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DOCKET NO. 50424

**APPLICATION OF MONARCH
UTILITIES 1, L.P. AND GOINS
UTILITY SERVICE LLC FOR SALE,
TRANSFER, OR MERGER OF
FACILITIES AND UNCERTIFICATED
AREA IN POLK COUNTY** §
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**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF’S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 9, files this Recommendation on Final Disposition. In support thereof, Staff shows the following:

I. BACKGROUND

On January 8, 2020, Monarch Utilities 1, L.P. (Monarch) and Goins Utility Service LLC (Goins) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and uncertificated area in Polk County. Monarch seeks to purchase all the water and wastewater assets of Goins. The requested sale and transfer includes 36 connections and approximately 17 total acres for the requested water service area and approximately 24 total acres for the requested sewer service area. The Applicants filed supplemental information to their application on March 10, 2020, April 7, 2020, and on April 27, 2020.

On July 7, 2020, the administrative law judge (ALJ) filed Order No. 5, finding the application administratively complete. On September 2, 2020, the ALJ filed Order No. 7, finding notice sufficient.

On October 19, 2020, the ALJ filed Order No. 9, requiring Staff to request a hearing or file a recommendation on the approval of the sale and CCN amendment by November 5, 2020. Therefore, this pleading is timely filed.

II. RECOMMENDATION

Staff has reviewed the supplemented application and, as supported by the attached memorandum of Heidi Graham, Infrastructure Division, recommends that the proposed transaction does not satisfy the criteria in Texas Water Code § 13.246(c) and Texas Administrative Code (TAC) §§ 24.225-24.239. Specifically, Monarch has not provided sufficient information related

to: the economic feasibility of regionalization or consolidation with another retail public utility; obtaining service from a neighboring retail public utility; how Monarch's purchase of Goins would result in any improvement in service for Goins' customers; or the potential significant environmental impacts of construction projects that were not shown to be necessary. In addition, the transaction would result in a significant increase in rates for Goins' customers due to the implementation of Monarch's consolidated rates, despite no indication that those rates are based on the specific reasonable and necessary costs of serving Goins' customers. Finally, the service provided by Goins to its customers is adequate at this time while Monarch has active violations from 2019 for its Oak Terrace Estates public water system, to which Monarch plans to interconnect Goins, for failure to maintain all equipment in good working condition and failure to provide the required well production capacity of 0.6 gallons per minute per connection. Therefore, Staff does not recommend that the transaction be approved to proceed at this time.

IV. CONCLUSION

Staff respectfully requests the entry of an order consistent with the foregoing recommendation.

Dated: November 5, 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 November 5, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Taylor P. Denison
Taylor P. Denison

Public Utility Commission of Texas

Memorandum

TO: Taylor Denison, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: November 5, 2020

RE: Docket No. 50424 - *Application of Monarch Utilities 1, L.P. and Goins Utility Service LLC for Sale, Transfer, or Merger of Facilities and Uncertificated Area in Polk County*

On January 8, 2020, Monarch Utilities 1, L.P., an indirect a subsidiary owned by Southwest Water Company (Purchaser) filed a request to transfer uncertificated area and to purchase water and wastewater assets of Goins Utility Service, LLC (also known as Beacon Bay Water and Sewer or Beacon Bay). The Purchaser requests to add the service areas to its existing water and sewer CCN service areas. My review addresses the financial abilities and financial stability requirements in Texas Water Code (TWC) § 13.246(c)(6) and the related financial assurance provisions in 16 Texas Administrative Code (TAC) § 24.11 as they pertain to the Purchaser. In my opinion, the Purchaser demonstrates adequate financial stability and financial and managerial capability to provide continuous and adequate service to the area subject to this application. I based my recommendations on information provided prior to this date and that information may not reflect changes in the Purchaser's status subsequent to this review.

Financial Test

TWC § 13.246(c)(6) requires the Commission to consider the financial ability of an applicant to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant.

The provisions of 16 TAC § 24.11 establish the criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service area. The financial tests include a leverage test and operations test. The Commission rules identify five leverage tests.¹ The Purchaser must demonstrate that it meets one of the five tests.²

¹ See 16 TAC § 24.11(c)(2).

² *Id*

The following shows that the Purchaser meets one out of five leverage tests. This analysis is based on confidential financial statements ending December 31, 2018 and December 31, 2017. These financial statements contain an unqualified auditor's opinion from PricewaterhouseCoopers stating that the that the financial statements present fairly, in all material respects, the financial position of the Purchaser as of December 31, 2018 and December 31, 2017. The audit and the related opinion indicate the transparency of the Purchaser and indicate sound management capabilities.

