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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

ORDER NO. 17 APPROVING SALE AND TRANSFER TO PROCEED

This Order addresses the application of Monarch Utilities I L.P. and Goins Utility Service LLC for 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; amend its water and sewer certificates of convenience and necessity (CCN), numbers 12983 and 20899; and to simultaneously decertify a portion of Lake Livingston Water Supply Corporation’s certificated area under water CCN 10147 that currently overlaps part of Goins’ service area.¹ The administrative law judge (ALJ) grants that the sale is approved and the transaction between Monarch and Goins may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

- 1. Monarch is a Texas limited partnership registered with the Texas secretary of state under file number 800034797.
2. Monarch is a retail public utility that provides water and sewer service in Texas under CCN numbers 12983 and 20899.
3. Goins is a Texas limited liability company registered with the Texas secretary of state under file number 802505389.
4. Goins is a retail public utility that provides uncertificated water service in Polk County.

1 This Order approves the sale and transfer of facilities and uncertificated area between Monarch and Goins and does not address the decertification of a portion of Lake Livingston WSC’s certificated area or the amendment of Lake Livingston’s water CCN.

5. Goins owns and operates one public water system (PWS) in Polk County registered with the Texas Commission on Environmental Quality (TCEQ) under PWS identification number 1870016.
6. Goins owns one wastewater system in Polk County permitted by the TCEQ under wastewater discharge permit number WQ0013637001.

Application

7. On January 8, 2020, the applicants filed the application at issue in this proceeding.
8. The applicants filed supplemental information on March 10, April 7, 27, and 29, July 15 and 20, and August 31, 2020.
9. The requested area includes 36 current customers and approximately 17.55 acres for water service and approximately 23.69 acres for sewer service.
10. The requested service area subject to this transaction is located approximately six miles west of downtown Livingston and is generally bounded on the north by Farm-to-Market Road 350 South; on the east by Farm-to-Market Road 3126; on the south by Thorn Tree Drive; and on the west by Lake Livingston.
11. In Order No. 5 filed on July 7, 2020, the ALJ found the application administratively complete.

Notice

12. On August 6, 2020, the applicants filed the affidavit of George Freitag, the regulatory manager for Monarch, attesting that notice was provided to all current customers, neighboring utilities, and affected parties on July 28, 2020.
13. On August 6, 2020, the applicants filed a publisher's affidavit attesting that notice was published in the *Polk County Enterprise*, a newspaper of general circulation in Polk County, on July 26 and August 2, 2020.
14. In Order No. 7 filed on September 2, 2020, the ALJ found the notice sufficient.

Evidentiary Record

15. On April 26, 2021, the parties filed a joint motion to admit evidence.

16. In Order No. 16 filed on April 29, 2021, the ALJ admitted the following evidence into the record of this proceeding: (a) the application, including confidential information, filed on January 8, 2020; (b) applicant's supplemental information, including confidential information, filed on March 10, 2020; (c) Monarch's revised maps and shapefiles filed on April 7, 2020; (d) applicant's supplemental information, and confidential information, filed on April 27 and 29, 2020; (e) Monarch's affidavit of notice filed on August 6, 2020; (f) Monarch's affidavit regarding 25-acre tracts filed August 31, 2020; and (g) Commission Staff's amended recommendation on final disposition, filed on April 26, 2021.

System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(h)(3)(A), (h)(5)(I)

17. Monarch has been subject to enforcement actions by the TCEQ in the past five years for non-compliance with rules, orders, or state statutes.
18. Monarch has either resolved the non-compliance issues or has entered into compliance agreements with the TCEQ that are leading to resolution of the violations.
19. Goins's PWS number 1870016 and wastewater WQ0013637001 have unresolved violations in the TCEQ database.
20. Monarch intends to invest the capital required to make the upgrades, renovations, and repairs necessary to bring the water and sewer systems into compliance with TCEQ regulations and has submitted a capital improvement plan for the water and sewer systems.
21. Monarch demonstrated a compliance status that is adequate for approval of the sale and transfer to proceed.

Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(e)(1), 24.239(h)(5)(A)

22. There are currently 36 water connections in the requested areas being served by Goins through public water system number 1870016 which has unresolved violations in the TCEQ database.
23. There are currently 36 sewer connections in the requested areas being served by Goins through its sewer system, permit number WQ0013637001, which has unresolved violations in the TCEQ database.

Need for Additional Service—TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2), 24.239(h)(5)(B)

24. There is a continuing need for service because Goins is currently serving 36 existing water and sewer connections in the requested areas.
25. There is no evidence of specific requests for additional service within the requested areas.

Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(C)

26. Approving the sale and transfer to proceed and granting the CCN amendment will obligate Monarch to provide water and sewer service to current and future customers in the requested areas.
27. Goins and Monarch are the only entities affected by the sale and transfer.
28. Lake Livingston WSC has consented to the decertification of a portion of its water service area.
29. The transaction will not affect landowners in the vicinity of the requested area or adjacent utilities.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), (b), (c), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (e)(4), 24.239(e), (h)(5)(D)

30. Goins's public water system number 1870016 and sewer system, permit number WQ0013637001, are currently providing water and sewer service to the requested areas and have adequate capacity to meet the demands in the requested areas.
31. Monarch employs or contracts with TCEQ-licensed operators who will operate the public water and sewer systems.
32. Monarch has access to an adequate supply of water and is capable of providing water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and the TCEQ's rules.
33. Monarch has the managerial and technical capability to provide continuous and adequate service to the requested areas.

Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 13.301(b); 16 TAC §§ 24.11(e), 24.227(a), (e)(6), 24.239(e), (h)(5)(F)

34. Monarch has a debt-to-equity ratio of less than one, satisfying the leverage test.

35. Monarch demonstrated it has sufficient cash available to cover any projected operations and maintenance shortages during the first five years after the completion of the proposed sale and transfer, satisfying the operations test.
36. Monarch has demonstrated the financial capability and stability to provide continuous and adequate water and sewer service.

Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)

37. There is no need to require Monarch to provide a bond or other financial assurance to ensure continuous and adequate service.

Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5), 24.239(h)(5)(E)

38. It is not feasible for an adjacent utility to provide service to the requested area because Monarch's and Goins's existing facilities possess sufficient capacity to provide continuous and adequate service.
39. Utilities within a two-mile radius were noticed, and no protests were received.

Environmental Integrity and Effect on the Land—TWC §§ 13.246(c)(7), (c)(9); 16 TAC §§ 24.227(e)(7), (e)(9), 24.239(h)(5)(G)

40. The requested areas will continue to be served with some existing infrastructure.
41. Monarch plans to replace major components of Goins's water and sewer systems; however, Monarch plans to abide by all TCEQ rules and standards during the construction, so the environmental impact and the effect on the land will be minimal.

Improvement in Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)

42. Monarch will continue to provide water and sewer service to the existing customers in the requested areas and the rates charged will not immediately change as a result of the proposed transaction.

Regionalization or Consolidation—TWC § 13.241(d); 16 TAC § 24.227(b)

43. Because Monarch does not anticipate building any new facilities to continue serving the requested area, it is not necessary to consider regionalization or consolidation.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Monarch and Goins provided notice of the application that complies with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239(a) through (c).
2. After consideration of the factors in TWC § 13.246(c), Monarch demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested areas as required by TWC § 13.301(b).
3. Monarch and Goins have demonstrated that the sale of Goins's water and sewer facilities and the transfer of all of the uncertificated service areas to Monarch will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public as required by TWC § 13.301(d) and (e).

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The sale is approved and the transaction between Goins and Monarch may proceed and be consummated.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, Goins and Monarch must file proof that the transaction has been consummated and customer deposits, if any, have been addressed.
3. Goins and Monarch have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not consummated within this period, or an extension is not granted, this approval is void and of Goins and Monarch will have to reapply for approval.
5. Monarch and Goins are notified that the uncertificated service areas will be held by Goins until the sale and transfer transaction is complete in accordance with Commission rules.
6. In an effort to finalize this case as soon as possible, Monarch and Goins must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.

7. Within 15 days following the filing of the applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

Signed at Austin, Texas the 3 day of May 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



**KATIE MOORE MARX
ADMINISTRATIVE LAW JUDGE**