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

JOINT RESPONSE TO MONARCH UTILITIES I, L.P.'S OBJECTION TO THE JOINT MOTION TO SET INTERIM RATES UNTIL A FINAL ORDER IS ISSUED

The Staff of the Public Utility Commission of Texas (Staff) and the Office of Public Utility Counsel (OPUC) (collectively, the Movants) file this Joint Response to Monarch Utilities I, L.P.'s Objection to the Joint Motion to Set Interim Rates Until a Final Order is Issued (Joint Response) in this docket. The undersigned is authorized to represent that the Movants support this Joint Response, which is timely filed under 16 Texas Administrative Code (TAC) § 22.78(a). In support of this Joint Response, the Movants respectfully show the following:

I. BACKGROUND

On July 15, 2020, Monarch Utilities I, L.P. (Monarch or the Company) filed an application for authority to change rates pursuant to Texas Water Code (TWC) § 13.178 and 16 TAC § 24.27. Monarch has approximately 30,000 active connections under water certificate of convenience and necessity (CCN) number 12983 and approximately 4,400 active connections under sewer CCN number 20899. Monarch is a Class A utility. 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 through the pendency of this case. 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. 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. The first phase sets interim rates at Monarch's current rates, effective September 18, 2020. The second phase sets interim rates at Monarch's proposed rates, effective February 1, 2021. SOAH Order

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No. 3 also extended the suspension of the effective date of the proposed rates until May 31, 2021. 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. If the current interim rates expire on May 31, 2021, the rates proposed by Monarch in its application would be considered approved under 16 TAC § 24.33(e). The Movants note that the Company's proposed rates are higher than the rates agreed to by the parties as part of the settlement.

On February 2, 2021, Monarch, Staff, and OPUC filed an agreed motion to abate the proceeding after reaching a settlement in principle. On February 2, 2021, the SOAH ALJs also issued SOAH Order No. 7, which granted the requested abatement to allow the parties time to prepare final settlement documents. The Movants note that complexities resulting from the size of the CCNs at issue in this proceeding have presented challenges that have required time to work through by the parties. At this time, the Movants continue to work diligently with Monarch to finalize the settlement documents and expect to file a complete settlement package on May 28, 2021.

On May 19, 2021, the Movants filed a Joint Motion to Set Interim Rates Until a Final Order is Issued (Joint Motion), requesting that the interim rates currently set in this proceeding be extended until a final rate is set pursuant to 16 TAC § 24.37(b). On May 20, 2021, Monarch filed its objection to the Joint Motion. The Movants and Monarch are currently engaged in ongoing discussions regarding how to proceed with the extension of interim rates.

II. JOINT RESPONSE TO MONARCH'S OBJECTION

Under Texas Water Code (TWC) § 13.187(*D*), a regulatory authority may, at any time during the pendency of the rate proceeding, "fix interim rates to remain in effect...until a final determination is made on the proposed rate." Likewise, 16 TAC § 24.37(b) states that "[a]t any time after the filing of a statement of intent to change rates...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."

In its objection to the Joint Motion, Monarch argues that the effect of the Movants' request to set interim rates until a final rate is set by the Commission would be "contrary to the TWC and

the Commission's rules regarding effective date suspension.”¹ Monarch argues that TWC § 13.187(e) establishes a 150-day suspension period and unambiguously requires a utility’s proposed rates to be approved if a final determination is not made by the end of the 150-day suspension.

The Movants reject Monarch’s argument that extending interim rates until a final order is issued would “circumvent the Legislature's limited suspension period through the use of interim rates, and no authority to do so exists.”² Monarch’s objection fails to recognize the full text of TWC § 13.187(l), which expressly rejects Monarch’s proposed interpretation of TWC § 13.187(e) and allows a regulatory authority to establish interim rates in effect beyond the 150-day suspension period. Specifically, TWC § 13.187(l) states:

At any time during the pendency of the rate proceeding the regulatory authority may fix interim rates to remain in effect during the applicable suspension period under Subsection (d-1) or Subsections (e) and (e-1) *or until a final determination is made on the proposed rate*. If the regulatory authority does not establish interim rates, the rates in effect when the application described by Subsection (c) was filed continue in effect during the suspension period.³

Thus, contrary to Monarch’s argument, the plain language of the TWC expressly provides statutory authority for interim rates to be set until a final rate is determined, even if that final rate is established after the close of the 150-day suspension period described in TWC § 13.187(e).