The Purchaser meets the first test under 16 TAC § 24.11(e)(2)(A), which requires that the owner or operator must have a debt to equity ratio of less than one, using long term debt and equity or net assets. As calculated in confidential attachment FB-1, the Purchaser's debt-to equity ratio falls below one. The debt to equity ratio indicates the ability to leverage debt in order to install additional infrastructure. A debt to equity ratio of less than one is an indicator of financial stability and financial and managerial capability.

The provisions of 16 TAC § 24.11(e)(3) refer to the operations test, which requires that the owner or operator must demonstrate that sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. The Purchaser submitted projected financial statements in its application, which show water and sewer net income shortages that fail to cover the first 5 years of operations and the required capital improvements of \$268,000 as indicated in confidential attachment FB-1. Although there are projected shortages and planned improvements, the Purchaser generates enough annual net income to cover the annual water and sewer shortages and the required capital improvements as shown in confidential attachment FB-1. Therefore, the Purchaser meets the operations test. Sufficient cash and net income available to cover possible future shortages is an indicator of financial stability and financial and managerial capability.

TWC § 13.246(d) allows the Commission to require an applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided.

Because the Purchaser meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Public Utility Commission of Texas

Memorandum

TO: Taylor Denison, Attorney
Legal Division

FROM: Heidi Graham, Lead Engineering Specialist
Infrastructure Division

DATE: November 5, 2020

SUBJECT: **Docket No. 50424** – Application of Monarch Utilities 1, L.P. and Goins Utility Service LLC for Sale, Transfer, or Merger of Facilities and Uncertificated Area in Polk County

1. Application

Monarch Utilities 1, L.P. (Monarch) holds water Certificate of Convenience and Necessity (CCN) No. 12983 and sewer CCN No. 20899. Monarch seeks approval to acquire facilities and to add to its CCNs all of the uncertificated water and sewer service areas of Goins Utility Service LLC (Goins). In addition, Monarch requests to amend CCN No. 12983 to add a portion of the water service area of Lake Livingston Water Supply & Sewer Service Corporation (Lake Livingston), CCN No. 10147. Lake Livingston has agreed to decertify that portion of its water service area.

The Goins water service area includes approximately 17 acres and 36 current customers. The Goins sewer service area includes approximately 24 acres and 36 current customers. The water service area of Lake Livingston to be decertified and simultaneously certified to Monarch is approximately 5 acres and has no customers.

2. Notice

Monarch provided notice consistent with 16 Texas Administrative Code (TAC) §24.239(c). The deadline for intervention stated in the notice was September 1, 2020, and no protests, intervention, or opt-out requests were received.

3. Factors Considered

Texas Water Code (TWC) Chapter 13 and 16 TAC Chapter 24 require the Public Utility Commission (PUCT) to consider certain factors when granting or amending a water or sewer CCN, which are addressed below as subsections.

3.1. *Consideration of the adequacy of service currently provided to the requested area (TWC § 13.246(c)(1) and 16 TAC § 24.227(e)(1))*

The water service currently provided to the requested area by Goins is adequate. Goins has a public water system (PWS) registered with the Texas Commission on Environmental Quality (TCEQ) under Beacon Bay Marina and RV Park, PWS No. 1870016. Monarch submitted a TCEQ investigation report with the application that indicated Goins has an active violation

with the TCEQ for record keeping for its well.¹

The sewer service currently provided to the requested area by Goins is adequate. Goins has a sewer system registered with the TCEQ under Beacon Bay Marina Wastewater Treatment Facility, Wastewater Discharge Permit No. WQ0013637001.² According to the TCEQ investigation report submitted with the application, the previous violations Goins had with the TCEQ have been resolved. The TCEQ investigator commented in the report that the wastewater treatment plant appeared to be well-maintained.³

The PUCT's Customer Protection Division has not received any complaints from Goins' water or sewer customers.

3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2) and 16 TAC § 24.227(e)(2))*

Although Goins does not have a CCN, there are 36 customers currently receiving water service and sewer service from Goins' water and sewer systems. Therefore, there is a need for continuation of those services. There is no information in the docket indicating a need for additional service in the Goins water and sewer service areas.

3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already serving the proximate area (TWC § 13.246(c)(3) and 16 TAC § 24.227(e)(3))*

The number of customers in the water and sewer service areas of Goins is small relative to the total number of customers served by Monarch, resulting in a negligible effect on Monarch. The effect of application approval on landowners and other retail public utilities in the area would be the transfer of service areas from Goins and Lake Livingston to Monarch and Monarch's planned construction projects, which I discuss below in subsection 3.10.

