

RESOLUTION NO. 1300-11-08-23-0055

A RESOLUTION BY THE CITY OF PFLUGERVILLE, TEXAS, ("CITY") RESPONDING TO THE APPLICATION OF MONARCH UTILITIES I, LP, A WHOLLY OWNED SUBSIDIARY OF SOUTHWEST WATER COMPANY, TO INCREASE WATER AND SEWER RATES AND TO CONSOLIDATE RATES OF SEVERAL DIFFERENT UTILITIES INTO ONE SET OF TARIFFS; SUSPENDING THE EFFECTIVE DATE OF THIS RATE INCREASE FOR NINETY DAYS; AUTHORIZING THE CITY TO PARTICIPATE IN A COALITION OF CITIES KNOWN AS THE "COALITION OF CITIES"; AUTHORIZING THE HIRING OF COUNSEL AND EXPERTS THROUGH THE COALITION; REQUIRING THE REIMBURSEMENT OF COSTS; AUTHORIZING THE CITY'S INTERVENTION IN CONJUNCTION WITH THE COALITION OF CITIES AT THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND AT STATE OFFICE OF ADMINISTRATIVE HEARINGS WITH REGARD TO ANY APPLICATIONS FILED ON BEHALF OF MONARCH UTILITIES I, LP TO INCREASE RATES OR TO TRANSFER OR CANCEL CERTIFICATES OF CONVENIENCE AND NECESSITY; DETERMINING THAT THE MEETING AT WHICH THE RESOLUTION WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

**WHEREAS:** on or about August 8, 2011, filed Monarch Utilities I, LP ("Monarch"), filed an application to increase rates on a system-wide basis for water by 62.3% and for sewer by 33.6% ; and

**WHEREAS:** Monarch requests raising the basic monthly water charge to \$59.82 and Monarch requests raising the basic monthly charge, for areas with sewer service, to \$46.59. For areas that receive water and sewer service from Monarch, a customer would be charged \$106.41, even if the customer used no water, if the requested rates are approved by the Texas Commission on Environmental Quality ("TCEQ"); and

**WHEREAS:** the City may suspend the effective date for the increase in rates for ninety days, so that the City can make an informed decision with regard to the requested increase in rates; and

**WHEREAS:** Monarch has filed the same requested increase in rates before the TCEQ that it filed with the City Secretary. Decisions made by the TCEQ or by the State Office of Administrative Hearings ("SOAH"), if the rate request is referred to SOAH, on procedural and substantive issues could directly impact the decision-making of the City with regard to the rate increase request; and

**WHEREAS:** Monarch has also filed at the TCEQ a request to transfer the service territories of seven water and (in some cases, sewer) utilities, with very different rates that operate in very different parts of the state of Texas, to Monarch. Each of the utilities is a subsidiary of SouthWest Water Company; and

**WHEREAS:** from a rate standpoint, the transfer of the service territories to Monarch may have very negative rate consequences for current Monarch customers and for some of the customers in the seven utilities; and

**WHEREAS:** the TCEQ is supposed to decide if the transfer of service territories is in the public interest. The term "public interest" should include an investigation of the likely impact of the transfers on the rates of customers located in and outside of Monarch's current service territory; and

**WHEREAS:** the application of Monarch to transfer the service territories is part of a process undertaken at the TCEQ, which process is known as the "sale, transfer, merger" ("STM") process; and

**WHEREAS:** municipal participation in the STM process will help ensure that the public interest review is a meaningful one; and

**WHEREAS:** participating through a coalition helps foster efficiencies of process and cost; and

**WHEREAS:** given the complexity in analyzing the Monarch rate application, which is more than 1700 pages, it is appropriate to hire special counsel and experts for the purpose of assisting the City in its role as a regulatory authority under Chapter 13 of the Water Code and to participate in the rate proceedings at the TCEQ, SOAH, and related proceedings through special counsel; and

