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APPLICATION OF MONARCH
UTILITIES I L.P. FOR AUTHORITY
TO CHANGE RATES

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BEFORE THE STATE OFFICE OF
PUBLIC UTILITY COUNSEL
ADMINISTRATIVE HEARINGS

**MONARCH UTILITIES I L.P.'S OBJECTION TO
JOINT MOTION TO SET INTERIM RATES**

Monarch Utilities I L.P. (Monarch) files this objection to the Joint Motion to Set Interim Rates Until a Final Order is Issued (Motion) filed by Staff of the Public Utility Commission of Texas (Commission Staff) and the Office of Public Utility Counsel (OPUC)(collectively Movants) on May 19, 2021, and in support respectfully shows the following:

I. BACKGROUND

On July 15, 2020, Monarch filed an application for authority to change rates pursuant to Texas Water Code (TWC) § 13.187 and 16 Tex. Administrative Code (TAC) § 24.27. On August 18, 2020, the Commission Administrative Law Judge (ALJ) issued Commission Order No. 3, finding the application and notice sufficient. Commission Order No. 3 also suspended the effective date for all proposed rates. On August 31, 2020, the Commission referred this docket to the State Office of Administrative Hearings (SOAH).

On September 28, 2020, Monarch, Staff, and OPUC filed a Joint Motion to Set Interim Rates, Extend Effective Date, and Adopt Joint Proposed Procedural Schedule (Joint Motion to Set Interim Rates). On October 15, 2020, the SOAH ALJs issued SOAH Order No. 3 Approving Agreed Interim Rates; Unconditionally Adopting Procedural Schedule Set Forth in SOAH Order No. 2; and Recognizing Extension of Effective Date. SOAH Order No. 3 adopted interim rates in two phases. In SOAH Order No. 3, the ALJs acknowledged that in the Joint Motion to Set Interim Rate, Monarch agreed to extend the effective date of the proposed rates to January 1, 2021. Based

on that agreed extension of the effective date, the ALJs suspended the proposed rates for 150 days, until May 31, 2021.¹

Commission Staff and OPUC in their Motion state that “SOAH Order No. 3 does not clearly identify whether the interim rates remain in effect until the end of the suspension period or until a final order is issued in this proceeding.”² This statement appears completely inconsistent with the Joint Motion to Set Interim Rates, which Movants signed, that unequivocally concludes, “that the 150-day suspension deadline would be May 31, 2021, as allowed in 16 Tex. Admin. Code § 24.9, or until such time that the Commission sets a final rate, *whichever occurs first*.”³

Pursuant to TWC § 13.187(e) and 16 TAC § 24.33(e), the current interim rates expire on May 31, 2021, and at such time, unless the Commission has taken final determination on the proposed rate, the rates proposed by Monarch in its application are considered approved. While the TWC and Commission Rules provide a limit on the extent to which a proposed rate may be suspended to avoid regulatory lag, those same provisions still allow the Commission to continue a hearing in progress and ultimately approve a different rate, balancing the cash flow needs of the applicant with the Commission’s administrative process.

The Parties are at the precipice of finalizing all necessary settlement documents, and anticipate that such filings will occur prior to May 31, 2021.

II. ARGUMENT

The Movants propose the extension of interim rates in this proceeding for an indeterminate period beyond the current statutory suspension period to allow the Commission “adequate time to

¹ SOAH Order No. 3 Approving Agreed Interim Rates; Unconditionally Adopting Procedural Schedule Set Forth in SOAH Order No. 2; and Recognizing Extension of Effective Date at 3 (Oct. 15, 2020).

² Joint Motion to Set Interim Rates Until a Final Order is Issued at 2 (May 19, 2021) (Motion).

³ Motion at 2 (emphasis added).

review and issue a final decision in this proceeding.”⁴ The effect of this requested relief is an indefinite suspension of Monarch’s proposed effective date, which is contrary to the TWC and the Commission’s rules regarding effective date suspension.

The TWC is clear:

After written notice to the utility, the utility commission may suspend the effective date of a rate change *for not more than 150 days* from the proposed effective date. If the utility commission does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the utility commission thereafter to continue a hearing in progress.⁵

The Commission’s Rules confirm:

. . . the commission may suspend the effective date of a rate change *for not more than: (1) 150 days* from the date the proposed rates would otherwise be effective for an application filed under Texas Water Code (TWC) § 13.187...⁶

The Movants acknowledge that if interim rates expire on May 31, 2021, then Monarch’s proposed rates are considered approved under 16 TAC § 24.33(e). Movants cite to no authority, statutory or otherwise, which supports the conclusion that the Commission or SOAH may bypass the 150 day suspension period, set out in TWC § 13.187(e) or 16 TAC § 24.33(e), by setting interim rates until a final order is issued by the Commission.

If the Commission or SOAH had such authority, the suspension provisions in the statute and rules would be rendered meaningless. Either the Commission or SOAH would only have to set interim rates at an applicant’s current rates until a final order is issued, and from that point forward, the Commission would have unlimited time by which to examine and adjudicate the proposed rate change. And then after a final order was issued (potentially years later), the applicant would then be required to surcharge or refund customers for the difference pursuant to 16 TAC

⁴ *Id.*

⁵ TWC § 13.187(e) (emphasis added).

⁶ 16 TAC § 24.33(a)(1) (emphasis added).

§ 24.37(h). Such a conclusion would rewrite the statute to render TWC § 13.187(e) and 16 TAC § 24.33(e) meaningless.⁷

The TWC is unambiguous: “[i]f the utility commission does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved.”⁸ It does not say, “[i]f the utility commission does not make a final determination on the proposed rate *or set an interim rate* before the expiration of the suspension period...” The Legislature provided one condition precedent to proposed rates being “considered approved”—expiration of the suspension period. It would be contrary to the tenants of statutory construction to imply other exceptions or “off-ramps.”⁹

The Commission Staff and OPUC may not seek to circumvent the Legislature’s limited suspension period through the use of interim rates, and no authority to do so exists.

III. CONCLUSION AND PRAYER

Monarch respectfully requests that the Joint Motion to Set Interim Rates Until a Final Order is Issued be denied, and grant any further relief to which Monarch shows itself justly entitled.

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.

⁷ When construing a statute, courts are to look to the plain language to determine the intent of the Legislature. *See State v Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). If a statute is unambiguous, courts are to apply the words according to their common meaning, and may consider the objective of the law and the consequences of a particular construction. *See id.* “*We must not interpret the statute ‘in a manner that renders any part of the statute meaningless or superfluous.’”* *Crosstex Energy Servs., LP v Pro Plus, Inc*, 430 S.W.3d 384, 390 (Tex. 2014) (quoting *Columbia Med Ctr of Las Colinas, Inc v. Hogue*, 271 S.W.3d 238, 256 (Tex. 2008)).

⁸ TWC § 13.187(e).

⁹ “It is a well-known rule of statutory construction in this State and elsewhere that the express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others.” *Ex parte McIver*, 586 S.W.2d 851, 856 (Tex. Crim. App. 1979) (citing to 53 Tex.Jur.2d, Statutes, Section 142, pp. 205–207; *Peterson v Calvert*, 473 S.W.2d 314 (Tex. Civ. App. 1971, writ ref’d)).

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**ATTORNEYS FOR
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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 May 20, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ William A. Faulk, III

WILLIAM A. FAULK, III