



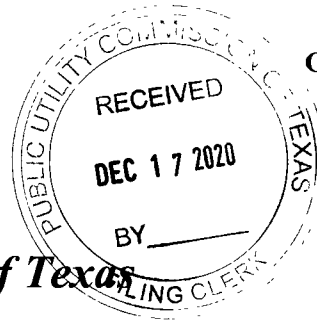
Control Number: 49732



Item Number: 35

Addendum StartPage: 0

DeAnn T. Walker
Chairman
Arthur C. D'Andrea
Commissioner
Shelly Botkin
Commissioner



Greg Abbott
Governor

Public Utility Commission of Texas

TO: Stephen Journey
Commission Counsel

All Parties of Record
FROM: Isaac Ta *I. T.*
Administrative Law Judge
RE: Docket No. 49732 – *Complaint of Paul Hawkins Against Monarch Utilities I, L.P.*
DATE: December 17, 2020

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the PFD.

Please place this docket on an open meeting agenda for the Commissioners' consideration. There is no deadline in this case. Please notify me and the parties of the open meeting date, as well as the deadline for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

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DOCKET NO. 49732

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

SECOND PROPOSAL FOR DECISION

This Second Proposal for Decision (PFD) addresses the motions for summary decision filed in this matter by Monarch Utilities I, L.P. and Commission Staff on October 22 and 23, 2020, respectively. For the reasons set forth herein, the Second PFD recommends that the Commission grant the motions and deny the complaint of Paul Hawkins.

I. Background

On February 29, 2016, Monarch filed an application for a base-rate increase in Docket No. 45570.¹ A settlement was filed in that docket 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.² Monarch's approved tariff contains a pass-through provision with the following language:

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

On February 20, 2019 Monarch filed an application in Docket No. 49242³ for approval of a pass-through gallonage charge of \$0.69 per 1,000 gallons, effective March 1, 2019. Monarch's application contained a copy of the notice provided to customers of the pass-through gallonage charge and included the proposed effective date of March 1, 2019.

On March 1, 2019, Monarch implemented the pass-through gallonage charge of \$0.69 per 1,000 gallons. No final decision has yet been issued in Docket No. 49242.

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

² *Id.* at 8.

³ *Application of Monarch Utilities I, L.P. for a Pass Through Gallonage Charge*, Docket No. 49242 (pending).

On July 15, 2019, Mr. Hawkins filed the formal complaint against Monarch that is at issue in the present docket. Mr. Hawkins filed the formal complaint under 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. All of the bills included the water pass-through gallonage charge. The formal complaint did not contain any specific allegations but appeared to concern the pass-through gallonage charges billed by Monarch.

On August 13, 2019, Commission Staff filed a statement of position noting that Mr. Hawkins' complaint did not meet the requirements of 16 TAC § 22.242(e)(2) and recommended that Mr. Hawkins be ordered to cure the deficiencies. In Order No. 2 filed on August 15, 2019, the administrative law judge (ALJ) ordered Mr. Hawkins to cure the deficiencies. Mr. Hawkins did not file anything in response to Order No. 2. On October 11, 2019, Commission Staff filed a supplemental statement of position and moved to dismiss Mr. Hawkins' complaint due to his failure to amend it such that it met the requirements of 16 TAC § 22.242(e)(2).

On February 7, 2020, the ALJ filed a PFD recommending Mr. Hawkins' complaint be dismissed under 16 TAC § 22.181(d)(7).

On February 28, 2020, Mr. Hawkins supplemented his complaint with a letter alleging improper billing practices on the part of Monarch. Although Mr. Hawkins' complaint and supplements thereto are unartfully worded, the substance of his concern appears to be that he believes Monarch has been inappropriately charging the pass-through gallonage charge.

On March 11, 2020, Chairman Walker filed a memorandum recommending that the Commission not adopt the PFD, noting that the Commission's rules require that the Commission construe all pleadings "so as to do substantial justice."⁴ Chairman Walker's memorandum stated that Mr. Hawkins' complaint raised the issue of whether customers should currently be charged the water pass-through gallonage charge, i.e. whether Monarch's approved tariff authorized it to bill customers its proposed pass-through gallonage charge while its application is still being processed by the Commission, and recommended that the Commission remand the proceeding for further processing and that the Office of Policy and Docket Management be directed to file a briefing order to address whether Monarch's tariff language regarding the implementation of the

⁴ Citing 16 TAC § 22.75(a).

water pass-through charge comports with 16 TAC § 24.25(h). At its March 12, 2020 open meeting, the Commission declined to adopt the PFD and voted to adopt an order consistent with Chairman Walker's March 11, 2020 memorandum.

