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Item Number: 16

Addendum StartPage: 0



DOCKET NO. 50878

COMPLAINT OF  
RANDALL COLLINS AGAINST  
MONARCH UTILITIES I, L.P.

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PUBLIC UTILITY COMMISSION  
OF TEXAS  
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**ORDER NO. 7  
GRANTING IN PART AND DENYING IN PART  
COMMISSION STAFF’S MOTION FOR SUMMARY DECISION**

This Order grants in part and denies in part the motion for summary decision filed in this matter by Commission Staff on August 18, 2020. In this Order, the administrative law judge (ALJ) finds that there is no genuine issue as to any material fact as to certain parts of Mr. Randall “Skip” Collins’s complaint and that Commission Staff is entitled to a decision in their favor as to those allegations as a matter of law.

**I. Background**

On May 22, 2020, Mr. Collins filed a formal complaint against Monarch alleging that the utility overcharges for water service at his residence. Attached to Mr. Collins’s complaint as evidence are what appears to be printouts from the Commission’s website<sup>1</sup> allegedly showing that Monarch is only authorized to provide service in Montgomery County and not Henderson County. Also attached to Mr. Collins’s complaint is a sewer certificate of convenience and necessity (CCN) map for Tecon Water Company, L.P. under CCN number 20899. The map appears to have been generated by the Texas Commission on Environmental Quality and is dated November 8, 2004.<sup>2</sup>

On June 17, 2020, Monarch responded to Mr. Collins’s complaint, asserting that Mr. Collins’ monthly meter readings and billings were correct and consistent with Monarch’s tariff. Three exhibits were attached to Monarch’s response: (1) a worksheet showing the meter readings for Mr. Collin’s address for each month the meter has been in place, attached as exhibit A; (2) Monarch’s approved water and sewer tariffs, attached as exhibit B; and (3) Monarch’s water CCN number 12983 and sewer CCN number 20899, attached as exhibit C.

On July 1, 2020, Commission Staff filed a supplemental statement of position. Commission Staff expressed the opinion that Monarch was charging Mr. Collins the correct water

<sup>1</sup> See, e.g , <http://www.puc.texas.gov/WaterSearch/>.

<sup>2</sup> The map does not contain any information identifying where the map was obtained.

and sewer base charges; however, Commission Staff noted that Monarch was charging Mr. Collins a water pass-through gallonage charge even though the pass-through charge had not yet been approved by the Commission. Commission Staff noted that Monarch's application for the pass-through charge is pending before the Commission in Docket No. 49242,<sup>3</sup> and a separate complaint case, Docket No. 49732,<sup>4</sup> is also pending regarding the effective date of the pass-through charge.

In its Order on Briefing Issue and Remanding Proceeding filed in Docket No. 49732 on August 19, 2020, the Commission concluded that its order approving Monarch's water and sewer tariffs in Docket No. 45570<sup>5</sup> established the effective date for Monarch's pass-through rate is the date specified in the notice Monarch provided to customers, i.e. March 1, 2019.

On August 18, 2020, Commission Staff filed, in the present docket, a second supplemental statement of position and moved for summary decision. Based on the Commission's conclusion in Docket No. 49732, Commission Staff expressed the opinion that Monarch was charging Mr. Collins the correct water pass-through gallonage charge during the apparent time period about which Mr. Collins complains.

On September 28, 2020, Mr. Collins filed his response to Commission Staff's motion for summary decision.

## II. Discussion

Mr. Collins's complaint alleges the following:<sup>6</sup> (a) that he was billed the same amount each month for an unspecified period of six months, which indicates that his water meter does not accurately reflect his actual water usage; (b) that Monarch, as a for-profit entity, cannot provide water service for compensation in Texas; (c) that Monarch's rates are not just nor reasonable; (d) that Monarch's water CCN number 12983 only authorizes service in Montgomery County, but Mr. Collins lives in Henderson County; (e) that Monarch's tariff rates are unfair, unjust, and

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<sup>3</sup> *Application of Monarch Utilities I, LP for a Pass Through Gallonage Charge*, Docket No. 49242 (pending).

<sup>4</sup> *Complaint of Paul Hawkins against Monarch Utilities I, LP*, Docket No. 49732 (pending).

<sup>5</sup> *Application of Monarch Utilities I, LP for Authority to Change Rates*, Docket No. 45570, Order (Aug. 21, 2017).

<sup>6</sup> Mr. Collins is a *pro se* litigant. His allegations are not entirely clear. However, the following represents the ALJ's best effort to summarize the allegations.

unreasonable taxes; and (f) that Monarch is committing the criminal offense of extortion. Each allegation is discussed below:<sup>7</sup>

**A. Water Meter Accuracy**

Mr. Collins alleges that he was billed the exact same amount, \$167.51, each month for a period of six months which, he contends, indicates that his water meter does not accurately reflect his actual water usage. In his complaint, Mr. Collins does not identify which six months he is referring to and did not provide any direct evidence of his alleged actual water usage. He did assert, however, that his actual water usage varied from month to month.

