

Control Number: 50944



Item Number: 462

Addendum StartPage: 0

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APPLICATION OF MONARCH § BEFORE THE STATE OFFICE
UTILITIES I, L.P. TO CHANGE RATES § OF
FOR WATER AND SEWER SERVICE § ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 2
MEMORIALIZING PREHEARING CONFERENCE; CONDITIONALLY ADOPTING
PROCEDURAL SCHEDULE, SETTING HEARING ON THE MERITS; REQUESTING
BRIEFING ON INTERIM RATES; SETTING HEARING ON DISMISSAL OF NON-
PARTICIPATING INTERVENORS; RULING ON REQUEST TO RETAIN PARTY
STATUS**

I. MEMORIALIZING PREHEARING CONFERENCE

On September 18, 2020, the undersigned Administrative Law Judges (ALJs) convened a prehearing conference via Zoom. The following parties appeared through counsel: Monarch Utilities I, L.P. (Monarch), the Office of Public Utility Counsel (OPUC), and Public Utility Commission Staff (Staff). No ratepayer intervenor appeared. The parties addressed a procedural schedule and Staff's then-pending motion for interim rates. Monarch orally moved to dismiss all parties that failed to appear as required by SOAH Order No. 1. The ALJs took all these matters under advisement.

II. CONDITIONALLY ADOPTING PROCEDURAL SCHEDULE

Subsequently, the parties that appeared at the prehearing conference filed a joint motion to set interim rates, to extend the proposed rates' effective date, and to adopt a joint proposed procedural schedule.¹ The agreed procedural schedule appears contingent on the adoption of the proposed interim rates. However, the interim rates, as proposed, raise issues, as discussed further below. Because the parties may elect to withdraw their agreement to the joint proposed procedural

¹ *Joint Motion to Set Interim Rates, Extend Effective Date, and Adopt Joint Proposed Procedural Schedule* (September 28, 2020). Staff had previously filed a motion for interim rates, which the ALJs interpret to have been superseded by this joint motion.

462

schedule following the ruling on interim rates, the ALJs **conditionally adopt** the proposed schedule. Accordingly, until the ALJs issue an order addressing the schedule after they review the briefing on interim rates requested in this order, the following agreed schedule, as modified by the ALJs, shall govern this proceeding:

Deadline	Action
October 16, 2020	Deadline for Discovery on Monarch Direct Testimony
October 20, 2020	Deadline for Intervenor Direct Testimony or Statement of Position if not filing Direct Testimony ²
October 20, 2020	Deadline for Objections to Monarch Direct Testimony
October 21, 2020	Mandatory Settlement Conference (10 a.m.)
October 23, 2020	Deadline for Objections to Intervenor Direct Testimony
October 27, 2020	Deadline for Commission Staff Direct Testimony or Statement of Position if not filing Direct Testimony—for Staff, this deadline controls for purposes of 16 Tex. Admin. Code § 22.124's requirement to file direct testimony or a statement of position ³
October 27, 2020	Deadline for Intervenor Cross-Rebuttal Testimony—for Intervenors, this deadline controls for purposes of 16 Tex. Admin. Code § 22.124's requirement to file direct testimony or a statement of position
October 29, 2020	Deadline for Statement of Position if Direct Testimony was filed
November 5, 2020	Deadline for Objections to Commission Staff Testimony and Intervenor Cross-Rebuttal Testimony
November 12, 2020	Deadline for Discovery on Intervenor and Staff Direct Testimony
November 19, 2020	Deadline for Monarch Rebuttal Testimony

² This deadline shall control for purposes of 16 Tex. Admin. Code § 22.124.

³ Pursuant to 16 Tex. Admin. Code § 22.124, the filing of either a statement of position or direct testimony is required to maintain party status.

Deadline	Action
November 25, 2020	Deadline for Discovery on Monarch Rebuttal Testimony (Responses due within three business days of service)
November 30, 2020	Deadline for Objections to Monarch Rebuttal Testimony
December 7–11, 2020	Hearing on the Merits (9 a.m.) (Prehearing conference at beginning of hearing on December 7) (Zoom Hearing)⁴

In addition, as agreed by the parties, the following procedural provisions shall apply to this proceeding:

- Discovery Deadlines:
 - On all direct testimony, discovery responses are due within ten business days of service.
 - Responses to discovery on Monarch’s rebuttal testimony are due within three business days of service.
- Drafts of testimony and statements of position will not be discoverable and email transmitting drafts of testimony and statements of position will not be discoverable.
- Workpapers will be filed the next business day after the filing of testimony.

Under the conditionally adopted schedule, the hearing on the merits will be held via the Zoom videoconference platform on December 7 through 11, 2020. Further details will be provided once a procedural schedule is unconditionally adopted and finalized.

⁴ Should this procedural schedule remain in place, the ALJs will issue a subsequent order specifying the procedures for participating in the hearing on the merits, including the exchange of exhibits, etc. Sample procedural requirements can be found on SOAH’s website at <http://www.soah.texas.gov/emergencyNotice.html>.

III. INTERIM RATES AND EFFECTIVE DATE

On September 28, 2020, the parties filed a joint motion for, among other things, interim rates. The parties request that interim rates be implemented in two phases, the first of which would be effective September 18, 2020, and be set at Monarch's current rates. The second phase would be effective February 1, 2021—the date that Monarch's proposed rates could be charged pursuant to the Commission ALJ's order suspending them, and the latest date that the Commission may by law suspend them before they are deemed approved and may be charged until a final order issues⁵—and would be set at Monarch's proposed rates. Subject to the adoption of the interim rate proposal as contemplated in the joint motion, Monarch agrees to extend the proposed effective date to January 1, 2021, so that the 150-day suspension period would end on May 31, 2021.

