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APPLICATION OF MONARCH UTILITIES I L.P. AND GOINS UTILITY SERVICE LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND UNCERTIFICATED AREA IN POLK COUNTY	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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JOINT RESPONSE TO COMMISSION ORDER NO. 24

Monarch Utilities I L.P. (Monarch), Goins Utility Service LLC (Goins) (collectively, Applicants), and Public Utility Commission (Commission) Staff (collectively, Parties) file this response to Order No. 24 filed on October 20, 2021, which set a deadline of November 17, 2021 for the Parties to present arguments as to why Lake Livingston Water Supply and Sewer Service (Lake Livingston) need not be a party to this proceeding, and provide supplemental evidence and an amended Notice of Approval (NOA) or amend the application to remove the request to decertify a portion of Lake Livingston’s service area. On November 16, 2021, the Parties filed a joint request for extension to December 1, 2021, which was granted by the administrative law judge (ALJ) on November 18, 2021 in Order No. 25. In support, the Parties would respectfully show the following:

I. EXECUTIVE SUMMARY

- Lake Livingston is not required to be a party to the application.
- The ALJ has the power to impose duties on Lake Livingston regardless of its status as a party in this proceeding.
- Sufficient information is in the record to adequately support the findings of fact and conclusions of law necessary to support approval of the Application, including the decertification of a portion of Lake Livingston’s CCN.

II. PROCEDURAL HISTORY

On January 8, 2020, 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, April 27, 2020, July 15, 2020, July 20, 2020, August 6, 2020, August 31, 2020, and on June 1, 2021. On June 14, 2021, the Applicants filed proof of closing documents with the Commission, and the Commission Staff filed its sufficiency recommendation as to the closing documents on June 29, 2021.

On July 1, 2021, Order No. 18 was issued, finding closing documentation sufficient and requiring the Parties to file a joint motion to admit evidence and proposed notice of approval by August 24, 2021. Motions for extension of the filing deadlines in Order No. 18 were filed on August 23, September 7, and September 10, 2021, ultimately amending the deadline to file a joint motion to admit evidence and proposed notice of approval to October 8, 2021. The Parties filed the required joint motion to admit evidence and proposed notice of approval timely on October 8, 2021, which was subsequently amended and refiled on October 15, 2021 to include certain missing attachments.

On October 19, 2021, the Commission issued Order No. 23 admitting the evidence included in the Parties' amended joint motion to admit evidence. On October 20, 2021, the Commission issued Order No. 24 (Briefing Order), in which the ALJ raised questions regarding procedural aspects of the proceedings, specifically that, "before Lake Livingston's CCN can be amended, it must be a party to this proceeding[,]" that "the case should be restyled to reflect that a portion of Lake Livingston's CCN is being decertified[,]" and that "the record is not sufficiently complete to support all the findings of fact and conclusions of law necessary to support decertification."¹ To address these inquiries, the Briefing Order required that, by November 17, 2021:

¹ Order No. 24 Addressing Issues Related to Lake Livingston Water Supply and Sewer Service at 1 (Oct. 20, 2021 (Briefing Order)).

(1) Lake Livingston must move to intervene as a party; (2) the parties must supplement the record, as necessary, to provide all evidence necessary to support the decertification; and (3) the parties must file an amended proposed NOA that includes the necessary provisions to support the decertification. Alternatively, by the same date, Monarch, Goins, and Commission Staff may: (1) present arguments as to why Lake Livingston need not be a party, but still provide supplemental evidence and an amended NOA as discussed above; or (2) amend their application to remove the request to decertify a portion of Lake Livingston's service area.²

The Parties have elected to present arguments as to why Lake Livingston need not be a party and also provide supplemental evidence and an amended NOA as discussed in the Briefing Order. Therefore, this pleading is timely filed.

III. ARGUMENT

There is no requirement under the Commission's Rules or the sale, transfer, or merger (STM) application instructions requiring Lake Livingston to be a party to this proceeding. Further, though Lake Livingston is not a party to this proceeding: (1) Lake Livingston's signed letter agreeing to the decertification was included in the Application; (2) Lake Livingston received notice of the application; (3) Lake Livingston had the opportunity to intervene but elected not to; and (4) Lake Livingston's signed consent form consenting to the decertification was admitted into the record in this case. The Application should not be subject to further delay in approval, which has already been consented to by Lake Livingston.

