

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS, REVIEWING THE RATE INCREASE REQUEST OF MONARCH UTILITIES I, L.P.; ADOPTING A FINAL DETERMINATION DENYING THE REQUESTED INCREASE IN RATES; FINDING THAT THE APPLICATION TO INCREASE RATES IS IN VIOLATION OF LAW AND UNREASONABLE; ORDERING THAT NO INCREASE IN RATES OCCUR; REQUIRING THE REIMBURSEMENT OF RATE CASE EXPENSES; ESTABLISHING AN EFFECTIVE DATE FOR THIS ORDINANCE; CONTAINING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLIC NOTICE PURSUANT TO THE TEXAS OPEN MEETINGS ACT; ESTABLISHING THAT THIS ORDINANCE SHALL GOVERN OVER PREVIOUSLY ADOPTED RESOLUTIONS; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.

WHEREAS, Monarch Utilities I, L.P. (“Monarch”) filed two applications with the Texas Commission on Environmental Quality (“TCEQ”) on or about February 25, 2011 to absorb eight water and four sewer utilities into Monarch. The TCEQ has not granted that request with regard to ten of those utilities but instead referred the applications to the State Office of Administrative Hearings (“SOAH”) on August 30, 2011; and

WHEREAS, two of the ten utilities that Monarch seeks to absorb are located within the municipal boundaries of the City of Pflugerville, Texas (“City”). They are known locally as Windermere Utility Company (“Windermere”). Windermere has both a water and a sewer utility; and

WHEREAS, on August 29, 2011 Monarch filed an application to increase water and sewer rates within the City and in connection with the application Monarch included the cost to serve the ten as part of the request to increase rates. For all practical purposes, Monarch wrongfully assumed that the TCEQ would rubber stamp its request to absorb or acquire the ten utilities; and

WHEREAS, Monarch’s application to increase rates is totally defective, deficient and unlawful. Monarch has filed an application to increase rates within the City of Pflugerville when it has no customers or service territory within the City. Windermere Utility Company is the only investor-owned utility authorized to do business within the City; and

WHEREAS, Monarch’s application to increase water and sewer rates for residential customers is very substantial. A typical residential customer has a 5/8” or 3/4” meter. Monarch is seeking to increase rates by huge percentages in comparison to the rates charged by Windermere.

CHARGES	WINDERMERE	MONARCH	INCREASE
TAP FEE	\$350.00	\$700.00	100%
MIN. CHARGE (no water)	\$15.00	\$59.82/month	199%
TOTAL WATER CHARGE (10,000 gallons)	\$72.00/month	\$129.82/month	86%

WHEREAS, the requested minimum monthly charge for water service by Monarch, if adopted, would be among the highest if not the highest in the State of Texas; and

WHEREAS, a public hearing was held on Monarch's request to increase rates on October 18, 2011 and Mr. Charles Profilet, President of Monarch, was invited to attend the hearing; and

WHEREAS, the Council is adopting this ordinance only after consideration of the application filed by Monarch with the City as well as the comments made and documents distributed at the public hearing.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE THAT:

Section 1. The facts contained in the Preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. The rates proposed by Monarch are unlawful and unreasonable and in violation of law.

Section 3. The statement of intent and application to increase rates filed by Monarch with the City of Pflugerville, Texas on or about August 29, 2011 is hereby denied and rejected in whole and in part and the rates set by the Council are the rates that were charged by Windermere prior to the filing of Monarch's application to increase rates.

Section 3. Monarch is ordered not to increase rates within the municipal boundaries of Pflugerville, Texas as a result of its request to change rates which was filed with the City on or about August 29, 2011.

Section 4. To the extent Monarch implements any change in rates in contradiction of this Ordinance, Monarch shall refund any increase in rates in full, plus interest calculated at the rate currently being earned on customer deposits.

Section 5. That the effective date for this Ordinance is the date of its adoption.

Section 6. That this Ordinance is a final determination or final decision with regard to Monarch's statement of intent or application to change rates which was filed with the City in August of this year.

Section 7. Monarch shall reimburse the rate case expenses of the City of Pflugerville, or of any coalition of cities of which the City of Pflugerville is a member, within 30 days of receipt of the invoices submitted by the City; provided that there should be no hold back greater than 10%.

Section 8. That if any section or part of any section, paragraph, or clause of this Ordinance is declared invalid or unconstitutional for any reason, such declaration shall not be held to invalidate or impair the validity, force, or effect of any other section or sections, part of section, paragraph, or clause of this Ordinance.

Section 9. That this Ordinance shall govern with regard to any conflicts with previously adopted resolutions by the City Council.

Section 10. That the City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered, and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 12. That the City Secretary is hereby directed to send a true and copy of this Ordinance to Mr. George Freitag, Rate and Regulation Manager for Monarch Utilities I, L.P., 12535 Reed Road, Sugar Land, Texas 77478 and to Mr. Jim Boyle, Herrera & Boyle, PLLC, Suite 1250, 816 Congress, Austin, Texas 78701.

INTRODUCED, READ and PASSED by the affirmative vote of the City Council of the City of Pflugerville, Texas on this the 1st day of November, 2011.

CITY OF PFLUGERVILLE, TEXAS

ATTEST:

Jeff Coleman
Mayor

Karen Thompson
City Secretary