Monarch stated in its response that it believes Mr. Collins is referring to the June through November 2019 time period. Monarch's response also included a worksheet attached as exhibit A, which it stated reflects Mr. Collins's meter readings from July 1, 2016, through May 19, 2020. The worksheet includes a column entitled "Meter read. f. billing," which appears to show water usage in 1,000-gallon increments. Monarch asserts that, consistent with its tariff, Monarch bills customers for usage on a per 1,000-gallon basis and any gallons over the 1,000-gallon increment are carried forward to the next billing period.<sup>8</sup> Monarch stated that it accordingly billed Mr. Collins for 4,000 gallons of use for each month from June through November 2019.

In Commission Staff's supplemental response and second supplemental response, Commission Staff posited that the six-month period complained about by Mr. Collins was from June through November 2019 based on bill statements that were provided by Mr. Collins in his informal complaint.<sup>9</sup> Commission Staff expressed the opinion that Monarch was charging Mr. Collins the correct water base charges and pass-through charges.

The ALJ concludes that genuine issues of material fact exist and denies Commission Staff's motion for summary decision as it relates to this allegation. First, the ALJ considers the relevant time period to be a material fact; without knowing the applicable time period, no party can provide Mr. Collins's actual water usage, which is the basis of Mr. Collins's complaint. While

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<sup>7</sup> In the following discussion, the ALJ has combined allegations (c) and (e).

<sup>8</sup> Monarch provided the following example: a customer using 3,200 gallons in a month would be charged for 3,000 gallons of use and the additional 200 gallons would be carried forward to the following billing period.

<sup>9</sup> Commission Staff's Supplemental Statement of Position at 2 (July 1, 2020); Commission Staff's Second Supplemental Statement of Position and Motion for Summary Decision at 2 (Aug. 18, 2020) (citing *Complaint No. CP2020010451*, Randall Collins Invoices Confirmed (Jan. 22, 2020)).

Mr. Collins's complaint did not specify the six-month period in question,<sup>10</sup> Commission Staff alluded to bill statements that were provided by Mr. Collins during the informal complaint process in forming its opinion that June through November 2019 is the applicable time period. However, because those bill statements are not part of the record of this proceeding, the ALJ is not able to determine with a reasonable degree of certainty that the relevant time period is June through November 2019.

Second, the ALJ believes there are unresolved factual disputes about Mr. Collins's actual water usage. Without knowing Mr. Collins's actual water usage, it is impossible to determine whether Mr. Collins was correctly billed under Monarch's tariff. The worksheet provided by Monarch does not appear to show Mr. Collins's actual water use; rather, the worksheet appears to be adjusted to the nearest 1,000 gallons. Monarch stated in its response that it has previously provided detailed daily usage reading charts from the meter at Mr. Collins's service address to Mr. Collins and Commission Staff. This indicates to the ALJ that there is more accurate data showing Mr. Collins's actual water use that has not been adjusted to the nearest 1,000 gallons. Because those daily usage charts are not part of the record of this proceeding, the ALJ is not able to determine with a reasonable degree of certainty that Monarch's worksheet accurately reflects Mr. Collins's actual water usage.

Finally, the ALJ has questions concerning whether Monarch's approved tariff authorizes Monarch to bill in the fashion it describes. While it is clear that Monarch's tariff identifies a rate per 1,000 gallons, it is less clear that a customer's monthly usage can be rounded down to the nearest 1,000 gallons and the remainder carried forward to the customer's next monthly bill. The ALJ would benefit from additional briefing on this point.

Based on the foregoing, the ALJ finds that Commission Staff has not demonstrated that there are no genuine issues as to any material facts relating to this allegation. For this reason, the motion for summary decision is denied as to this allegation.

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<sup>10</sup> Mr. Collins's complaint did include a timeline of events and stated under the December 21, 2019 entry that he had "concerns about his past six month billing cycle . . ." *Complaint of Randall Collins* at 1 (May 22, 2020). While a party may infer from this statement that the applicable time period is June through November 2019, the ALJ feels it is inappropriate to do so for purposes of a motion for summary decision and declines to do so.

**B. Monarch as a For-Profit Entity**

Mr. Collins next alleges that nothing in the Texas Water Code (TWC), Texas Administrative Code (TAC), Texas Government Code, or Texas Utilities Code authorizes a private, investor-owned water utility, such as Monarch, to be granted a tariff.

Mr. Collins is incorrect. Chapter 13 of the TWC defines a water utility, public utility, or utility as “any person, *corporation*, cooperative corporation, affected county, or any combination of these persons or entities . . . owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use[.]”<sup>11</sup> The Commission’s rules in 16 TAC chapter 24 also contain this definition.<sup>12</sup> Further, the TWC requires every water utility to file a tariff with the Commission showing its rates.<sup>13</sup> Finally, under 16 TAC §§ 24.25(a) and 24.165(a), a utility may not demand, charge, or collect any rate or charge different from those prescribed in its approved tariff filed with the Commission.