A. **The Water Code and the Commission's Rules Do Not Require Lake Livingston to be a Party**

The application is governed by Texas Water Code (TWC) §§ 13.241, 13.246, and 13.301, as well as the Commission's Rules, 16 Tex. Admin. Code (TAC) §§ 24.11, 24.227, and 24.239. None of these statutes or rules mandate that Lake Livingston be a party to this proceeding.

The TWC focuses almost exclusively on the applicant for a CCN amendment. Under TWC § 13.241(a): “[i]n determining whether to grant or amend a certificate of public convenience and

² On November 16, 2021, the Parties filed a joint request for extension to December 1, 2021, which was granted by the ALJ on November 18, 2021 in Order No. 25.

necessity, the utility commission shall ensure that the *applicant* possesses the financial, managerial, and technical capability to provide continuous and adequate service.”³ The Water Code does mandate that when these applications are filed, “notice of the application to be given to *affected parties* and to each county and groundwater conservation district that is wholly or partly included in the area proposed to be certified.”⁴ The Commission must also grant CCN amendment applications on a “nondiscriminatory basis after consideration by the utility commission of . . . the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area.”⁵ The Water Code provisions guiding this proceeding have no requirement that would necessitate Lake Livingston being a party to this proceeding.

The Commission’s Rules governing this application provide no added requirements beyond what the Water Code mandates.⁶ In fact, even under 16 TAC § 24.245(d) Revocation of Amendment of a CCN by Decertification, all that is required is that “the current CCN holder has consented in writing to the revocation or amendment.” Note that Lake Livingston in this proceeding has twice consented in writing to decertification of the relevant section of its CCN.

The Briefing Order does not identify any specific provision of the Water Code or the Commission’s Rules that would require Lake Livingston being a party, nor can the Parties. In fact, the governing statutes and rules make it clear that such a requirement does not exist.

B. Non-Party Lake Livingston Participated in the Proceeding and Consented to the Relief Requested

Despite the Water Code and the Commission’s Rules not requiring Lake Livingston’s participation in this proceeding, the record evidence and procedural history establish that Lake Livingston is aware of the application and has consented to the requested relief.

³ Emphasis added.

⁴ TWC § 13.246(a) (Emphasis added).

⁵ TWC § 13.246(c)(3).

⁶ See generally 16 TAC §§ 24.11, 24.227, and 24.239.

In response to Question No. 13 in the original application, Monarch stated it had obtained an agreement with Lake Livingston for the decertification of a portion of its water CCN.⁷ On February 10, 2020, the Commission Staff deemed the application deficient and requested additional information to cure the deficiencies.⁸ In the February 10 memo, Commission Staff requested that the application be supplemented with a copy of the agreement between Monarch and Lake Livingston for decertification.⁹

On June 8, 2020, after Monarch's filing of the requested agreement, Commission Staff recommended that the application be deemed administratively complete.¹⁰ In its filing, Commission Staff recommended that the Applicants be directed to use notices attached to the recommendation for publication in a newspaper of general circulation in Polk County and mailed by first class to affected parties.¹¹ In the notices, information referring to the decertification of approximately five acres of Lake Livingston's water CCN area were included in both the heading and the body of the text.¹² Additionally, the maps provided to the affected parties specifically showed the area to be decertified.¹³ On July 28, 2020, Monarch mailed the notice and maps to customers and affected entities, which included Lake Livingston.¹⁴ On July 26 and August 2, 2020, the notice was published in the Polk County Enterprise, a newspaper of general circulation in Polk County.¹⁵

⁷ Application at 7 (Jan. 8, 2020).

⁸ Commission Staff's Recommendation on Administrative Completeness and Proposed Notice (Feb. 10, 2020).

⁹ *Id.* at 5.

¹⁰ Commission Staff's Supplemental Recommendation on Administrative Completeness, Proposed Notice, and Procedural Schedule (Jun. 8, 2020).

¹¹ *Id.* at 6.

¹² *Id.* at 7 and 11.

¹³ Affidavits of Notice at 11 (Aug. 6, 2020).

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 12.