On March 12, 2020, a briefing order was filed directing the parties to file briefs on the effective date of Monarch's pass-through gallonage charge. Specifically, the Commission questioned Monarch's assertion that it was authorized to bill customers its proposed pass-through gallonage charge while its application is being processed by the Commission because its Commission-approved tariff allows it to charge a pass-through gallonage charge upon satisfaction of the Commission's notice requirements.⁵ Accordingly, 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 [water pass-through gallonage charge] on the proposed effective date in the notice. Implementation of this [water pass-through gallonage charge] 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.

On March 26, 2020, Mr. Hawkins filed comments and Commission Staff and Monarch filed briefs on the issues. On April 3, 2020, Monarch filed a reply brief. On April 6, 2020, Mr. Hawkins filed additional comments.

On August 19, 2020, the Commission filed an order on briefing issue determining that the Commission's order approving Monarch's water and sewer tariffs in Docket No. 45570 established the effective date for the implementation of Monarch's pass-through gallonage charge as the effective date contained in the notice provided to customers in Docket No. 49242, i.e.

⁵ Monarch's Response to Order No. 1 at 2-3 (Aug. 6, 2019).

March 1, 2019. The Commission's August 19, 2020 order remanded this proceeding to the Office of Policy and Docket Management for further processing.

In Order No. 4 filed September 9, 2020, the ALJ ordered Commission Staff to file a supplemental statement of position and proposed procedural schedule for continued processing of this docket. On September 24, 2020, Commission Staff filed a supplemental statement of position and proposed procedural schedule. In Order No. 5 filed on September 25, 2020, the ALJ adopted a procedural schedule establishing deadlines for motions for summary decision and responses to motions for summary decision.

On October 22, 2020, Monarch filed a motion for summary decision asserting that, because the Commission determined that the effective date for Monarch's pass-through gallonage charge was March 1, 2019, Monarch was entitled to summary decision that it properly implemented its pass-through gallonage charge. On October 23, 2020, Commission Staff filed a motion for summary decision stating that the Commission has already answered the central question at issue in this matter—when Monarch was permitted to begin charging its pass-through gallonage charge. Commission Staff asserted that because the Commission determined that the effective date for Monarch's pass-through gallonage charge is the date specified in the notice Monarch provided to its customers, March 1, 2019, Monarch's implementation of the pass-through gallonage charge complies with its tariff. Mr. Hawkins did not file anything in response to Order No. 5 and did not respond to the motions for summary decision.

No hearing was held on the motions for summary decision.

II. Findings of Fact

The ALJ adopts the following findings of fact.

Background

1. Monarch is a Texas limited partnership registered with the Texas secretary of state under filing number 800034797.
2. Monarch owns and operates facilities for providing retail water service under water certificate of convenience and necessity number 12983.
3. On August 21, 2017, the Commission issued its final order in Docket No. 45570 approving Monarch's tariff.

4. Monarch's approved tariff contains a pass-through provision with the following language:

To implement [a water pass-through gallonage charge], all notice requirements must be met. The utility may begin to charge the new filed [water pass-through gallonage charge] on the proposed effective date in the notice. Implementation of this [water pass-through gallonage charge] adjustment provision shall be governed by 16 [Texas Administrative Code] § 24.21(h).
5. On February 20, 2019, Monarch filed an application for approval of a \$0.69 per 1,000 gallons pass-through gallonage charge in Docket No. 49242.
6. Monarch's application in Docket No. 49242 contained copies of the notice provided to customers detailing the pass-through gallonage charge prior to the effective date of the pass-through gallonage charge and specifying the effective date as March 1, 2019.
7. Monarch's application for the pass-through gallonage charge in Docket No. 49242 remains pending.
8. On March 1, 2019, Monarch implemented a pass-through gallonage charge of \$0.69 per 1,000 gallons under the pass-through provision in its tariff.

Complaint

9. Mr. Hawkins filed the complaint at issue in this docket on July 15, 2019.
10. Mr. Hawkins filed supplements to his complaint on August 13, 2019, and February 28, March 26, and April 6, 2020.
11. In his complaint, as supplemented, Mr. Hawkins asserts that Monarch is inappropriately charging the pass-through gallonage charge.
12. In Monarch's response filed on August 6, 2019, Monarch provided a detailed response to the complaint, denying that it had inappropriately applied its tariffed rates or inappropriately billed Mr. Hawkins its pass-through gallonage charge.

The First PFD

13. In Commission Staff's statement of position filed on August 13, 2019, Commission Staff noted that Mr. Hawkins' complaint failed to include the information required under 16 TAC § 22.242(e)(2)(C)–(I) and requested that Mr. Hawkins be ordered to cure the deficiencies under 16 TAC § 22.242(e)(2).

