



Control Number: 46309



Item Number: 14

Addendum StartPage: 0

DOCKET NO. 46309

RECEIVED

PETITION FOR AN ORDER  
APPOINTING A TEMPORARY  
MANAGER TO AERO VALLEY  
WATER SERVICE IN DENTON  
COUNTY

§  
§  
§  
§  
§

PUBLIC UTILITY COMMISSION

2017 APR 13 PM 4:11  
PUBLIC UTILITY COMMISSION  
FILING CLERK

OF TEXAS

**COMMISSION STAFF'S APPLICATION FOR AN EMERGENCY ORDER  
EXTENDING THE TERM OF THE COMMISSION ORDER APPOINTING A  
TEMPORARY MANAGER TO AERO VALLEY WATER SERVICE WITHOUT A  
HEARING**

NOW COMES the Staff of the Public Utility Commission of Texas (Commission) and files this Application for an emergency order extending the term of the Commission Order appointing a temporary manager to Aero Valley Water Service (Aero Valley).

**I. INTRODUCTION AND PROCEDURAL HISTORY**

On September 9, 2016, Commission Staff filed an Amended Request for an Emergency Order Appointing a Temporary Manager to Aero Valley Water Service without a Hearing (Petition).<sup>1</sup> An Emergency Order granting that Petition was issued on September 23, 2016.<sup>2</sup> The Commission issued an Order affirming the Emergency Order on October 7, 2016.<sup>3</sup>

For the reasons discussed below, an emergency order should be issued to extend the term of the Commission order appointing a temporary manager to Aero Valley for an additional 180 days. The Commission should issue this emergency orders and fix a time for a hearing that is as soon after the issuance of the emergency order as practicable. In support of this Application, the Commission Staff respectfully shows the following:

<sup>1</sup> *Petition for an Order Appointing a Temporary Manager to Aero Valley Water Service in Denton County*, Docket No. 46309, Commission Staff's Amended Request for an Emergency Order Appointing a Temporary Manager to Aero Valley Water Service without a Hearing (September 9, 2016).

<sup>2</sup> *Petition for an Order Appointing a Temporary Manager to Aero Valley Water Service in Denton County*, Docket No. 46309, Emergency Order (September 23, 2016).

<sup>3</sup> *Petition for an Order Appointing a Temporary Manager to Aero Valley Water Service in Denton County*, Docket No. 46309, Order Affirming Emergency Order (October 7, 2016).

## II. JURISDICTION AND LEGAL AUTHORITY

The Commission may authorize a willing person to temporarily manage and operate a utility if the utility has abandoned operations.<sup>4</sup> Texas Water Code § 13.412 (TWC) and 16 Texas Administrative Code § 24.142 (TAC) enumerate actions that constitute abandonment, including but not limited to “failure to adequately maintain facilities, resulting in potential health hazards.” A temporary manager appointed under TWC § 13.4132 and 16 TAC §§ 24.142 and 24.143 has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers. This includes conducting required sampling and making necessary repairs.

TWC § 13.4132 gives the Commission the authority to appoint a temporary manager by emergency order.<sup>5</sup> 16 TAC § 22.299(d) describes the procedures for an emergency order and states that an emergency order to appoint a temporary manager may be issued with or without a hearing, so long as the Commission or executive director fixes a place and time for a hearing that is “as soon as practicable after the order is issued.”<sup>6</sup> The hearing may be held before the Commission or the State Office of Administrative Hearings, unless the person affected by the order waives the right to a hearing.<sup>7</sup> Notice of the commission’s action is adequate if the notice is mailed to the last known address of the utility’s headquarters.<sup>8</sup>

An application for emergency order must state whether the requesting person is also seeking or has obtained an emergency order from the TCEQ.<sup>9</sup> It must also contain information sufficient to identify the facility and location to be affected by the order; describe the conditions of the emergency that justify the issuance of the order; allege facts supporting any findings required to appoint a temporary manager; “estimate the dates on which the proposed order should begin and end”; “describe the action sought and the activity proposed to be allowed, mandated, or prohibited”; and estimate the dates on which the action sought and activity proposed to be allowed, mandated, or prohibited should begin and end.<sup>10</sup>

---

<sup>4</sup> TEX. WATER CODE ANN. § 13.4132 and 16 TEX. ADMIN. CODE § 24.142.