Beyond the clear statutory language in TWC § 13.187(l) that provides the Commission the authority to fix interim rates until a final order is issued by the Commission, the Movants note that it is common practice to establish interim rates until a final determination of base rates is made by the Commission. Specifically, the Movants note that interim rates have been set until a final rate was determined by the Commission in past water utility rate case proceedings in Docket Nos.

¹ Monarch Utilities I, L.P.’s Objection to the Joint Motion to Set Interim Rates (May 20, 2021) at 3.

² *Id.* at 4.

³ TWC § 13.187(l) (emphasis added).

45570,⁴ 47736,⁵ 49887,⁶ and 50200.⁷ The Movants particularly note that in Docket No. 45570, *Monarch, itself*, requested that interim rates be set until a final rate was determined in accordance with TWC § 13.187(l).⁸ Further, Monarch's affiliate, SWWC Utilities, Inc. dba Water Services, Inc., also requested that interim rates be set until a final rate was determined by the Commission in Docket No. 47736.⁹ Accordingly, the Movants emphasize that both statutory authority and prior Commission precedent support extending interim rates in this proceeding until a final rate is determined by the Commission.

Further, the Movants note that Monarch's October 9, 2020 brief on interim rates in this docket took positions that align with the Movants' request to establish interim rates until a final order is issued by the Commission. Specifically, Monarch emphasized the Commission's authority to set interim rates at any time during the pendency of a rate-change proceeding,¹⁰ acknowledged that the Commission's substantive rules allow for interim rates to be set until a final decision on the requested rate change is made by the Commission,¹¹ and cited to Monarch's previous rate case in Docket No. 45570—in which interim rates were implemented until a final rate was established by the Commission—as precedent.¹²

Accordingly, the Movants contend that fixing interim rates until a final rate determination is made by the Commission is supported by both statutory authority and Commission precedent. The Movants maintain that extending interim rates until a final order is issued by the Commission

⁴ *Application of Monarch Utilities I, L.P. for Authority to Change Rates for Water and Sewer Service*, Docket No. 45570, Order No. 9 Establishing Interim Rates (Sep. 21, 2016) at 1 (referencing Monarch's Motion to Grant Interim Rates, filed Sep. 19, 2016, requesting that interim rates be established until the Commission sets a final rate).

⁵ *Application of SWWC Utilities, Inc dba Water Services, Inc. for Authority to Change Rates*, Docket No. 47736, Order No. 8 Approving Interim Rates for Phase II (Aug. 7, 2019) at 1.

⁶ *Application of Kendall West Utility, LLC for Authority to Change Rates*, Docket No. 49887, SOAH Order No. 7 Adopting Interim Rates (June 15, 2020) at 1.

⁷ *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, SOAH Order No. 10 Admitting Evidence; Setting Interim Rates; and Remanding Case to the Commission and Dismissing it from SOAH's Docket (Aug. 21, 2020) at 3.

⁸ *Application of Monarch Utilities I, L.P. for Authority to Change Rates for Water and Sewer Service*, Docket No. 45570, Monarch Utilities I, L.P.'s Motion to Grant Interim Rates (Sep. 19, 2016) at 2.

⁹ *Application of SWWC Utilities, Inc dba Water Services, Inc. for Authority to Change Rates*, Docket No. 47736, Joint Motion to Set Interim Rates and Extend Effective Date (Jan. 2, 2019) at 2.

¹⁰ Brief on Interim Rates Issues of Monarch Utilities I, L.P. (Oct. 9, 2020) at 2.

¹¹ *Id.* at 6 (quoting 16 TAC § 24.37(j), a notice provision which acknowledges that interim rates may be set until the requested rate change until a final determination is made).

¹² *Id.* at 7.

is in the public interest and this standard Commission practice would protect Monarch's customers from additional and unnecessary financial hardship levied by the imposition of Monarch's higher proposed rates without the issuance of a refund or surcharge, as applicable. Therefore, the Movants respectfully request that the Joint Motion be granted, but are engaged in ongoing discussions with Monarch regarding the extension of interim rates.

III. CONCLUSION AND PRAYER

The Movants respectfully request that the ALJs enter an order extending interim rates until a final order is issued by the Commission in this proceeding. The parties continue to work diligently towards finalizing settlement documents and expect to file a complete settlement package on May 28, 2021.

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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CERTIFICATE OF SERVICE
SOAH DOCKET NO. 473-20-4709.WS
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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 24, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Courtney Dean
Courtney N. Dean