14. In Order No. 2 filed on August 15, 2019, the ALJ ordered Mr. Hawkins to cure the deficiencies in his complaint by September 27, 2019.
15. Mr. Hawkins did not file anything in response to Order No. 2.
16. In Commission Staff's supplemental statement of position filed on October 11, 2019, Commission Staff moved to dismiss the complaint due to Mr. Hawkins' failure to meet the requirements of 16 TAC § 22.242(e)(2).
17. In Order No. 3 filed on October 14, 2019, the ALJ ordered Mr. Hawkins to cure the deficiencies in his complaint by October 30, 2019.
18. Mr. Hawkins did not file anything in response to Order No. 3.
19. In Commission Staff's second supplemental statement of position filed on November 12, 2019, Commission Staff re-urged dismissal of the complaint under 16 TAC § 22.181(d)(7).
20. On February 7, 2020, the ALJ filed a PFD (the first PFD) recommending the Commission dismiss the complaint due to Mr. Hawkins' failure to amend his complaint such that it was sufficient after repeated determinations that the complaint was insufficient.
21. At its March 12, 2020 open meeting, the Commission concluded it should not adopt the first PFD, concluding that there were issues regarding the effective date of Monarch's pass-through gallonage charge that needed to be more fully considered.

Threshold Issues—Effective Date of Monarch's Pass-Through Gallonage Charge

22. At its March 12, 2020 open meeting, the Commission considered Mr. Hawkins' complaint and concluded that it raised the issue of whether Monarch implemented its pass-through gallonage charge without Commission approval.
23. On March 12, 2020, an order was filed requiring any party to file briefs on the effective date of Monarch's pass-through gallonage charge.
24. On March 26, 2020, Mr. Hawkins filed comments and Commission Staff and Monarch filed briefs on the issues.
25. On April 3, 2020, Monarch filed an unsolicited reply brief.
26. On April 6, 2020, Mr. Hawkins filed comments in response.

27. At its July 31, 2020 open meeting, the Commission considered the parties' briefs.
28. On August 19, 2020, the Commission filed an order on briefing issue and remanding proceeding determining that the Commission's order approving Monarch's water and sewer tariffs in Docket No. 45570 established the effective date for the implementation of Monarch's pass-through gallonage charge as the effective date contained in the notice provided to customers in Docket No. 49242, March 1, 2019. The Commission's August 19, 2020 order remanded this proceeding to the Office of Policy and Docket Management for further processing.

Remand to Office of Policy and Docket Management

29. On September 24, 2020, Commission Staff filed a supplemental statement of position and proposed procedural order.
30. In Order No. 5 filed on September 25, 2020, the ALJ adopted a procedural schedule establishing deadlines for motions for summary decision and responses to motions for summary decision.
31. On October 22, 2020, Monarch filed a motion for summary decision.
32. On October 23, 2020, Commission Staff filed a motion for summary decision.
33. Mr. Hawkins did not respond to the motions for summary decision.
34. It is undisputed that Monarch provided notice to Mr. Hawkins detailing the pass-through gallonage charge prior to the effective date of March 1, 2019.
35. No hearing was held in this matter, and none is necessary, because the facts are established as a matter of law by the administrative record, of which the ALJ takes official notice.

III. Conclusions of Law

The ALJ adopts the following conclusions of law.

1. The Commission has authority over this matter under Texas Water Code § 13.041.
2. Under 16 TAC § 22.242(a), any affected person may complain to the Commission about "any act or thing done or omitted to be done by any person under the jurisdiction of the Commission in violation or claimed violation of any law which the Commission has jurisdiction to administer."

3. As decided by the Commission in its August 19, 2020 order on briefing issue and remanding proceeding in this docket, the Commission's order approving Monarch's water and sewer tariffs in Docket No. 45570 established the effective date for the implementation of Monarch's pass-through gallonage charge as the effective date contained in the notice provided to customers in Docket No. 49242.
4. Monarch's implementation of its pass-through gallonage charge, effective March 1, 2019, complies with its tariff.
5. Under 16 TAC § 22.182(a) the Commission may grant a motion for summary decision if the pleadings, affidavits, material 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.
6. Under 16 TAC § 22.182(d), a hearing on a motion for summary decision is not required.
7. Under 16 TAC § 22.182(f), resolution of all issues by summary decision requires preparation of a PFD.
8. This Second PFD was issued in accordance with Texas Government Code § 2001.062 and 16 TAC § 22.182(f).
9. Mr. Hawkins' complaint is appropriate for disposition by summary decision because there is no dispute regarding facts material to the resolution of this proceeding and this dispute

IV. Proposed Ordering Provisions

In light of the above findings of fact and conclusions of law, the ALJ proposes the following ordering paragraphs.

1. The Commission grants Monarch and Commission Staff's motions for summary decision and denies Mr. Hawkins' complaint.
2. All other motions, requests for entry of specific findings of fact, conclusions of law, and ordering paragraphs, and any other requests for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 17th day of December 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read 'Isaac TA', with a long horizontal flourish extending to the right.

ISAAC TA
ADMINISTRATIVE LAW JUDGE

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