3.4. *Consideration of the ability of the applicant to provide adequate service (TWC §§ 13.241(b), 13.246(c)(4), and 16 TAC § 24.227(e)(4))*

It is unclear whether Monarch will provide adequate service in Goins' water and sewer service areas if the application is granted. Monarch is generally capable of providing adequate service given the large number of customers that it has served for a number of years. However, Monarch's provision of water service in compliance with the TCEQ's rules in the general area of Goins water service area appears to be worse than Goins' provision of water service. Monarch has a public water system registered with the TCEQ under Oak Terrace Estates, PWS No. 1870055 that is adjacent to the Goins water service area. According to the TCEQ's online records, Monarch has active violations from 2019 for this public water system for failure to maintain all equipment in good working condition and failure to provide the required well production capacity of 0.6 gallons per minute per connection. The violation for maintaining all equipment in good working condition is related to a bulging 5,000-gallon pressure tank that failed. To date, Monarch has not requested construction approval from the TCEQ for a replacement pressure tank.

¹ In the report, the TCEQ investigator required Goins to begin keeping well records and to submit those records to the regional office. Staff notes that a violation related to lack of record keeping does not affect the adequacy of water service provided by Goins.

² Application, page 9 of 20.

³ Application, TCEQ Compliance Correspondence Part F: Question 22.

Monarch does not have a sewer CCN in the vicinity of the requested area. In order to operate the Goins wastewater treatment plant after the CCN and facilities are transferred, Monarch would have to obtain approval for the transfer of the existing wastewater discharge permit from Goins by application to the TCEQ or apply to the TCEQ to obtain its own permit. Given that Monarch has held a number of wastewater discharge permits from the TCEQ, Monarch will likely be able to obtain such a permit to serve Goins' sewer service area.

3.5. *The applicants' demonstration to the Commission that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d) and 16 TAC § 24.227(b))*

Monarch plans to replace major components of Goins' existing water and wastewater systems, as discussed below in subsection 3.10. As a result, regionalization or consolidation should be considered as alternatives. Lake Livingston's service area is adjacent to the Goins water service area. David L. Sheffield d/b/a Texas Landing Utilities, sewer CCN No. 20569 is nearby to the north of the Goins sewer service area. Aqua Texas, water CCN No. 13203, is nearby to the northwest of the Goins water service area. However, the applicants did not address whether regionalization or consolidation with these systems is economically feasible.

Monarch plans to interconnect the Goins' water system to Monarch's neighboring Oak Terrace Estates water system. However, the Oak Terrace Estates water system does not have the well production capacity to serve its existing customers. As stated in subsection 3.4, the TCEQ has determined that Monarch is failing to provide the required well production capacity for its Oak Terrace Estates water system.

3.6. *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5) and 16 TAC § 24.227(e)(5))*

As discussed above, there are retail public utilities in close proximity to Goins' service areas. Lake Livingston service area is adjacent to the Goins water service area. David L. Sheffield d/b/a Texas Landing Utilities, sewer CCN No. 20569, is nearby to the north of the Goins sewer service area. Aqua Texas, water CCN No. 13203, is nearby to the northwest of the Goins water service area. However, the applicants did not address the feasibility of obtaining service from these retail public utilities.

3.7. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC § 13.246(c)(6) and 16 TAC § 24.227(e)(6))*

Fred Bednarski from the Rate Regulation Division is addressing this factor.

3.8. *Requirement of an applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC § 13.246(d) and 16 TAC § 24.227(f))*

Fred Bednarski from the Rate Regulation Division is addressing this factor.

3.9. *Consideration of environmental integrity and the effect on the land to be included in the certificated area (TWC §§ 13.246(c)(7) and (9) and 16 TAC § 24.227(e)(7) and (9))*

Monarch's plans for major construction to provide service in the Goins service areas may affect the environmental integrity of the land. Monarch construction plans include replacement of the existing wastewater treatment plant. This project would involve not only the construction of the new plant, but the dismantling of the existing plant and the disposal of sludge. No information was provided by Monarch that addressed the environmental impact of any of its planned construction projects as required by this section of the PUCT's rules.

3.10. ***Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8) and 16 TAC § 24.227(e)(8))***

The applicants did not demonstrate that there would be an improvement in service if the application is approved. As explained above in subsection 3.4, Monarch's provision of water service in the general area appears to be worse than Goins' provision. In addition, as explained in subsection 3.5, Monarch plans to interconnect the Goins' water system to Monarch's Oak Terrace Estates water system, despite the fact that the Oak Terrace Estates water system does not have the well production capacity to serve its existing customers.

Monarch plans to increase the rates of Goins' customers. On March 10, 2020, in its response to Staff's deficiency memo, Monarch proposed to phase-in its consolidated rates, which are 79.54% higher for water service and 105.63% higher for sewer service than the existing Goins' water and sewer rates. In addition, Monarch has a pending base-rate application in which it proposes an overall increase of 9.80% in water revenues from its existing customers and an overall increase of 14.28% in wastewater revenues from its existing customers.⁴ In Attachment HG-1, attached to this memorandum, Monarch's current rates are compared to Goins' rates and neighboring utilities' rates.