**WHEREAS:** Monarch filed an application to increase rates with the City and at the TCEQ. The City is entitled to have its reasonable rate case expenses reimbursed by the applicant utility for ratemaking proceedings of this sort; and

**WHEREAS:** an application was filed with the TCEQ by Monarch to transfer the service territories of seven utilities. Given the complexity of the public interest determinations to be made in connection with the STM applications by Monarch and the fact that the outcome of the STM process could directly impact the outcome of the rate increase request, it is appropriate for the City to participate in the STM process through special counsel and, if later determined necessary, with the aid of expert consultants.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS THAT:**

**Section 1.** That the statements and findings set out in the preamble to this resolution are hereby in all things approved and adopted.

**Section 2.** The City suspends the requested effective date by Monarch for 90 days pursuant to the authority granted the City under Section 13.187 of the Texas Water Code. The City finds that additional time is needed in order to properly determine the reasonableness of such charges.

**Section 3.** The City is authorized to join with other cities in a coalition of cities known as the "Coalition of Cities" or "Cities". The City's representative to the Coalition of Cities is Mr. Brandon Wade, City Manager. The Coalition shall meet periodically during the rate case

in person or by telephone. The Coalition shall act on behalf of the member cities in connection with the pending Monarch rate case and with regard to the pending STM applications filed by Monarch at the TCEQ.

**Section 4.** The City authorizes the law firm of Herrera & Boyle, PLLC, to file an intervention on behalf of the City and as a member of the Coalition of Cities at the TCEQ or at SOAH in connection with the rate application filed by Monarch subject to the direction of the Coalition of Cities.

**Section 5.** The City is authorized to hire the law firm of Herrera & Boyle, PLLC, as special counsel, to represent its interests as a regulatory authority and on behalf of ratepayers located within the City with regard to Monarch's rate application and to retain such experts as are appropriate for such a proceeding.

**Section 6.** Monarch is ordered to pay the City's reasonable rate case expenses incurred in response to Monarch's rate increase application within 30 days of receipt of invoices for such expenses.

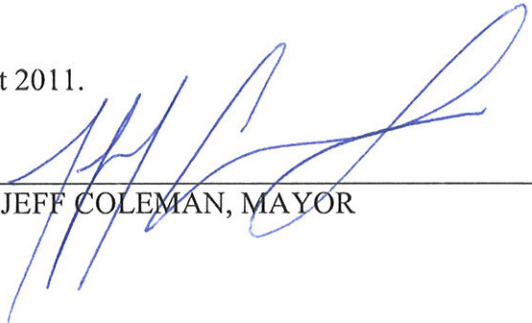
**Section 6.** The City retains its right to withdraw from COC at any time without any financial obligation to the remaining coalition members or to the experts or lawyers hired by the coalition; provided that, written notice is given to the other members of the COC.

**Section 7.** The City is authorized individually and as a member of COC to participate actively at the TCEQ or at SOAH with regard to the STM applications filed by Monarch . Special counsel is authorized to represent the City in connection with such applications. Since the STM applications may not be regarded as ratemaking proceedings subject to reimbursement, the City is authorized to expend up to \$5,000 for legal counsel in connection with the STM applications.

**Section 8.** The meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

**Section 9.** This resolution shall be effective immediately upon passage.

**PASSED AND APPROVED** this 23<sup>rd</sup> day of August 2011.



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JEFF COLEMAN, MAYOR

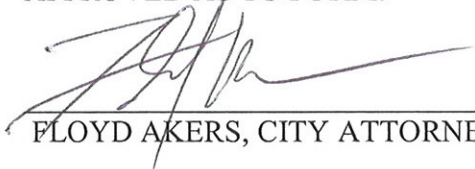
ATTEST:



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KAREN THOMPSON, CITY SECRETARY

APPROVED AS TO FORM:



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FLOYD AKERS, CITY ATTORNEY