



Control Number: 53120



Item Number: 13

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PUBLIC UTILITY COMMISSION  
OF TEXAS

AGREED NOTICE OF VIOLATION, §  
AGREEMENT, AND REPORT TO THE §  
COMMISSION REGARDING §  
MONARCH UTILITIES I LP'S §  
VIOLATIONS OF THE §  
COMMISSION'S FEBRUARY 21, 2021 §  
ORDER DIRECTING CERTAIN §  
ACTIONS AND GRANTING §  
EXCEPTIONS TO CERTAIN RULES §

**ORDER**

This Order addresses the agreement between Commission Staff and Monarch Utilities I LP regarding Monarch’s violations of the Commission’s February 21, 2021 Order Directing Certain Actions and Granting Exceptions to Certain Rules filed in Project No. 51812.<sup>1</sup> The agreement also serves as a report to the Commission under 16 Texas Administrative Code (TAC) § 22.246(h)(1). Commission Staff recommends that, in lieu of an administrative penalty, Monarch donates \$60,000 to Water Assist, Monarch’s water bill payment assistance program. Monarch agrees to pay the donation recommended by Commission Staff. The Commission approves the required donation to the extent provided in this Order.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Respondent**

1. Monarch is a Texas limited partnership registered with the Texas secretary of state under filing number 800034797.
2. Monarch provides retail water service to approximately 30,000 active water connections across multiple, geographically separate service areas under water certificate of convenience and necessity (CCN) number 12983.

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<sup>1</sup> *Issues Related to the State of Disaster for the February 2021 Winter Weather Event*, Project No. 51812. Order Directing Certain Actions and Granting Exceptions to Certain Rules (Feb. 21, 2021).

3. Monarch provides retail sewer service to approximately 4,400 connections across multiple, geographically separate service areas under sewer CCN number 20899.

**February 21, 2021 Commission Order**

4. From February 10 to 20, 2021, the state of Texas experienced a severe winter weather event that caused unprecedented levels of interruption to electric and water utility services throughout the state.
5. On February 12, 2021, under Texas Government Code § 418.014, in response to the extreme winter weather event, Governor Greg Abbott issued a Declaration of a State of Disaster for all counties in Texas.
6. On February 21, 2021, in response to the ongoing recovery from emergency conditions, the Commission issued an Order Directing Certain Actions and Granting Exceptions to Certain Rules in Project No. 51812.<sup>2</sup>
7. In the Order Directing Certain Actions and Granting Exceptions to Certain Rules, the Commission found there existed a public emergency and imperative public necessity that constituted good cause to suspend a number of substantive rules to protect customers during the ongoing public emergency.
8. Among the rules suspended by the Order Directing Certain Actions and Granting Exceptions to Certain Rules was 16 TAC § 24.165(c), which states that a water utility may charge customers a one-time penalty of either \$5.00 or 10% of a delinquent bill, unless otherwise provided. Under the Order Directing Certain Actions and Granting Exceptions to Certain Rules, water utilities were prohibited from charging these late fees to customers until the suspension period was over.
9. On March 5, 2021, the Commission issued its Order Terminating Exceptions to Certain Rules in Project No. 51812, terminating the suspension of 16 TAC § 24.165(c), and thereby authorizing water utilities to reinstate the charging of late fees.<sup>3</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *Issues Related to the State of Disaster for the February 2021 Winter Weather Event*, Project No. 51812, Order Terminating Exceptions to Certain Rules (Mar. 5, 2021).

**Violations of the February 21, 2021 Commission Order**

10. Under the terms of the Order Directing Certain Actions and Granting Exceptions to Certain Rules, Monarch was prohibited from charging late fees to customers under 16 TAC § 24.165(c) until the suspension period was lifted on March 5, 2021.
11. During the suspension period from February 21 through March 5, 2021, Monarch issued 2,810 customer bills that included late fees that were incurred by customers before the start of the suspension period on February 21, 2021. The total amount of late fees charged during the suspension period was \$26,721.58.
12. Monarch asserts that the violations were unintentional and resulted from a misreading of the Order Directing Certain Actions and Granting Exceptions to Certain Rules. Specifically, Monarch believed that it was allowed by the Order Directing Certain Actions and Granting Exceptions to Certain Rules to assess, during the suspension period, late fees that were incurred before the start of the suspension period.
13. On March 21, 2022, Monarch filed an errata to the affidavit of Dean Van Horne, Monarch's director of customer care, attesting that all late fees charged in violation of the Order Directing Certain Actions and Granting Exceptions to Certain Rules were refunded to customers on or about November 8, 2021.
14. Monarch has not realized any economic benefit as a result of its violations, because Monarch refunded all late fees collected from bills issued during the suspension period.

**Notice**

15. On July 29, 2021, Commission Staff notified Monarch of the investigation into Monarch's violation of the Order Directing Certain Actions and Granting Exceptions to Certain Rules.
16. On September 8, 2021, Commission Staff provided Monarch with notice of the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.

**Evidentiary Record**

17. On February 16, 2022, Monarch and Commission Staff filed a joint motion to admit evidence.

18. In Order No. 1 filed on March 4, 2022, the administrative law judge (ALJ) admitted the following into the record of this proceeding: (a) the affidavit and confidential supporting documentation of Neil Van Horne filed on February 16, 2022; and (b) the agreement and all attachments filed on February 16, 2022.
19. On March 31, 2022, Monarch and Commission Staff filed a joint supplemental motion to admit evidence.
20. In Order No. 4 filed on March 31, 2022, the ALJ admitted the parties' joint response to Order No. 2, including all attachments, filed on March 21, 2022, into the record of this proceeding.

**Agreement**

21. Monarch cooperated with Commission Staff's investigation.
22. Monarch acknowledges the basis for the violations alleged by Commission Staff as detailed in this Order but asserts that the violations were unintentional.
23. On February 16, 2022, Commission Staff and Monarch entered into an agreement, in which Commission Staff recommended, and Monarch agreed, that in lieu of an administrative penalty, Monarch will donate \$60,000 to Water Assist, Monarch's water bill payment assistance program, and Monarch and Water Assist will comply with the following terms:
  - a. Upon receiving the \$60,000 donation, Monarch's Water Assist program will disburse the \$60,000 donation to qualifying customers of Monarch who live in Texas and are in need of bill payment support;
  - b. Monarch must ensure that none of the bill payment assistance funds to be paid under the terms of this agreement will be provided to any employee, contractor, or agent of Monarch or any Monarch affiliate, or to any family member thereof;
  - c. Monarch will not include the \$60,000 donation required under the terms of the agreement in any publicity, marketing, advertising, or promotional efforts; and
  - d. The \$60,000 donation required under the terms of the agreement will be in addition to Monarch's budgeted bill payment assistance funding level for the fiscal year in which the donation is made.

24. On February 16, 2022, Commission Staff filed a copy of the executed agreement with the Commission's filing clerk.

**Informal Disposition**

25. At least 15 days have passed since the completion of all notice requirements.
26. No person filed a protest or motion to intervene.
27. Monarch and Commission Staff are the only parties to this proceeding.
28. No party requested a hearing and no hearing is needed.
29. Commission Staff recommended approval of the agreement.
30. This decision is not adverse to any party.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has authority over this matter under Texas Water Code (TWC) §§ 13.041, 13.042, and 13.4151.
2. Monarch is a utility, public utility, and water utility as those terms are defined in TWC § 13.002(23) and 16 TAC § 24.3(39).
3. Under TWC § 13.041(a), the Commission may regulate and supervise the business of each water and sewer utility within its jurisdiction, including other economic regulation, and may do all things necessary and convenient in the exercise of these powers and jurisdiction.
4. Under 16 TAC § 22.5(a), the Commission may suspend the operation of one or more of the Commission's substantive rules if there exists a public emergency or imperative public necessity and the Commission ascertains that suspension of one or more rules will best serve the public interest and will not prejudice the rights of any party.
5. Under 16 TAC § 24.165(c), a water and sewer utility may charge customers a one-time penalty of either \$5.00 or 10% of a delinquent bill, unless otherwise provided.
6. The Order Directing Certain Actions and Granting Exceptions to Certain Rules suspended 16 TAC § 24.165(c) for the period from February 21 until March 5, 2021, thereby

- prohibiting water and sewer utilities in the state of Texas from charging customers late fees on delinquent bills during that period.
7. Monarch violated the Order Directing Certain Actions and Granting Exceptions to Certain Rules by charging late fees on bills issued to 2,810 customers between February 21 and March 5, 2021.
  8. Because Monarch refunded all late fees collected in violation of the Order Directing Certain Actions and Granting Exceptions to Certain Rules, Monarch did not realize any financial gain from the violation.
  9. Under TWC § 13.4151(a), the Commission has authority to impose administrative penalties for violations of orders adopted under TWC chapter 13 in an amount of up to \$5,000 per violation per day.
  10. Monarch was provided proper notice of Commission Staff's investigation into this matter, the results of Commission Staff's investigation, information about Monarch's right to a hearing, and an opportunity to explain its activities, as required by 16 TAC §§ 22.241(a)(2) and 22.246(f)(2).
  11. The filing of the agreement meets the requirements of 16 TAC § 22.246(h)(1).
  12. The Commission processed this docket in accordance with applicable statutes and Commission rules.
  13. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

### III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

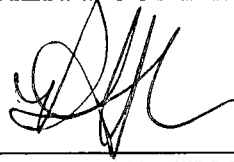
1. The Commission approves the required donation to the extent provided in this Order.
2. Monarch must comply with the terms of the agreement and this Order.
3. Within 30 days of the date of this Order, Monarch must donate \$60,000 to Water Assist, Monarch's bill payment assistance program for low-income, senior, and disabled customers.

4. Within 15 days of the date that Monarch's \$60,000 donation to Water Assist is made, Monarch must file an affidavit and supporting documentation demonstrating that the payment was made.
5. After receiving the \$60,000 donation from Monarch, Monarch's Water Assist program must disburse the \$60,000 donation to qualifying customers of Monarch who live in Texas and are in need of bill payment support.
6. Monarch and Water Assist must ensure that none of the bill payment assistance funds to be paid under the terms of this agreement will be provided to any employee, contractor, or agent of Monarch or any Monarch affiliate, or to any family member thereof.
7. Monarch must not include the \$60,000 donation required under the terms of this agreement in any publicity, marketing, advertising, or promotional efforts.
8. The \$60,000 donation required under the terms of this Order must be in addition to Monarch's budgeted bill payment assistance funding level for the fiscal year in which the donation is made.
9. The Commission is not constrained in any manner from requiring additional action or penalties for matters that are not resolved by this agreement.
10. This Order resolves only the claims identified in this Order.
11. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.
12. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.



Signed at Austin, Texas the 30<sup>th</sup> day of June 2022.

**PUBLIC UTILITY COMMISSION OF TEXAS**



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**PETER M. LAKE, CHAIRMAN**



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**WILL MCADAMS, COMMISSIONER**



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**LORI COBOS, COMMISSIONER**



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**JIMMY GLOTFELTY, COMMISSIONER**