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**DOCKET NO. 49732**

**COMPLAINT OF PAUL HAWKINS § PUBLIC UTILITY COMMISSION**  
**AGAINST MONARCH UTILITIES I, §**  
**L.P. § OF TEXAS**

**COMMISSION STAFF’S MOTION FOR SUMMARY DISPOSITION**

**COMES NOW** the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Motion for Summary Disposition. Staff respectfully moves for summary disposition in this matter given that there are no remaining genuine issues of material fact. In support thereof, Staff shows the following:

**I. INTRODUCTION**

On July 15, 2019, Paul Hawkins (Mr. Hawkins) filed a formal complaint against Monarch Utilities I, L.P. (Monarch) regarding pass-through water charges. Mr. Hawkins filed the formal complaint pursuant to 16 Texas Administrative Code (TAC) § 22.242. Mr. Hawkins’ complaint consisted of utility bills from Monarch with the “total amount due” and the “Water Pass-Through Gal. Charge” circled.<sup>1</sup> All of the bills included a water pass-through gallonage charge. The formal complaint did not identify any specific allegations; however, Staff construed Mr. Hawkins’ complaint to focus on the water pass-through charges, based on his annotations to the bills and the information from Mr. Hawkins’ informal complaint CP2019060780.<sup>2</sup>

On August 13, 2019, Staff filed a statement of position noting that Mr. Hawkins’ complaint did not meet the requirements of 16 TAC § 22.242(e)(2).<sup>3</sup> Specifically, Staff noted that Mr. Hawkins’ complaint did not comply with 16 TAC § 22.242(e)(2)(C), (E), (F), (G), (H), and (I).<sup>4</sup> Staff recommended that Mr. Hawkins be ordered to cure the above deficiencies.<sup>5</sup>

A proposal for decision (PFD) was issued on February 7, 2020, recommending Mr. Hawkins’ complaint be dismissed under 16 TAC § 22.181(d)(7).<sup>6</sup> On February 28, 2020, Mr.

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<sup>1</sup> Formal Complaint of Paul Hawkins Against Monarch Utilities I, L.P. (Jul. 15, 2019).

<sup>2</sup> Commission Staff’s Statement of Position (Aug. 13, 2019).

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 4

<sup>6</sup> Proposal for Decision, Conclusion of Law No. 5 (Feb. 7, 2020).

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Hawkins supplemented his complaint with an informational letter, which 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.<sup>7</sup>

On March 11, 2020, Chairman Walker issued a memorandum recommending that the Commission not adopt the PFD and noting that the Commission's rules require that the Commission construe all pleadings "so as to do substantial justice."<sup>8</sup> The memorandum stated that Mr. Hawkins' complaint raised the issue of whether customers should currently be charged the water pass-through rate and further recommended that the Commission remand the proceeding for further processing and that the Office of Policy and Docket Management be directed to issue a briefing order to address whether Monarch Utilities I L.P.'s tariff language regarding the implementation of water pass-through charges comports with 16 TAC § 24.25(h).<sup>9</sup>

A briefing order was issued on March 12, 2020.<sup>10</sup> The issues to be briefed were as follows:

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).

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.<sup>11</sup>

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<sup>7</sup> Supplemental Complaint (Feb. 28, 2020) (Supplemental Complaint).

<sup>8</sup> Commissioner Memorandum (Mar. 11, 2020).

<sup>9</sup> *Id.*

<sup>10</sup> Order Requesting Briefing (Mar. 12, 2020)

<sup>11</sup> *Id.* at 2.

Staff and Monarch filed briefs on the effective date issues raised in the briefing order on March 26, 2020.<sup>12</sup> Monarch filed a reply brief on April 3, 2020.<sup>13</sup> On April 6, 2020, Mr. Hawkins filed an additional letter.<sup>14</sup>

On July 30, 2020, Chairman Walker issued a memorandum stating her belief that the answer to both of the questions posed in the briefing order was in the affirmative.<sup>15</sup> The memorandum recommended finding that the pass-through charge calculated under a tariff formula is a tariff change, and that the approved language in Monarch's water tariff identifies the triggering mechanism for the effective date of a water pass-through charge.<sup>16</sup> Chairman Walker further identified that Monarch's proposed pass-through provision tariff language in Docket No. 45570 stated "[t]he utility may begin to charge the new filed [water pass-through charge] on the proposed effective date in the notice" and that the Commission issued an order approving this provision.<sup>17</sup>

Having addressed that issue, Chairman Walker recommended that the Commission find that Mr. Hawkins has provided sufficient information for his complaint to move forward and recommended not dismissing the complaint for the reason cited in the PFD.<sup>18</sup> Instead, the memorandum recommended remanding the proceeding to Docket Management for further processing.<sup>19</sup> On August 19, 2020, an order was issued consistent with the recommendations in the memorandum, and the docket was remanded for further processing.<sup>20</sup>

Order No. 4, filed September 9, 2020, set a deadline of September 24, 2020 for Staff to file a supplemental statement of position regarding this case and file a proposed procedural schedule for continued processing of this docket. Staff timely filed a supplemental statement of position recommending that the Commission has answered the central question at issue in this docket, namely, whether Monarch was permitted to begin charging the pass-through rate on the effective

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<sup>12</sup> Staff's Brief on Effective Date Issues (Mar. 26, 2020); Brief of Monarch Utilities I, L.P. (Mar. 26, 2020).

<sup>13</sup> Reply Brief of Monarch Utilities I, L.P. (Apr. 3, 2020).