<sup>5</sup> See also 16 TAC § 24.143(a). The Commission may also delegate to the Executive Director of the Commission the authority to issue emergency orders to appoint a temporary manager, pursuant to TWC § 13.451(b). This delegation was made on December 4, 2015 in Docket No. 43517.

<sup>6</sup> 16 TAC § 22.294(e).

<sup>7</sup> *Id.* and TWC § 13.451(a).

<sup>8</sup> 16 TAC § 22.294(g).

<sup>9</sup> 16 TAC § 22.295.

<sup>10</sup> *Id.*

An emergency order has similar requirements to contain “a description of the condition justifying the issuance of the order”; “any finding of fact required under this subchapter”; “a statement of the term of the order, including the dates on which it shall begin and end”; and “a description of the action sought.”<sup>11</sup> If the order is issued without a hearing, the order should contain a statement to that effect and the procedure by which a person waives a right to a hearing.<sup>12</sup> Pursuant to TWC § 13.455 and 16 TAC § 24.14, an emergency order is limited to a term of 180 days and can be renewed once for up to an additional 180 days.

### III. FACTUAL ALLEGATIONS

Aero Valley serves Northwest Regional Airport, located at 302 Phantom Way in Roanoke, TX 76262 and received a certificate of convenience and necessity on November 1, 1979. The system is owned by Mr. Shawn Horvath. Aero Valley is comprised of one public water system (PWS).<sup>13</sup> The Aero Valley PWS was assigned PWS No. 0610243 and has approximately 38 service connections.<sup>14</sup> In a separate docket, the Commission revoked Aero Valley’s CCN, as it was not properly transferred to Mr. Horvath.<sup>15</sup>

On October 20, 2015, Mr. Horvath informed TCEQ that Aero Valley had been experiencing an outage since October 17<sup>th</sup> and he did not plan on providing an alternate source of water.<sup>16</sup> Mr. Horvath subsequently relocated to Las Vegas, Nevada. The Texas Commission on Environmental Quality (TCEQ) appointed Eric Tamayo, the Public Works Director of the nearby City of Northlake as temporary manager through an emergency order.<sup>17</sup> Mr. Tamayo served six months as temporary manager, and informed the Commission and the TCEQ that he would be unable to serve an additional six-month term. The TCEQ then appointed Mr. Mark Patterson of Patterson Water Supply to a six-month term on April 20, 2016.<sup>18</sup> This order expired on October 17, 2016. The TCEQ is prevented by law from further extending its prior emergency order to

---

<sup>11</sup> 16 TAC § 22.298.

<sup>12</sup> *Id.*

<sup>13</sup> The TCEQ uses the term public water system (PWS) to describe facilities used for providing potable water service to “at least 15 service connections or serve at least 25 individuals at least 60 days out of the year.” See 30 TAC § 290.38(66)(Tex. Comm’n. Env’tl. Quality).

<sup>14</sup> TCEQ Docket No. 2015-1594-UCR-E.

<sup>15</sup> Commission Docket 45277.

<sup>16</sup> TCEQ Docket 2015-1594-UCR-E.

<sup>17</sup> TCEQ Docket 2015-1594-UCR-E.

<sup>18</sup> TCEQ Docket 2015-1594-UCR-E.

appoint a temporary manager.<sup>19</sup> Commission Staff is not seeking, nor has it obtained, an emergency order from TCEQ.

After TCEQ's order expired, the Commission issued an order appointing Mr. Patterson as temporary manager. That order expires on April 15, 2017. On January 26, 2017, TCEQ sent out a letter to Aero Valley's customers informing them that system closure was imminent unless they act. TCEQ and the Commission have recently received word that a utility is interested in acquiring the system, and staff of both agencies are working with this utility in an effort to find a long-term solution for Aero Valley's customers.

#### **IV. RECOMMENDATION FOR EXTENDING THE COMMISSION ORDER APPOINTING A TEMPORARY MANAGER**

The Commission's Order appointing a temporary manager expires on April 15, 2017. Without a temporary manager, Aero Valley's customers would not have access to retail water service. Commission Staff is working to find a long-term solution for Aero Valley, and Mr. Patterson has actively worked to fix and manage Aero Valley. An extension is necessary to ensure continuous and adequate service.

Commission Staff requests that the Commission issue an emergency order extending the term of the Commission Order appointing a temporary manager for an additional 180 days<sup>20</sup> or when a utility is certified to provide service to Aero Valley's customers, whichever is the earlier occurrence. A draft proposed emergency order identifying the terms of the appointment is included in this Application.

#### **V. SUBSEQUENT HEARING**

16 TAC § 22.297 states that an emergency order issued without a hearing is not subject to the requirements of the Administrative Procedure Act (APA).<sup>21</sup> If an emergency order is issued without a hearing, "the commission or executive director shall set a time and place for a hearing to be held before the commission or SOAH to affirm, modify, or set aside the order as soon as practicable after the order is issued."<sup>22</sup> The hearing held to affirm, modify, or set aside an

---

<sup>19</sup> TWC § 5.505.

<sup>20</sup> The term of the order would therefore begin on April 16, 2017 and end on October 13, 2017..

<sup>21</sup> Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

<sup>22</sup> 16 TAC § 22.299(d)

emergency order is subject to the APA.<sup>23</sup> Pursuant to 16 TAC § 22.297(d)(2), Commission Staff will provide notice of the opportunity to participate in an evidentiary hearing to affirm, modify, or set aside each emergency order issued by the Commission no later than the tenth day before the date of the hearing. This notice will also include information on how an affected person may waive the right to a hearing.

Commission Staff will provide a copy of this request by certified mail, return receipt requested, to last known address of Aero Valley's headquarters in the Commission's records:

Shawn Horvath  
5281 Kelly Drive  
Roanoke, Texas 76262

In the TCEQ order appointing Mr. Patterson as temporary manager, TCEQ also sent notice to Mr. Horvath at the following address:

Shawn Horvath  
3660 Boulder Highway  
Las Vegas, Nevada 89121-1651

Commission Staff will also provide a copy of this request by certified mail, return receipt requested, to this address.

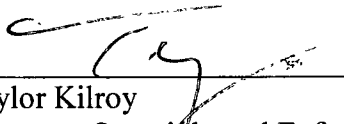
---

<sup>23</sup> 16 TAC § 22.297

### III. REQUEST

Commission Staff respectfully requests that the Commission grant Commission Staff's application for an emergency order extending the term of the Commission Order appointing a temporary manager to Aero Valley.

Respectfully Submitted,



---


Taylor Kilroy  
Attorney, Oversight and Enforcement Division  
State Bar No. 24087844  
(512) 936-7127 T  
(512) 936-7268 F  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

### **CERTIFICATE OF SERVICE**

I certify that on April 17, 2017, a copy of this document was sent certified mail, return receipt requested, to the last known address of the headquarters of Aero Valley in the Commission's records:

Shawn Horvath  
5281 Kelly Drive  
Roanoke, Texas 76262

Shawn Horvath  
3660 Boulder Highway  
Las Vegas, Nevada 89121-1651

  
Taylor Kilroy



**DOCKET NO. 46309**

<b>PETITION FOR AN ORDER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>APPOINTING A TEMPORARY</b>	<b>§</b>	
<b>MANAGER TO AERO VALLEY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>WATER SERVICE IN DENTON</b>	<b>§</b>	
<b>COUNTY</b>	<b>§</b>	

**EMERGENCY ORDER EXTENDING THE TERM OF THE COMMISSION ORDER  
APPOINTING A TEMPORARY MANAGER TO AERO VALLEY WATER SERVICE**

This Order addresses the application of the Public Utility Commission of Texas (Commission) Staff for an emergency order extending the term of the Commission order appointing a temporary manager to Aero Valley Water Service (Aero Valley) in Denton County for an additional 180 days. The Executive Director, on behalf of the Commission,<sup>1</sup> grants this emergency order without a hearing, and sets a hearing on this matter at the May 4, 2017 Open Meeting currently scheduled for 9:30 a.m. at the Commission's offices in Austin, Texas.

The Commission adopts the following findings of fact and conclusions of law:

**I. Findings of Fact**

1. Commission Staff, as the requesting party, is located at 1701 N. Congress Avenue, 7<sup>th</sup> Floor, Austin, Texas 78701.
2. Aero Valley is a retail public utility previously owned and operated by Mr. Shawn Horvath. Aero Valley was granted Certificate of Convenience and Necessity (CCN) number 11401 on November 1, 1979. This CCN was revoked by the Commission on April 25, 2016 because it was not properly transferred to Mr. Horvath.
3. Aero Valley is comprised of one public water system.
4. On September 9, 2016, Commission Staff filed an Amended Request for an Emergency Order Appointing a Temporary Manager to Aero Valley Water Service without a Hearing (Petition).

