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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

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§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**OFFICE OF PUBLIC UTILITY COUNSEL'S
MOTION TO COMPEL**

The Office of Public Utility Counsel (“OPUC”) files this motion to compel Monarch Utilities I, L.P.’s (“Monarch” or the “Company”) response to OPUC’s request for information (“RFI”) No. 4-1. Monarch filed objections to OPUC RFI No. 4-1 on October 6, 2020. Pursuant to 16 Texas Administrative Code (“TAC”) § 22.144(e), the party seeking discovery shall file a motion to compel no later than five working days after the objection is received. Thus, this motion to compel is timely filed.

**I. OPUC’S RESPONSE TO MONARCH’S
OBJECTIONS TO RFI NO. 4-1**

On September 29, 2020, OPUC propounded RFI No. 4-1 on Monarch to request a copy of the Company’s long-term incentive compensation plan that was in effect during the Test Year and in 2020. OPUC RFI No. 4-1 specifically states:

- 4-1.** Please reference the Direct Testimony of Mujeeb Hafeez at 11:5-16. Please provide a copy of the short-term and the long-term incentive plans in effect: (a) during the Test Year; and (b) in 2020.

Monarch objects to OPUC RFI No. 4-1 on the grounds that the request is not relevant and is unreasonably cumulative and duplicative. As discussed in further detail below, Monarch’s objections are without merit. Accordingly, the Administrative Law Judges (“ALJs”) should overrule Monarch’s objections and compel the Company to answer OPUC RFI No. 4-1.

A. LEGAL STANDARD AND SCOPE OF DISCOVERY

The scope of relevancy for discovery in contested case proceedings before the Public Utility Commission of Texas (“Commission”) and State Office of Administrative Hearings (“SOAH”) is governed by Rule 192.3 of the Texas Rules of Civil Procedure (“TRCP”)¹ and 16 TAC § 22.141(a).² These legal authorities establish that a party may obtain discovery *regarding any matter* that is not privileged and is *relevant to the subject matter of the pending action*.³ TRCP 192.3(a) provides that “[i]t is not a ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Thus, the legal standard for determining relevancy in the context of discovery is broader than the legal standard for determining the admissibility of evidence at trial.⁴

Furthermore, with respect to discovery, the Texas Supreme Court has stated that “[t]he ‘relevant to the subject matter’ and ‘reasonably calculated to lead to admissible evidence’ tests are liberally construed to allow the litigants to obtain the fullest knowledge of the facts and issues prior to trial.”⁵ Consistent with this well-established precedent, the Texas Supreme Court reiterated as recently as 2017 that the scope of discovery is broad and that a request for information must simply show a reasonable expectation of obtaining information that will aid the dispute’s resolution.⁶ TRCP 192.4(a) sets forth a reasonableness standard for determining whether a request for information is cumulative or duplicative. Specifically, TRCP 192.4 states that discovery should be limited by the court *if* the court determines that the discovery sought is *unreasonably* cumulative or duplicative.

¹ Tex. R. Civ. Proc. 192.3.

² In adopting its discovery rules, the Commission expressly stated that its discovery rules are not intended as a substitute for appropriate reliance on the Texas Rules of Civil Procedure, except to the extent that the Commission rules expressly provide different requirements for matters also covered by the Texas Rules of Civil Procedure. 18 Tex. Reg. 6644 (Sep. 28, 1993).

³ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 22.141(a).

⁴ *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990) (concluding relevancy is liberally construed in the context of discovery).

⁵ *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990) (citing *Gutierrez v. Dallas Indep. School Dist.*, 729 S.W. 2d 691, 693 (Tex. 1987)); *see also In re Nat’l Lloyds Ins. Co.*, 532 S.W.3d 794, 808 (Tex. 2017).

⁶ *In re Nat’l Lloyds Ins. Co.*, 532 S.W.3d 794, 808 (Tex. 2017).