Given that this rate application affects different systems, involves both water and sewer rates, and requests consolidation of tariffs, and the motion requests interim rates be set retroactively, the ALJs require clarification before ruling on the parties' motion. Therefore, **no later than October 9, 2020**, the moving parties shall, and other parties may, submit briefs addressing the following issues:

1. What is the legal authority to set interim rates retroactively, that is, effective before the interim rates are approved?
2. If interim rates may not be set retroactively, when is the appropriate date for their imposition?
3. What effect will the imposition of interim rates prior to the end of the currently imposed February 1, 2021 suspension period have on the systems whose own proposed effective dates are as late as 2023?
4. What effect will the imposition of interim rates prior to the end of the currently imposed February 1, 2021 suspension period have if the requested consolidation is not approved?
5. How will surcharges or refunds be allocated if consolidation is approved?

⁵ See Order No. 3 (Aug. 18, 2020) (suspending rates' effective date); Tex. Water Code § 13.187(d) *et seq.*

6. Given the proposal to set, beginning on September 18, 2020, interim rates at their current level until February 1, 2021, how will Monarch alert each affected ratepayer to the imposition of interim rates with sufficient specificity?
7. As posed in the Commission's preliminary order:⁶
 - a. Has the utility met the requirements for interim rates? If so, what are the appropriate levels of the interim rates under 16 Texas Administrative Code § 24.37?
 - b. If a refund or surcharge results from this proceeding, how and over what period of time should the refund or surcharge be made?
8. If any of these questions have caused a party to reconsider its agreement regarding the procedural schedule, how should that schedule be modified so as to satisfy all parties while promoting administrative efficiency to the extent possible?

Upon receipt of this briefing, the ALJs intend to rule promptly on the joint motion.

IV. CONDITIONALLY DISMISSING INTERVENORS; SETTING HEARING TO ADDRESS DISMISSALS; ADDRESSING REQUEST TO RETAIN PARTY STATUS

A. Conditionally dismissing non-participating intervenors

As noted above, no ratepayer intervenor appeared at the initial, mandatory prehearing conference, nor did any such intervenor file the requisite notice of intent to appear, as required by SOAH Order No. 1. Therefore, the ALJs **CONDITIONALLY GRANT** Monarch's oral motion to dismiss all intervenors except OPUC, which appeared at the prehearing conference, and Kathy Nielson, as discussed below. Any person wishing to contest dismissal may do so by filing a motion to retain party status by October 13, 2020, or, alternatively, appearing at the show cause hearing set for October 15, 2020, at 10:00 a.m., as described below. The motion to retain party status should describe the good cause for failure to appear at the prehearing conference, in accordance with SOAH Order No. 1. All intervenors conditionally dismissed in this order who fail to make such a showing or to appear at the show cause hearing will be removed from the service list and may no longer participate as parties to this proceeding.

⁶ Preliminary Order (Sept. 24, 2020) at 9.

B. Setting show cause hearing

The show cause hearing for parties wishing to challenge their dismissal as parties shall be held on October 15, 2020, at 10:00 a.m via the Zoom videoconferencing platform.

To participate in the hearing, you will need: (1) a computer with a functional webcam and microphone (preferred method); or (2) any mobile or smart device, such as a cellphone, iPad, iPhone, or Android phone; and (3) to have the latest version of Zoom installed (free installation). More information on how to join a Zoom meeting is available here: <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>.

To access the hearing via Zoom, use one of the following:

Via Computer:

- Use the Zoom meeting link:

<https://soah-texas.zoomgov.com/j/1619296505?pwd=UkJzVzFnUXNKMTR2VnVsMzA3TXNCZz09>

- To participate, you should follow the link above or copy the link and paste it into your browser, then hit enter. If you have not downloaded the Zoom application, you will be prompted to do so and then to open the Zoom launcher.
- Alternatively, you can go to www.soah-texas.zoomgov.com and enter the following

Meeting ID and Password:

Meeting ID: 161 929 6505

Password: 7Z43H?

Join Zoom Meeting Via Telephone:

- Note that the password to join by telephone is different than the password to join via a computer or smart device.

1 (646) 828-7666

Meeting ID: 161 929 6505

Password: 222524


Find your local number: <https://soah-texas.zoomgov.com/join/111RPO>


A party who experiences technical difficulties with joining the hearing should contact SOAH's Docketing Division at (512) 475-4993.

C. Ruling on request to retain party status

On September 28, 2020, intervenor Kathy Nielsen filed a request to retain her party status despite failing to appear at the initial prehearing conference. Ms. Nielson explained that she was unable to do so due to her unfamiliarity with the technology required to participate in a Zoom conference. Although the instructions were set out in SOAH Order No. 1, along with a phone number for those requiring technical assistance and instructions for participating in the Zoom prehearing conference by telephone only, the ALJs acknowledge that adapting to new circumstances and technology in response to the COVID-19 pandemic is intimidating initially. In the future, all parties are expected to familiarize themselves with the technological requirements for participation, which can be achieved without the use of a computer using a phone line. However, under these circumstances, the ALJs find that Ms. Nielsen has demonstrated good cause for her failure to appear at the prehearing conference and **GRANT** her request to retain her party status.

SIGNED October 2, 2020.


DANIEL WISEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS


MITRA FARHADI
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS