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



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

**OFFICE OF PUBLIC UTILITY COUNSEL'S
RESPONSE TO SOAH ORDER NO. 2**

The Office of Public Utility Counsel (“OPUC”) files this response to the clarifying questions posed by the Administrative Law Judges (“ALJs”) in State Office of Administrative Hearings (“SOAH”) Order No. 2.¹ Pursuant to SOAH Order No. 2, parties must submit responsive briefs no later than October 9, 2020. Thus, this response is timely filed and OPUC’s brief shows the following:

I. BACKGROUND

On September 18, 2020, Monarch Utilities I, L.P. (“Monarch” or the “Company”), Staff of the Public Utility Commission of Texas (“Commission Staff”), and OPUC (collectively, “the Moving Parties”) participated in a prehearing conference and jointly moved for the adoption of interim rates, extension of the effective date, and a proposed procedural schedule. On September 28, 2020, the Moving Parties filed a written motion memorializing their oral motion made at the September 18, 2020 prehearing conference.² SOAH Order No. 2 conditionally adopts the Moving Parties’ proposed procedural schedule pending a ruling on the Moving Parties’ Joint Motion for Interim Rates. SOAH Order No. 2 further requests that the Moving Parties submit briefs to provide the ALJs with clarification on specific issues before a ruling is issued on the Moving Parties’ Joint Motion for Interim Rates.

¹ SOAH Order No. 2 (Oct 2, 2020)

² Joint Motion to Set Interim Rates, Extend Effective Date, and Adopt Joint Proposed Procedural Schedule (Sep. 28, 2020) (“Joint Motion for Interim Rates”).

II. RESPONSE

Requests for and adoption of interim rates are governed by Texas Water Code (“TWC”) § 13.187(l) and 16 Texas Administrative Code (“TAC”) §§ 22.125 and 24.37.

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

TWC § 13.187(l) permits the regulatory authority to fix interim rates at any time during the pendency of a rate case proceeding that will remain in effect during the applicable suspension period or until a final determination is made on a utility’s proposed rate. Therefore, the adoption of interim rates that are effective on or after September 18, 2020 is permissible under TWC § 13.187(l). Moreover, the adoption of the Moving Parties’ requested effective date for interim rates is consistent with the adoption of interim rates in other recent rate cases before SOAH. In Docket Nos. 50200 and 49887, SOAH issued orders adopting interim rates more than a week from the effective date of the approved interim rates.³

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

If the ALJs determine that a different effective date for interim rates should be used than the interim rates requested in the Moving Parties’ Joint Motion for Interim Rates, OPUC recommends that the ALJs’ order specify that the interim rates are adopted for usage on or after the date of the next billing cycle following the issuance of the order.

³ See e.g., *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) (pending) (setting the effective date for interim rates on August 1, 2020—three weeks preceding issuance of the Order); see also *Application of Kendall West Utility, LLC for Authority to Change Rates*, Docket No. 49887, SOAH Order No. 7 (June 15, 2020) (pending) (setting the effective date of interim rates on June 1, 2020—two weeks preceding issuance of the Order).

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 Moving Parties' Joint Motion for Interim Rates requests the adoption of interim rates effective September 18, 2020 through January 31, 2021 at Monarch's current Commission approved rates. Thus, pursuant to the Moving Parties' Joint Motion for Interim Rates for those systems whose own proposed effective dates are as late as 2023, interim rates would not apply.

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?

The impact of interim rates imposed prior to the end of the current February 1, 2021 suspension period does not change based on whether consolidation is approved by the Commission. Each system currently has its own individual tariff and if consolidation is not approved by the Commission, each system would continue to operate under its own individual tariff with its own individual rates that have been approved by the Commission. The impact of interim rates, however, remains dependent on whether the final Commission approved rates are lower or higher than the interim rates. If the final Commission approved rates reflected in the applicable tariff are lower than the interim rates, then a refund would be issued to the Company's ratepayers. If the final Commission approved rates reflected in the applicable tariff are higher than the interim rates, then a surcharge would be imposed on the Company's ratepayers. Consolidation merely impacts whether a refund or surcharge for interim rates is based upon a single tariff reflecting a final Commission approved rate for all systems or multiple tariffs reflecting final Commission approved rates for individual systems.

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

If consolidation is approved by the Commission, the Company's allocation of surcharges or refunds will be determined by the Commission in a final order.

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?**

OPUC defers to Monarch on this issue.

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

- 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?**

A similar question was also posed in the Commission's preliminary orders in Docket Nos. 50200 and 49887, two cases before SOAH in which interim rates were adopted pursuant to a joint motion by the parties in the proceedings.⁴ Like the parties in Docket Nos. 50200 and 49887, the Moving Parties in this proceeding jointly requested interim rates. Consistent with 16 TAC § 24.37, the Moving Parties have requested appropriate levels of interim rates in their Joint Motion for Interim Rates. Specifically, the Moving Parties request interim rates based on Monarch's currently authorized, Commission approved rates effective September 18, 2020 through January 31, 2021, and interim rates based on the rates set forth in Exhibit A to the Joint Motion for Interim Rates effective on February 1, 2021, which are no higher than Monarch's requested rates.

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

Pursuant to the Moving Parties' agreement memorialized in the Joint Motion for Interim Rates and consistent with 16 TAC § 24.37, a refund or surcharge that results from this proceeding will be made in a reasonable number of monthly installments.⁵ For any amount collected in excess of the Commission approved final rates, Monarch must refund or credit its ratepayers the over-collected amount plus interest.⁶ The monthly interest rate for any refund or credit is 0.194%,⁷

⁴ See *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, Preliminary Order at Issue No. 51 (May 1, 2020) (pending); see also *Application of Kendall West Utility, LLC for Authority to Change Rates*, Docket No. 49887, Preliminary Order at Issue No. 46 (Dec. 16, 2019) (pending).

⁵ 16 TAC § 24.37(h)&(i).

⁶ 16 TAC § 24.37(h).

⁷ Joint Motion for Interim Rates at 2 (Sep. 28, 2020).

which when compounded monthly equates to an effective annual rate of 2.35% pursuant to the Historical Record of Interest Rates set by the Commission for 2020.⁸ If the Commission approved final rates exceed the interim rates, Monarch will collect the difference as a surcharge from its ratepayers.

- 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?**

The ALJs' questions have not caused OPUC to reconsider its agreement with Monarch and Commission Staff regarding the procedural schedule. However, in the event that interim rates are not adopted by the ALJs, OPUC requests a prehearing conference on the procedural schedule.

III. CONCLUSION

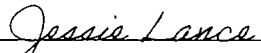
OPUC respectfully requests that the ALJs issue an order adopting interim rates pursuant to the Moving Parties' Joint Motion for Interim Rates and grant any other relief to which OPUC is entitled.

⁸ *Interest Rates Set Under Texas Utilities Code § 183.003 and Set for Overcharges and Undercharges Under 16 Texas Administrative Code §§ 25.28, 25.480, and 26.27*, Project No. 45319, Order (Nov. 15, 2019).

Dated: October 9, 2020

Respectfully submitted,

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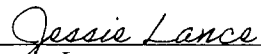
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CERTIFICATE OF SERVICE

SOAH Docket No. 473-20-4709.WS
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I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 9th day of October 2020, by facsimile, electronic mail, and/or first class, U.S. mail.



Jessie Lance