<sup>14</sup> Comments (Apr. 6, 2020).

<sup>15</sup> Commissioner Memorandum at 1 (Jul. 30, 2020) (July Memorandum).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* (citing to *Application of Monarch Utilities I, LP for Authority to Change Rates*, Docket No. 45570, Order (Aug. 21, 2017)).

<sup>18</sup> July Memorandum at 2.

<sup>19</sup> *Id.*

<sup>20</sup> Order on Briefing Issue and Remanding Proceeding (Aug. 19, 2020).

date provided in the notice to customers.<sup>21</sup> On September 25, 2020, Order No. 5 was issued, setting a deadline of October 23, 2020, for any party to file a motion for summary disposition. Therefore, this pleading is timely filed.

## II. LEGAL STANDARD

The presiding officer may grant a motion for summary decision<sup>22</sup> in accordance with the standard set forth in 16 TAC § 22.182(a):

The presiding officer, on motion by any party, may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed in accordance with § 22.222 of this title (relating to Official Notice), 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.<sup>23</sup>

## III. MOTION FOR SUMMARY DISPOSITION

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 serviced his neighborhood three to five times a week.<sup>24</sup> Mr. Hawkins requested a return to his prior rates and that the Commission review the rates charged to him by Monarch for violations.<sup>25</sup> Staff construed this letter, along with Mr. Hawkins' other correspondence and his informal complaint CP2019060780 as an allegation that the pass-through rate implemented by Monarch on March 1, 2019 was implemented without Commission approval. Therefore, the question of whether Monarch improperly implemented pass-through rate charges on March 1, 2019 is the central question in this docket.

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<sup>21</sup> Commission Staff's Supplemental Statement of Position at 5 (Sep. 24, 2020)

<sup>22</sup> It is Staff's understanding that the terms "Motion for Summary Disposition" and "Motion for Summary Decision" are interchangeable as both types of motions request the same relief. *See*, 1 TAC § 155.5050 ("Summary disposition shall be granted on all or part of a contested case if the pleadings, the motion for summary disposition, and the summary disposition evidence 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 all or some of the issues expressly set out in the motion.").

<sup>23</sup> 16 TAC § 22.182(a).

<sup>24</sup> Supplemental Complaint at 2-3.

<sup>25</sup> *Id.* at 3.

When Mr. Hawkins' complaint was filed, Monarch had recently noticed and implemented a pass-through rate of \$0.69 per 1,000 gallons.<sup>26</sup> This was the first time Monarch had implemented the pass-through rate provision in its approved tariff. On August 6, 2019, Monarch filed a response to Mr. Hawkins' original complaint asserting that the bills provided by Mr. Hawkins were consistent with Monarch's tariff and that Monarch was permitted to bill customers the proposed pass-through rate before receiving final Commission approval because the pass-through provision in Monarch's tariff allowed it to charge a pass-through rate after providing notice.<sup>27</sup>

The Commission has determined that "the effective date for Monarch's pass-through rate is the date specified in the notice Monarch provided to its customers."<sup>28</sup> It is undisputed that the pass-through provision in Monarch's tariff was approved in Docket No 45570.<sup>29</sup> It is also undisputed that the pass-through provision states that "[t]he utility may begin to charge the new filed [water pass-through charge] on the proposed effective date in the notice"<sup>30</sup> and that the Commission issued an order approving this tariff provision.<sup>31</sup> Monarch provided notice of the pass-through rate to customers,<sup>32</sup> and no evidence has been provided to suggest that Monarch began charging the pass-through before the effective date stated in the notice. Accordingly, there is no genuine issue as to any material fact needed to support a decision that it was proper for Monarch to implement its pass-through rate charge effective on the first meter reading after March 1, 2019.

The Commission has already answered the central question at issue in this matter—when Monarch was permitted to begin charging its pass-through rate. Further, the record contains uncontroverted evidence regarding when the Commission approved the pass-through provision in Monarch's tariff, the language of the pass-through provision, when Monarch provided notice to customers, and the effective date for the pass-through rate included in the notice. Therefore, there are no genuine issues as to any material fact and Monarch is entitled to a decision that its

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<sup>26</sup> *Application of Monarch Utilities I, L.P. for a Pass-Through Gallonage Charge*, Docket No. 49242, Commission Staff's Agreed Recommendation on Final Disposition (Feb. 7, 2020).

<sup>27</sup> Monarch's Response to Order No. 1 at 2-3 (Aug. 6, 2019).

<sup>28</sup> Order on Briefing Issue and Remanding Proceeding at 7 (Aug. 19, 2020) (Order on Briefing)

<sup>29</sup> *Id.* at 4 (citing to *Application of Monarch Utilities I, L.P. for Authority to Change Rates*, Docket No. 45570, Order at 8 (Aug. 21, 2017).

<sup>30</sup> Monarch's Response to Order No. 1 at Exhibit A

<sup>31</sup> Docket No. 45570, Order at Findings of Fact Nos. 55 and 56 and Ordering Paragraph No. 3.

<sup>32</sup> Monarch's Response to Order No. 1 at Exhibit C.

implementation of the pass-through rate was in compliance with its tariff as a matter of law. Staff respectfully requests that a decision be issued granting this motion for summary disposition under 16 TAC § 22.182(a).

#### IV. CONCLUSION

Staff respectfully requests the entry of an order granting its motion for summary disposition.

**Dated: October 23, 2020**

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on October 23, 2020 in accordance with the Order Suspending Rules, issued in Project No. 50664.

*/s/ John Harrison*  
John Harrison