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DOCKET NO. 53920

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	§	

**COMMISSION STAFF’S RESPONSE TO ORDER NO. 2 REGARDING
ADMINISTRATIVE COMPLETENESS OF THE APPLICATION**

I. INTRODUCTION

The information Staff requested that Monarch provide as part of Monarch’s application is required by the Commission’s application form. In addition, the requested information is the same type of information provided by another utility with similar STM applications. Monarch’s application should therefore be determined to be administratively incomplete.

II. BACKGROUND

On August 1, 2022, Monarch Utilities I L.P. (Monarch) and the Creek Water Utility, LLC (Creek Water) (jointly, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Marion County.

On September 27, 2022, the administrative law judge (ALJ) filed Order No. 3, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to reply to Monarch’s response regarding Staff’s completeness recommendation by October 3, 2022. Therefore, this pleading is timely filed.

Monarch rejects Staff’s September 1, 2022 recommendation that its application is administratively incomplete for failing to provide sufficient financial information and requests the ALJ find the application administratively complete. Monarch claims it has met the application form requirements for financial information, and accordingly, believes that Staff’s recommendation should be set aside and that the ALJ should determine the application administratively complete. Staff disagrees.

III. DISCUSSION

Included in Staff's recommendation on the sufficiency of the application was a memorandum from Staff finance expert Ethan Blanchard. Mr. Blanchard recommended that Monarch be required to provide the following information to complete its application:

1. Five years of projected income statements for the acquired system or company-wide for Monarch. Or,
2. Completed Appendix B.¹

Question 10 in the STM form states the following:

Financial Information

The transferee Applicant must provide accounting information typically included within a balance sheet, income statement, and statement of cash flows. If the 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. If the Applicant is a new market entrant and does not have its own historical balance sheet, income statement, and statement of cash flows information, then the Applicant should establish a five-year projection taking the historical information of the transferor Applicant into consideration when establishing the projections.

Projected Financial Information may be shown by providing any of the following:

1. Completed Appendix B;
2. Documentation that includes all of the information required in Appendix B in a concise format;
3. A detailed budget or capital improvement plan, which indicates sources and uses of funds required, including improvements to the system being transferred; or
4. A recent budget and capital improvements plan that includes information needed for analysis of the operations test (16 Tex. Admin. Code § 24.11(e)(3)) for the system being transferred and any operations combined with the system. This may be provided electronically by providing a uniform resource locator (URL) or a link to a website portal.

As indicated in numbered paragraph 4 quoted above, the information required by question 10 of the STM form is needed to determine whether the applicant meets the operations test in 16 TAC § 24.11(e)(3). That provision states:

¹ Commission Staff's Recommendation on Administrative Completeness and Proposed Procedural Schedule at 4 (Sept. 1, 2022). (Commission Staff's Recommendation).

Operations test. The owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. An affiliated interest may provide a written guarantee of coverage of temporary cash shortages. The affiliated interest of the owner or operator must satisfy the leverage test.

The four options listed above should thus be interpreted as the four options applicants have for providing the information necessary for Staff to make its evaluation under 16 TAC § 24.11(e)(3).

A closer examination of these options show they are all related to obtaining information sufficient for Staff to evaluate an application's compliance with the operations test. The first option is Appendix B, which requires both current, detailed asset and income information and five-year projections for the same information. Option 2 requires information that includes—at a minimum—the information required to complete Appendix B. Options 3 and 4 offer alternative, more open-ended options. Option 4 states that “a recent budget and capital improvements plan” is sufficient if it provides information needed for the operations test in 16 TAC § 24.11(e)(3). Similarly, option 3 states: “A detailed budget or capital improvement plan, which indicates *sources and uses of funds* required, including improvements to the system being transferred[]” (emphasis added). The terms “detailed budget” and “capital improvement plan” are undefined, but from the context in which they are used, it is clear that either document must provide the information needed for the operations test in 16 TAC § 24.11(e)(3). To interpret this as requiring anything less would make no sense, as it could serve as a loophole that would allow an applicant to avoid providing information required by the other three options. Option 3 also expressly states that regardless of whether an undefined “detailed budget” or “capital improvement plan” is provided, the document must indicate “sources and uses of funds.” Providing an income statement would meet this last requirement in option 3 when combined with the asset/capital five-year projections that Monarch provided in its application. Regardless of which option an applicant chooses, the purpose of this provision is to provide sufficient information from an applicant so Staff can properly evaluate whether an applicant meets the operations test in 16 TAC § 24.11(e)(3).

The first paragraph of the instructions for question 10 states in part that “projected financial information is only required if the Applicant proposes new service connections and new investment in plant.” The instructions should not be read as distinguishing new service connections and new investment in plant and requiring both before requiring an applicant to provide projected

financial information. New service connections are a type of new investment in plant and should thus trigger the requirement for projected financial information. Furthermore, the instructions state that Staff can request projected financial information.² Mr. Blanchard seeks to obtain the needed information by requesting either “1. Five years or projected income statements for the acquired system or company-wide for Monarch. Or, 2. Completed Appendix B.”³ As a Class A utility, Monarch has the ability to provide the more specific information requested in options 1 and 2, compared to the information requested in the more open-ended options 3 and 4, and providing that specific information may avoid the possible need for additional communications about what information is needed to determine whether Monarch meets the operations test.⁴

Staff generally has taken a flexible approach to the information required for Staff to support an application sufficiency determination, such that Staff does not always insist on all the information required by the application form if Staff does not expect that the information will be required to evaluate a particular application. In this particular docket, Monarch’s application includes a request to apply its rates to the service of the customers served by the system it seeks approval to acquire, rather than continue to apply the current rates that apply to the system. Monarch makes this request under Texas Water Code (TWC) § 13.3011, which was enacted last year. Not only does Staff need both the five-year income projections to determine whether Monarch meets the operations test, Staff also needs the information more generally for its public interest evaluation of the application.⁵ Furthermore, Staff has obtained this information from another utility that has multiple pending TWC § 13.3011 STM applications.⁶

² “However, projected financial information is only required if the Applicant proposes new service connections and new investment in plant, or if requested by Staff.”

³ Commission Staff’s Recommendation at 4.

⁴ As shown in the quote from Mr. Blanchard’s memorandum, Mr. Blanchard gave Monarch the flexibility to provide the information either for the acquired system or company-wide.

⁵ TWC § 13.301(d); 16 TAC § 24.239(g).

⁶ See Docket No. 53765, Commission Staff’s Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule at 6, Memorandum (Aug. 16, 2022); Docket No. 53827, Commission Staff’s Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule at 5, Memorandum (Aug. 15, 2022); Docket No. 53828, Commission Staff’s Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule at 4, Memorandum (Aug. 15, 2022).

IV. CONCLUSION

For the reasons detailed above, Staff recommends that the application should continue to be found administratively incomplete and that Monarch should be ordered to cure the deficiencies identified in Mr. Blanchard's memorandum.

Dated: October 3, 2022

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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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 October 3, 2022, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Ian Groetsch
Ian Groetsch