On September 2, 2020, after the notice was completed, the ALJ found notice sufficient and established a procedural schedule for continued processing of the application.¹⁶ On May 3, 2021, the ALJ issued Order No. 17 approving the sale and authorizing the transaction between Monarch and Goins to proceed.¹⁷ Finding of Fact No. 28 in Order No. 17 stated: “Lake Livingston WSC has consented to the decertification of a portion of its water service area.”¹⁸

On June 14, 2021, Monarch submitted proof the transaction had closed.¹⁹ Then, on July 1, 2021, the ALJ found the closing documentation sufficient and that there were no issues related to customer deposits to address as a result of the transaction.²⁰ On August 17, 2021, the General Manager of Lake Livingston signed a consent form concurring with the maps and certificates transmitted by email on August 3, 2021.²¹ This signed consent form was admitted into evidence by the administrative law judge on October 19, 2021 in Order No. 23.²²

The record evidence shows that Lake Livingston entered into an agreement as to the decertification, that it received notice and an opportunity to intervene in the proceeding, that it chose not to intervene, and that it ultimately consented in writing to the CCN maps to be approved by the Commission that adjust its certificated service territory. The Parties see no need to adjust the Amended Joint Proposed Notice of Approval originally filed on October 15, 2021. Further, should the ALJ deem it necessary, the Commission’s signed NOA can include additional provisions similar to those included in the final orders in Docket Nos. 50445 and 51035.²³

¹⁶ Order No. 7 Finding Notice Sufficient and Establishing Procedural Schedule (Sept. 2, 2020).

¹⁷ Order No. 17 Approving Sale and Transfer to Proceed (May 3, 2021).

¹⁸ *Id.* at 4.

¹⁹ Proof of Transaction Closing (Jun. 14, 2021).

²⁰ Order No. 18 Finding Closing Documentation Sufficient and Establishing Procedural Schedule (Jul. 1, 2021).

²¹ Consent Forms at 3 (Aug. 17, 2021).

²² Order No. 23 Admitting Evidence at 1 (Oct. 19, 2021).

²³ *Petition of H2O Tech, Inc. to Discontinue Water Service and Cancel its Water Certificate of Convenience and Necessity*, Docket No. 50445, Order (Dec. 17, 2020); and *Application of Quadvest L.P. to Decertify a Portion of its Water Certificate of Convenience and Necessity in Jackson County*, Docket No. 51035, Notice of Approval (Jun. 9, 2021).

C. The ALJ has the authority to impose duties on Lake Livingston, even though it is not a party.

The Commission's Rules and the Water Code allow the Commission to impose obligations and duties upon entities in CCN proceedings whether they are a party or not. Generally speaking, an administrative proceeding meets the test of due process if notice of each step taken is given before final disposition of the matter and an opportunity to be heard is accorded.²⁴

When discussing CCN amendment applications, the Water Code clearly states, "[a]ny person affected by the application *may* intervene at the hearing."²⁵ The Water Code further provides in decertification proceedings that the Commission "at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder," making notice the only requirement in addition to written consent.²⁶

The Commission's Rules on CCN amendment proceedings state that "[a]fter proper notice, the commission may take action on an uncontested application at any time after the later of the expiration of the intervention period or for which all interventions are subsequently withdrawn."²⁷ So long as a party was provided with an opportunity to intervene and the application is uncontested, the Commission may take action. Here Lake Livingston consented in writing to the decertification and was provided with an opportunity to intervene. The intervention deadline has passed, and the decertification is uncontested. So the Commission may now take action regardless of whether Lake Livingston is a party.

IV. CONCLUSION

The Parties request that the ALJ find that Lake Livingston is not required to be a party to this proceeding, and clarify any additional information needed as a result of this filing. In the alternative, should the ALJ disagree with any of the positions raised by the Parties in this brief, the

²⁴ *Richardson v. City of Pasadena*, 513 S.W.2d 1, 4 (Tex. 1974).

²⁵ TWC § 13.246(a) (Emphasis added).

²⁶ TWC § 13.254(a).

²⁷ 16 TAC § 24.237(b).

Parties request that the ALJ grant additional time to correct the record as deemed necessary by the ALJ. The Parties further request any other relief to which they have shown themselves entitled.

Respectfully submitted,

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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 December 1, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ William A. Faulk, III

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