and Remanding Proceeding at 7 (Aug. 19, 2020).

²⁰ Commission Staff’s Supplemental Statement of Position at 5 (Sept. 24, 2020).

²¹ Order No. 5 Establishing Deadlines for Motions and Responses (Sept. 25, 2020).

²² 16 Tex. Admin. Code (TAC) § 22.182(b).

²³ *Id.* § 22.182(a).

serviced his neighborhood three to five times a week.²⁴ Mr. Hawkins requested a return to his prior rates and that the Commission review the rates charged to him by Monarch for violations.²⁵ Commission Staff construed this letter, along with Mr. Hawkins' other correspondences and his informal complaint CP2019060780, to indicate that Mr. Hawkins was alleging the pass-through rate implemented by Monarch on March 1, 2019 was implemented without Commission approval.²⁶

Monarch's application for a pass-through rate filed with the Commission on February 20, 2019, in Docket No. 49242, complied with the notice requirements of 16 TAC § 24.25, and the notice included an appropriate effective date of March 1, 2019. Therefore, Monarch was authorized to charge its proposed pass-through rate beginning on March 1, 2019.

B. The matter should be dismissed because the Commission's Order has resolved the only issue in Mr. Hawkins' Complaint.

It is undisputed that Monarch provided Mr. Hawkins with notice of the pass-through charge and that Monarch began collecting this charge on the effective date specified in the notice.²⁷ The only issue raised in Mr. Hawkins' complaint is whether Monarch had the Commission's authorization to start charging the pass-through rate on the effective date stated in the notice pursuant to the approved language in Monarch's tariff. While Monarch was implementing the specific charge for the first time, the pass-through provision itself was already approved and in Monarch's tariff at the time in question.²⁸ Accordingly, Monarch's position was that the charge was authorized as long as it complied with the Commission's rules on notice and implementation.

²⁴ Supplemental Complaint at 2-3

²⁵ *Id.* at 3.

²⁶ Commission Staff's Statement of Position at 2 (Aug. 13, 2019)

²⁷ Order Requesting Briefing at 1 (Mar. 12, 2020).

²⁸ Order on Briefing Issue and Remanding Proceeding at 1-2 (Aug. 19, 2020).

Mr. Hawkins felt differently, arguing that the charge was not effective until Monarch had received Commission approval on the specific amount of the current pass-through rate, regardless of the provision in the tariff.

The Commission reviewed the arguments of the parties and issued the Order on Briefing Issue and Remanding Proceeding determining “that the effective date for Monarch’s pass-through rate is the date specified in the notice Monarch provided to its customers.”²⁹ The evidence of record clearly shows there is no dispute on the material facts. Based on the Commission’s determination, Monarch is entitled to a decision, as a matter of law, that it properly implemented its pass-through charge.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Monarch respectfully requests that the ALJ grant summary disposition by entering a final decision that there being no genuine issue of material fact and that Monarch is entitled, as a matter of law, to a decision finding that Monarch properly implemented its pass-through charge, dismissing Mr. Hawkins’ complaint, and granting Monarch any and all further relief to which it may show itself justly entitled.

Respectfully submitted,

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²⁹ Order on Briefing Issue and Remanding Proceeding at 7 (Aug. 19, 2020).

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**ATTORNEYS FOR MONARCH UTILITIES I
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CERTIFICATE OF SERVICE

I hereby certify that notice of the filing of this document was provided to all parties of record via electronic mail on October 22, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ William A. Faulk, III

WILLIAM A. FAULK, III

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