Based on the plain meaning of the statutes and rules cited above, it is clear that a for-profit entity, including Monarch, can be a water utility and can provide water service for compensation in Texas as long as the for-profit entity files a tariff with the Commission, the tariff is approved by the Commission, and the for-profit entity bills a customer consistent with its tariff. Accordingly, the ALJ grants Commission Staff’s motion for summary decision and denies this allegation.

**C. and E. Monarch’s Rates are Unreasonable, or the Rates are Unfair, Unjust, and Unreasonable Taxes**

Mr. Collins next alleges that Monarch’s rates are unreasonable, or that they constitute unfair, unjust, and unreasonable taxes. As an initial matter, a water utility’s rates are not taxes, but instead represent a reasonable opportunity to earn a reasonable return on the utility’s

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<sup>11</sup> TWC § 13.002(23) (emphasis added); *see also* TWC § 13.002(16) (defining a retail public utility as “any person, *corporation*, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.” (emphasis added)); TWC § 13.002(15) (“‘Person’ includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and *corporations*.” (emphasis added)).

<sup>12</sup> 16 TAC § 24.3(31); *see also id.* § 24.3(39), (24).

<sup>13</sup> TWC § 13.136(a).

investment over and above its operating expenses.<sup>14</sup> That being said, the TWC requires the Commission to “regulate and supervise the business of each water and sewer utility within its jurisdiction, including ratemaking and other economic regulation.”<sup>15</sup> In exercising this authority, the Commission must ensure that every rate made, demanded, or received by any utility is just and reasonable.<sup>16</sup> The Commission’s rules delineate the process the Commission uses in determining just and reasonable rates.<sup>17</sup> At the end of the process, the Commission issues an order approving a tariff, which constitutes the Commission’s determination that the rates the tariff contains are just and reasonable.

As to Monarch, the Commission has already completed this process and the utility’s rates have already been found by the Commission to be reasonable.<sup>18</sup> Accordingly, the ALJ concludes there is no genuine issue of material fact and grants summary decision denying these allegations.

#### **D. Monarch’s Service in Henderson County**

Mr. Collins alleges that Monarch lacks the authorization to provide water service in Henderson County. Under TWC § 13.242, a utility may not provide retail water utility service without first obtaining a CCN from the Commission. A CCN issued by the Commission obligates a utility to provide utility service to a specific service area or areas and names the county or counties where the service area or areas are located.<sup>19</sup>

Monarch’s tariff expressly authorizes it to provide water service in Henderson County.<sup>20</sup> The ALJ concludes there is no genuine issue of material fact and grants summary decision denying this allegation.

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<sup>14</sup> When setting a utility’s rates, the Commission must set a rate that allows the utility a “reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public, over and above its reasonable and necessary operating expenses . . . , and preserve[s] the financial integrity of the utility.” 16 TAC § 24.43(a).

<sup>15</sup> TWC § 13.041(a).

<sup>16</sup> TWC § 13.182(a).

<sup>17</sup> 16 TAC chapter 24, subchapter B.

<sup>18</sup> *Application of Monarch Utilities I, LP for Authority to Change Rates*, Docket No. 45570, Order at 9–10 (Aug. 21, 2017) (“The rates, terms, and conditions of the tariffs resulting from the agreement are just and reasonable.”).

<sup>19</sup> *See, e.g., Application of SWWC Utilities, Inc dba Southwest Utility Company and Monarch Utilities I L P for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*, Docket No. 49103, Notice of Approval at attached tariff (March 31, 2020) (including Monarch’s most recent tariff).

<sup>20</sup> *See id*

**F. Extortion**

The Commission has only the authority granted to it in the TWC as it relates to the regulation of rates and services of water utilities. Accordingly, the ALJ grants summary decision denying this allegation because the Commission lacks the authority to enforce alleged violations of the Texas Penal Code, such as extortion.<sup>21</sup>

**III. Conclusion**

The ALJ grants Commission Staff's motion for summary decision and denies Mr. Collins's allegations (b) through (f), as identified above. The ALJ denies Commission Staff's motion for summary decision as it relates to Mr. Collin's allegation (a), as identified above.

By October 30, 2020, the parties must file a proposed procedural schedule for further processing of this case. By November 20, 2020, the parties must file additional evidence and briefing on Monarch's billing practices.

**Signed at Austin, Texas the 19th day of October 2020.**

**PUBLIC UTILITY COMMISSION OF TEXAS**



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**ISAAC TA  
ADMINISTRATIVE LAW JUDGE**

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<sup>21</sup> Tex. Penal Code § 31.02.