B. MONARCH'S LONG-TERM INCENTIVE COMPENSATION PLAN IS RELEVANT TO THIS PROCEEDING

Monarch contends OPUC RFI No. 4-1 is not relevant to this proceeding. However, Issue No. 15 of the Commission's Preliminary Order states that the following must be addressed in this proceeding:

15. What adjustments, if any, should be made to the utility's proposed test-year data in accordance with TWC § 13.185(d)(1) and 16 TAC § 24.41(b) and (c)(5)?⁷

Although Monarch asserts that long-term incentive compensation was removed from its Test Year costs and therefore is not relevant to this rate case proceeding, the fact that long-term incentive compensation was included in Monarch's Test Year costs in the first place makes the Company's long-term incentive compensation plan relevant to this proceeding. Removal of long-term incentive compensation from Monarch's Test Year costs is an adjustment to the Company's proposed test-year data as contemplated in Issue No. 15 of the Commission's Preliminary Order. Furthermore, to the extent Monarch's long-term incentive compensation plan may be used to calculate the appropriate adjustments to the Company's proposed test-year data, the Company's long-term incentive compensation plan is plainly relevant to this proceeding. Consequently, the ALJs should overrule Monarch's objections and compel the Company to produce its long-term incentive compensation plan because the information is necessary to ensure that the Company made the appropriate adjustments to its Test Year costs.

C. OPUC'S REQUEST FOR MONARCH'S LONG-TERM INCENTIVE COMPENSATION PLAN IS NOT UNREASONABLY CUMULATIVE OR UNREASONABLY DUPLICATIVE

In response to OPUC RFI No. 1-7, Monarch provided payroll information. The Company asserts that the portion of OPUC RFI No. 4-1 that seeks its long-term incentive compensation plan is unreasonably cumulative and duplicative in light of its response to OPUC RFI No. 1-7. The information sought in OPUC RFI No. 4-1 is neither unreasonably cumulative nor unreasonably duplicative as demonstrated by the fact that Monarch did not raise the same objection to the portion of OPUC RFI No. 4-1 that seeks the Company's short-term incentive compensation plan.

⁷ Preliminary Order at 4 (Sep. 24, 2020).

The legal standard for granting an objection to discovery on the basis that the request is cumulative or duplicative requires a showing that the request is *unreasonably* cumulative or duplicative.⁸ Although Monarch's payroll information and long-term incentive compensation plan may have some overlapping information, the Company's payroll information and long-term incentive compensation plan do not contain information which is so identical in nature as to render the request for one unreasonably cumulative or duplicative after the production of the other information. Consequently, the ALJs should overrule Monarch's objections and compel the Company to produce its long-term incentive compensation plan to ensure that the Company made the appropriate adjustments to its Test Year costs.

II. CONCLUSION AND PRAYER

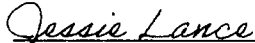
OPUC respectfully requests that the ALJs overrule Monarch's objections, grant OPUC's motion to compel Monarch's response to OPUC RFI No. 4-1, and order Monarch to produce the requested information without delay. OPUC further requests that the ALJs grant any other and additional relief to which OPUC may be entitled.

⁸ Tex. R. Civ. Proc. 192.4(a).

Dated: October 13, 2020

Respectfully submitted,

Lori Cobos
Chief Executive & Public Counsel
State Bar No. 24042276



Jessie Lance

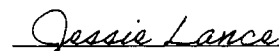
Assistant Public Counsel
State Bar No. 24091434
Tucker Furlow
Senior Assistant Public Counsel
State Bar No. 24060897
Chris Ekoh
Senior Managing Public Counsel
State Bar No. 06507015

OFFICE OF PUBLIC UTILITY COUNSEL
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512-936-7500 (Telephone)
512-936-7525 (Facsimile)
jessie.lance@opuc.texas.gov
tucker.furlow@opuc.texas.gov
chris.ekoh@opuc.texas.gov
opuc_eservice@opuc.texas.gov (Service)

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 13th day of October 2020, by facsimile, electronic mail, and/or first class, U.S. mail.



Jessie Lance