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APPLICATION OF MONARCH	§	PUBLIC UTILITY COMMISSION
UTILITIES I LP AND CREEK WATER	§	
UTILITY LLC FOR SALE, TRANSFER,	§	OF TEXAS
OR MERGER OF FACILITIES AND	§	
CERTIFICATE RIGHTS MARION	§	
COUNTY	§	

ORDER NO. 4
FINDING APPLICATION ADMINISTRATIVELY COMPLETE
AND REQUIRING A RECOMMENDATION ON NOTICE AND A PROPOSED
PROCEDURAL SCHEDULE

This Order addresses the administrative completeness of the application of Monarch Utilities I LP and Creek Water Utility LLC filed on August 1, 2022.

On September 1, 2022, Commission Staff recommended that the application be found administratively incomplete from a financial perspective. Specifically, Commission Staff contends that the application did not include five years of projected income statements for the acquired system or company-wide for Monarch and Monarch did not complete appendix B to the application form.

On September 2, 2022, Monarch filed a response to Commission Staff's completeness recommendation. Monarch argues that it provided both historical financial information, in the form of audited financial statements issued within 18 months of the application filing date, and projected financial information, in the form of a detailed budget or capital improvement plan, indicating the sources and uses of funds required along with improvements to the system being transferred. Monarch states that it has provided all of the financial information required by the Commission's application form and is not required to complete appendix B or provide the five-year projections sought by Commission Staff because it is not a new market entrant. Therefore, argues Monarch, any additional information required by Commission Staff goes to the merits of the application.

On October 3, 2022, Commission Staff filed additional briefing regarding the administrative completeness of the application. Commission Staff argues the requested information is needed to determine whether Monarch meets the operations test under 16 Texas

Administrative Code (TAC) § 24.11(e)(3). Further, they argue the projected financial information is required because “new service connections are a type of investment in plant and should thus trigger the requirement for projected financial information.”¹ Commission Staff points out that the instructions which accompany the application form state that Commission Staff can request projected financial information. Commission Staff further states that they take a flexible approach and do not always insist on all the information required by the application form; however, Monarch is seeking to acquire a system and is requesting to apply its rate to the service of customers served by the system under Texas Water Code (TWC) § 13.3011. Thus, argues Commission Staff, they need the five-year income projections or a completed appendix B to determine whether Monarch meets the operations test, and also more generally for their public interest evaluation of the application.

Under 16 TAC § 24.11, to demonstrate the leverage and operations tests are being met, the applicant must submit an affidavit signed by the owner or operator attesting to the accuracy of the information provided and

(B) A copy of *one* of the following:

- (i) the owner or operator’s independently audited year-end financial statements for the most recent fiscal year including the “unqualified opinion” of the auditor; *or*
- (ii) compilation of year-end financial statements for the most recent fiscal year as prepared by a certified public accountant (CPA); *or*
- (iii) internally produced financial statements meeting the following requirements:
 - (I) for an existing utility, three years of projections and two years of historical data including a balance sheet, income statement and an expense statement or evidence that the utility is moving toward proper accountability and transparency; *or*
 - (II) for a proposed or new utility, start up information and five years of pro forma projections including a balance sheet, income statement and expense statement or evidence that the utility will be moving toward proper accountability and transparency during the first five years of operations. All assumptions must be clearly defined and the utility must provide all documents supporting projected lot sales or customer growth.²

¹ Commission Staff’s Response to Order No. 2 Regarding Administrative Completeness of the Application at 4.

² 16 TAC § 24.11(e)(4) (emphasis added).

The Commission-approved form for applications for the sale, transfer or merger of a retail public utility requires the same information. Specifically, the form provides that “[i]f an applicant is an existing retail public utility, this must include historical financial information and projected financial information. However, projected financial information is only required if the Applicant proposes new service connections and new investment in plant, or if requested by Staff.”

Under TWC § 13.3011(a),

A person who files an application described by Section 13.301(a) for the purchase or acquisition of a water or sewer system may request that the regulatory authority with original jurisdiction over the rates for water or sewer service provided by the person to the customers of the system authorize the person to charge initial rates for the service that are:

- (1) shown in a tariff filed with a regulatory authority by the person for another water or sewer system; and
- (2) in force for the other water or sewer system on the date the application described by Section 13.301(a) is filed.

Currently, there is no corresponding rule for TWC § 13.3011; however, the statute does not include a requirement that the Commission perform any sort of analysis in order for an applicant to charge initial rates for service based on a tariff filed with the Commission by the applicant that is in force for another water or sewer system on the date the application is filed.

In its application, Monarch provided (1) historical financial information in the form of audited financial statements issued within 18 months of the application filing date and (2) projected financial information in the form of a detailed budget or capital improvement plan, including circling the appropriate sections of the form under Item No. 10. Therefore, Monarch has provided historical financial information and projected financial information. Importantly, Monarch provided what both the Commission’s rule and the Commission-approved form require.

The administrative law judge (ALJ) finds the application administratively complete. Commission Staff, like any party, is always free to conduct discovery to obtain additional information. The ALJ’s finding does not address the merits of the application.

By October 21, 2022, Commission Staff must file a proposed procedural schedule and a recommendation as to notice.

Signed at Austin, Texas the 7th day of October 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in cursive script, reading "Christina Denmark". The signature is written in black ink and is positioned above a horizontal line.

**CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE**