

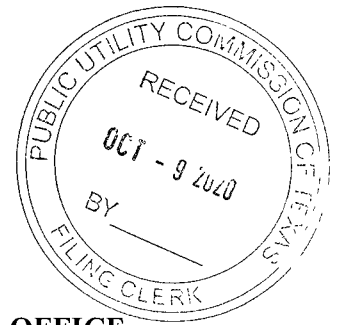


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**SOAH DOCKET NO. 473-20-4709.WS
PUC DOCKET NO. 50944**

APPLICATION OF MONARCH UTILITIES I, L.P. FOR AUTHORITY TO CHANGE RATES § **BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

COMMISSION STAFF’S RESPONSE TO SOAH ORDER NO. 2

COMES NOW the Staff (Commission Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Commission Staff’s Response to SOAH Order No. 2. In support thereof, Staff shows the following:

I. BACKGROUND

On July 15, 2020, Monarch Utilities I, L.P. (Monarch) filed an application to change rates under Texas Water Code (TWC) § 13.187 and 16 Texas Administrative Code (TAC) § 24.27. On August 31, 2020, the application was referred to the State Office of Administrative Hearings (SOAH).

On September 18, 2020, the Administrative Law Judges (ALJs) convened a prehearing conference, which was attended by counsel for Monarch, Commission Staff, and the Office of Public Utility Counsel (OPUC). The parties addressed a procedural schedule and Commission Staff’s then-pending motion for interim rates. The ALJs took these matters under advisement.

On September 28, 2020, the parties filed a joint motion for interim rates, requesting that the interim rates be implemented in two phases. The first phase of interim rates would be effective September 18, 2020 and would be set at Monarch’s current rates. The second phase of interim rates would be effective February 1, 2021 and would be set at Monarch’s proposed rates.

On October 2, 2020, SOAH Order No. 2 was issued, conditionally adopting the parties’ proposed procedural schedule and requiring the parties to submit briefs addressing eight specified issues by October 9, 2020. Therefore, this pleading is timely filed.

II. DISCUSSION

- 1. What is the legal authority to set interim rates retroactively, that is, effective before the interim rates are approved?**

The legal authority to set interim rates retroactively is found in 16 TAC § 24.37(b). According to 16 TAC § 24.37(b), “[a]t any time after the filing of a statement of intent to change rates under Chapter 13 of TWC the commission staff may petition the commission to set interim rates to remain in effect until further commission action or a final rate determination is made.” The effective date of the proposed rates was suspended by the Commission ALJ on August 18, 2020.¹ Additionally, interim rates were set retroactively in the *Application of Kendall West Utility, LLC for Authority to Change Rates*,² and in the *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*.³

2. If interim rates may not be set retroactively, when is the appropriate date for their imposition?

As shown in response to #1, Commission Staff’s requested interim rates may be set retroactively. However, Commission Staff recommends that an appropriate date for their imposition is the date of the issuance of the order approving interim rates.

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?

The imposition of interim rates prior to February 1, 2021 does not apply to 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?

Under TWC § 13.145(b), Monarch’s request for a consolidated tariff should be approved. While TWC § 13.145(a) sets out general requirements necessary for a utility to obtain a consolidated tariff, TWC § 13.145(b) contains a legislative carve-out specifically allowing

¹ Order No. 3, Finding Application and Notice Sufficient (Aug. 18, 2020).

² *Application of Kendall West Utility, LLC for Authority to Change Rates*, Docket No. 49887, SOAH Order No. 7 (June 15, 2020).

³ *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, SOAH Order No. 10 (Aug. 21, 2020).

Monarch to obtain a consolidated tariff without fulfilling the requirements in subsection (a).⁴ Because Monarch qualifies for an exemption to the requirements in TWC § 13.145(a), Monarch's request for a consolidated tariff should be approved.

5. How will surcharges or refunds be allocated if consolidation is approved?

In the event that the approved consolidation rates differ from the interim rates, any surcharge or refund would be allocated as described under 16 TAC) §§ (h)-(i).⁵ Specifically, if the proposed interim rates are higher than the final approved rates, 16 TAC § 24.37(h) states that "the retail public utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission in a reasonable number of monthly installments." Alternatively, if the proposed interim rates are lower than the final approved rates, 16 TAC § 24.37(i) states that "the retail public utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates."

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?

According to 16 TAC § 24.37(j), Monarch must provide notice to its customers and include the interim rates set by the presiding officer with the first billing at the interim rates. Monarch's notice must contain the following wording, "The presiding officer has established the following interim rates to be in effect until the final decision on the requested rate change or until another interim rate is established."

7. As posed in the Commission's preliminary order:

⁴ "This section does not apply to a public utility that provided utility service in only 24 counties on January 1, 2003." TWC § 13.145(b). Monarch, operating under the name Tecon Water Company, L.P. until 2004, provided service in only 24 counties as of January 1, 2003. *See also* Senate Comm. on Natural Res., Bill Analysis, Tex. S.B. 1063, 79th Leg., R.S. (2005) ("C.S.S.B. 1063 requires all investor owned utilities operating in Texas to adhere to a single regulatory scheme, with exception to the application of a single tariff system. One IOU would be allowed to continue collecting a universal rate while all other utilities would be required to establish regional rates").

⁵ *See also* TWC § 13.187(m).

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?

The requirements for interim rates are found in 16 TAC § 24.37(b) which states that “[a]t any time after the filing of a statement of intent to change rates under Chapter 13 of TWC the commission staff may petition the commission to set interim rates to remain in effect until further commission action or a final rate determination is made.” Additionally, as required by 16 TAC § 24.37(e)(1), the interim rates agreed to by the parties are not lower than the authorized rates prior to the proposed increase nor higher than the requested interim rates. If the rates approved in the Commission’s Final Order differ from the interim rates, any surcharge or refund would be allocated as described under 16 TAC §§ (h)-(i). Furthermore, interim rates were set by agreement in the *Application of Kendall West Utility, LLC for Authority to Change Rates*⁶ and in the *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*.⁷

b. If a refund or surcharge results from this proceeding, how and over what period of time should the refund or surcharge be made?

As discussed above, in the event that the rates approved in the Commission’s Final Order differ from the interim rates, any surcharge or refund would be allocated as described under 16 TAC §§ (h)-(i). Specifically, if the proposed interim rates are higher than the final approved rates, 16 TAC § 24.37(h) states that “the retail public utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission in a reasonable number of monthly installments.” Alternatively, if the proposed interim rates are lower than the final approved rates, 16 TAC § 24.37(i) states that “the retail public utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates.”

⁶ *Supra* note 2. The Commission also included the issue in its Preliminary Order. *Application of Kendall West Utility, LLC for Authority to Change Rates*, Docket No 49887, Preliminary Order (Dec. 13, 2019);

⁷ *Supra* note 3.

- 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?**

None of the questions have caused Commission Staff to reconsider its agreement regarding the procedural schedule. However, if the parties' agreement on interim rates and proposed procedural schedule is not adopted, Commission Staff requests a pre-hearing conference to discuss those matters.

III. CONCLUSION

Staff respectfully requests adoption of the parties' agreement on interim rates and proposed procedural schedule. Staff also respectfully requests a prehearing conference to discuss matters related to interim rates and the proposed procedural schedule if for any reason the parties' agreement is not adopted.

Dated: October 9, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
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/s/Courtney Dean_____

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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 October 9, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Courtney Dean_____

Courtney N. Dean