In addition to interconnecting the Goins' water system with its Oak Terrace Estates water system, Monarch plans construction of a replacement wastewater treatment plant; lift station rehabilitation; blower replacement; well and building rehabilitation; electrical work; meter replacement; and pressure tank replacement.⁵ Monarch estimates that these projects will cost \$268,000. However, Monarch did not demonstrate that these projects are necessary or that the amount of \$268,000 is justified.

Staff requested that the applicants provide the costs of Goins' existing facilities so that I could calculate estimated rates for Goins using its existing facilities. The applicants stated that records of the actual costs of Goins' existing facilities do not exist. As a result, Monarch prepared a trending study to estimate the costs of Goins' facilities. The trending study appears to have relied upon both insufficient and inaccurate inputs. Monarch provided no documentation to support the estimated values of Goins' facilities included in Monarch's trending study. In addition, according to the TCEQ's online records, Beacon Bay Marina and RV Park water system records under PWS No. 1870016 date back to 1982. For Beacon Bay Marina's wastewater discharge permit No. WQ0013637001, the TCEQ's online records date back to 1995. Nevertheless, Monarch used an installation date of October 1, 2004, without explanation, for the majority of the water and sewer assets that it included in the trending study. Therefore, without additional information showing otherwise, the trending study appears to be inaccurate. As a result, I have not calculated estimated rates for Goins using its existing facilities.

3.11. ***Other factor considered – Nonfunctioning system or utility status of Goins***

Goins is a very small utility, with only 36 water and sewer customers, and does not appear to be affiliated with other water and sewer utilities. In addition, it is out of compliance with the requirement to have a Commission-approved tariff. As a result, Goins is a nonfunctioning system or utility as that term is defined in 16 TAC § 24.3(23)(A). As a class A utility, Monarch has the resources to bring Goins into compliance with the Commission's regulatory requirements.

⁴ Docket No. 50944, Application of Monarch Utilities I, L.P. for Authority to Change Rates.

⁵ Application, page 9 of 20 and Attachment Part C, Question 10 Capital Improvements Plan.

4. Recommendation

Monarch has not yet demonstrated that its plans for major construction to provide service in the Goins service areas are reasonable and has not yet provided reasonable assurances that it will provide quality service to the customers of Goins. Therefore, I do not recommend approval of the transaction at this time, for the following reasons associated with the requirements of 16 TAC § 24.227 and TWC §§ 13.241 and 13.246:

- a. No information was provided about whether regionalization or consolidation with another retail public utility is economically feasible;
- b. Insufficient information was provided about the feasibility of obtaining service from a neighboring retail public utility;
- c. The potential exists for significant environmental impacts of construction projects that were not shown to be necessary;
- d. No information was provided detailing proposed improvements in service resulting from approval of the application; and
- e. A large rate increase that would result from the use of Monarch's consolidated rates without a showing that those rates are comparable to rates based on the specific reasonable and necessary costs of serving Goins' customers.

Docket No. 50424
Attachment HG-1

	Goms ¹	Customer Bill for 5,000 gallons usage	Like Livingston WS & SSC ²	Customer Bill for 5,000 gallons usage	% Difference from Goms Customer Bill	Texas Landing Utilities ³	Customer Bill for 5,000 gallons usage	% Difference from Goms Customer Bill	Aqua Texas ⁴	Customer Bill for 5,000 gallons usage	% Difference from Goms Customer Bill	Monarch ⁵	Customer Bill for 5,000 gallons usage	% Difference from Goms Customer Bill
Water														
Monthly Charge (5/8" meter)	\$16.50 (1,000 gal incl)	\$49.70	\$50.00 (1,000 gal incl)	\$76.00	52.92%	\$49.40	65.95	32.70%	\$31.00	\$49.50	0.40%	\$49.30	\$89.23	79.54%
Gal. Rate per 1,000 gallons	\$0.00		\$0.00			\$3.31			\$3.70			0-1,000 gallons \$5.79		
	1,001 gallons + \$3.30		1,001-1,000 gallons \$6.50									1,001-2,000 gallons \$5.79		
			1,001-7,000 gallons \$8.50									2,001-10,000 gallons \$7.52		
			7,001+ gallons \$9.50									10,001-20,000 gallons \$8.75		
												20,001+ gallons \$9.43		
Sewer														
Monthly Chg	\$36.50	\$36.60				\$46.24	\$68.59	87.40%				\$75.26	\$75.26	105.63%
Gal. Rate per 1,000 gallons	\$0.00					\$4.47						\$0.00		

1 Applicants' Notice Item No. 23
2 <https://lakelivingstonwater-supply.org/rates-and-policies>
3 Most recent tariff in PUC records
4 Most recent tariff in PUC records
5 Applicants' Notice Item No. 23