

Control Number: 50944



Item Number: 622

Addendum StartPage: 0

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

2021 MAY 27 AM 9:49

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

SOAH ORDER NO. 9
GRANTING THE MOVANTS' MOTION TO SET INTERIM RATES
UNTIL A FINAL ORDER IS ISSUED

On May 19, 2021, the staff (Staff) of the Public Utility Commission of Texas (Commission) and the Office of the Public Utility Counsel (OPUC) (collectively, the Movants) filed a Joint Motion to Set Interim Rates until a Final Order is Issued (Joint Motion).¹ Monarch Utilities I, L.P. (Monarch) filed an objection on May 20, 2021, and the Movants responded on May 24, 2021. The parties' arguments are summarized below. As will be discussed in greater detail herein, the Administrative Law Judges (ALJs) **GRANT** the Movants' Joint Motion and set the current interim rates to remain in effect until a final Commission order is issued in this proceeding.

The Movants assert that State Office of Administrative Hearings (SOAH) Order No. 3 did not explicitly state whether the agreed-upon interim rates remain in effect until the end of the suspension period on May 31, 2021, when Monarch's proposed rates are considered approved, or until a final Commission order is issued. As a result of this uncertainty, the Movants argue it is unknown whether Monarch's proposed rates, which are higher than the approved interim rates, will be charged to the ratepayers beginning May 31, 2021, until a final Commission order is issued. The Movants indicate that the Joint Motion is an attempt to avoid confusion and the economic hardship that would be imposed on Monarch's ratepayers under the proposed rates (because unlike the interim rates, Monarch's proposed rates are not subject to an eventual true-up of costs and Monarch is not required to refund or collect a surcharge from the customers, as applicable), and to

¹ The Movants reference 16 Texas Administrative Code (TAC) § 24.37(b) which allows Staff to petition to set interim rates to remain in effect until a final rate determination is made at any time after the filing of statement of intent to change rates under Texas Water Code, chapter 13.

U22

allow the Commission adequate time to review and issue a final decision in this case. In sum, the Movants are concerned about which rates, either the approved interim rates or Monarch's proposed rates, will be charged to the ratepayers for the time period between May 31, 2021, and the Commission's final order.

As provided in its objection, Monarch asserts the Joint Motion is inconsistent with SOAH Order No. 3 which adopted the Joint Motion to Set Interim rates, which the Movants signed, that provided "the 150-day suspension deadline would be May 31, 2021, as allowed in 16 Texas Administrative Code (TAC) § 24.9, or until such time that the Commission sets a final rate, whichever occurs first."² Monarch argues that the relief sought by the Joint Motion would result in an indefinite suspension of Monarch's proposed effective date, which is contrary to the Texas Water Code § 13.187(e) and 16 TAC § 24.33(a)(1). Further, Monarch argues that to circumvent the Legislature's limited suspension period through the use of interim rates is not only unauthorized but would render the suspension statutes and provisions in the Texas Water Code and Commission's rules meaningless.

With regard to Monarch's arguments, the Movants point to Texas Water Code § 13.187(l) and 16 TAC § 24.37(b) as evidence that a regulatory authority is authorized to establish interim rates that extend beyond the 150-day suspension period under Texas Water Code § 13.187(e) and 16 TAC § 24.33(a)(1). Specifically, Texas Water Code § 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 55 (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.

The Movants assert that this statute expressly authorizes interim rates to be set until a final rate is determined by Commission order, even if that final rate is established after the expirations of the

² Joint Motion to Set Interim Rates, Extend Effective Date, and Adopt Joint Proposed Procedural Schedule at 2 (Sept. 28, 2021).

150-day suspension period. Additionally, 16 TAC § 24.37(b) states:

At any time after the filing of a statement of intent to change rates under Chapter 13 of the TWC the [C]ommission staff may petition the [C]ommission to set interim rates to remain in effect until further commission action or a final rate determination is made. After a hearing is convened, any party may petition the judge or [C]ommission to set interim rates.

The Movants also reference multiple Commission water utility rate cases in which interim rates were established and set to run until a final Commission order was issued.³ More specifically, the Movants identify Commission Docket No. 45570 where Monarch, itself, requested that interim rates be set until a final rate was determined in accordance with Texas Water Code § 13.187(l). The Movants also reference Monarch's October 9, 2020 brief on interim rates filed in this docket in which they assert Monarch: emphasized the Commission's authority to set interim rates at any time during the pendency of a rate-change proceeding, acknowledged 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, and cited to Commission Docket No. 45570 (as previously addressed) as precedent for implementing interim rates until a final rate is established by the Commission.⁴

Both, the Movants and Monarch, confirmed that they are continuing to work with each other to finalize settlement documents that would resolve the contested issues subject to Monarch's July 15, 2020 application to change rates, and that they expect to file a completed settlement package by the end of May 2021. Furthermore, the Movants state that the parties are currently engaged in ongoing discussions regarding the extension of interim rates.

After reviewing the Movants' and Monarch's arguments regarding the Joint Motion, the ALJs find there is clear authority to set interim rates until a final Commission order is issued under

³ The ALJs note that each of the prior Commission water utility rate cases the Movants identified as Commission precedent for setting interim rates until a final Commission order was issued resulted from voluntary settlement agreements agreed to by the parties. Accordingly, these cases do not carry the weight of Commission precedent, as inferred by the Movants.

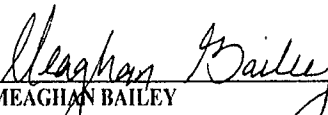
⁴ Brief on Interim Rate Issues of Monarch Utilities I, L.P. at 2, 6-7 (Oct, 9, 2020).

Texas Water Code § 13.187(l) and 16 TAC § 24.37(b). The ALJs are persuaded to act on that authority due to the parties' shortly anticipated settlement agreement and the financial protection and rate stability that interim rates will provide to the ratepayers from May 31, 2021, to the final Commission order. Additionally, in SOAH Order No. 3, the ALJs required Monarch to provide notice of the approved interim rates to its customers in compliance with 16 TAC § 24.37(j), which states:

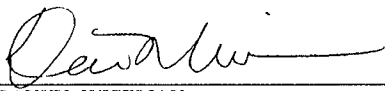
The retail public utility shall provide a notice to its customers including the interim rates set by the commission or presiding officer with the first billing at the interim rates with the following wording: *"The commission (or presiding officer) has established the following interim rates to be in effect until the final decision on the requested rate change (appeal) or until another interim rate is established."*⁵

Accordingly, it is **ORDERED** that the current authorized interim rates shall continue to be in effect until a final Commission order is issued in this proceeding.


SIGNED May 26, 2021.



MEAGHAN BAILEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DANIEL WISEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



METTRA FARHADI
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

⁵ Emphasis added.