---

<sup>1</sup> Tex. Water Code § 13.451(b) (TWC) states that the Commission may, by order or rule, delegate to the Executive Director the authority to receive and issue emergency orders under Subchapter K-1 of the TWC. The delegation was made by Commission order on December 4, 2015 in Docket No. 43517.

5. An Emergency Order granting that Petition was issued on September 23, 2016.
6. The Commission issued an Order affirming the Emergency Order on October 7, 2016.
7. On April 13, 2017, Commission Staff filed an Application for an Emergency Order Extending the Term of the Commission Order Appointing a Temporary Manager to Aero Valley Water Service without a Hearing (Commission Staff's Application for an Emergency Order).
8. Continuity of the temporary manager is necessary to maintain continuous and adequate service. An emergency order is justified in order to meet deadlines imposed by statute and rule so that a timely extension may be made.
9. Commission Staff reported that a utility has expressed interest in acquiring Aero Valley's customers, and additional time is needed to ensure that these customers are able to find a long-term solution.

## **II. Conclusions of Law**

1. The Commission has jurisdiction over this docket pursuant to Tex. Water Code §§ 13.4132 and 13.451 (TWC) and 16 Tex. Admin. Code § 24.142 (TAC).
2. Aero Valley is a public utility as defined in TWC § 13.002.
3. Under 16 TAC § 24.143(d), the Commission may grant an extension of the term of the temporary manager at the request of Commission Staff.
4. TWC § 13.451(b) states that the Commission may, by order or rule, delegate to the Executive Director the authority to receive and issue emergency orders under Subchapter K-1 of the TWC. The delegation was made by Commission order on December 4, 2015 in Docket No. 43517.
5. Under 16 TAC § 22.299(d), an emergency order to extend the term of a temporary manager may be issued with or without a hearing. The Commission or the executive director will set a hearing as soon as practicable after the order is issued.

### III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. Commission Staff's request for an emergency order is granted and the term for the temporary manager of Aero Valley is extended for 180 days to begin on April 16, 2017 and end on October 13, 2017, or until another utility is certified to provide service to Aero Valley, whichever is the earlier occurrence.
2. Mr. Patterson has all the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate service to customers.
3. As temporary manager, Mark Patterson shall comply with all requirements in 16 TAC § 24.143, including but not limited to reading meters, billing for service, collecting revenues, disbursing funds, requesting rate increases if needed, accessing all system components, conducting required sampling, making necessary repairs; and performing other acts necessary to assure continuous and adequate utility service as authorized by the Commission.
4. Mr. Patterson shall return to the Commission an inventory of all property received within 60 days of appointment, pursuant to 16 TAC § 24.143(e).
5. Mr. Patterson shall report to the Commission on a monthly basis. This report shall include an income statement for the reporting period; a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and any other information required by the Commission, pursuant to 16 TAC § 24.143(h).
6. Mr. Patterson shall comply with all applicable requirements imposed by the TCEQ.
7. Mr. Patterson is not required to post financial assurance.
8. Mr. Patterson shall be compensated for his role as temporary manager from Aero Valley's revenues in the amount of twelve dollars per connection per month, and shall bill for this amount as part of the regular authorized rates of Aero Valley.

9. Commission Staff shall provide notice of issuance of this emergency order to Aero Valley as soon as practicable pursuant to 16 TAC § 22.293(c).
10. A hearing to affirm, modify or set aside this emergency order shall be held at the May 4, 2017 Open Meeting currently scheduled for 9:30 a.m., at the offices of the Commission in Austin, Texas.
11. Commission Staff shall provide notice of opportunity to participate in an evidentiary hearing to affirm, modify, or set aside this emergency order to Aero Valley no later than the tenth day before the date of the hearing and shall provide that Aero Valley may waive the right to this hearing either by written notice to the Commission or by failing to attend the hearing.

Signed at Austin, Texas the 13<sup>th</sup> day of April 2017.

**PUBLIC UTILITY COMMISSION OF TEXAS**

A handwritten signature in black ink, appearing to read "B. H. Lloyd", is written over a horizontal line.

**BRIAN H. LLOYD, EXECUTIVE DIRECTOR**