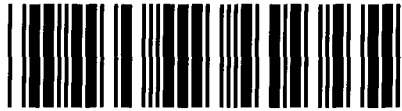




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Item Number 1

Addendum StartPage 0

DOCKET NO. **46309**

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PUBLIC UTILITY COMMISSION
FILING CLERK

PETITION FOR AN ORDER
APPOINTING A TEMPORARY
MANAGER TO AERO VALLEY
WATER SERVICE PURSUANT TO
TEX. WATER CODE ANN. § 13.4132
AND 16 TAC § 24.142

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PUBLIC UTILITY COMMISSION

OF TEXAS

**COMMISSION STAFF'S PETITION FOR AN ORDER APPOINTING A TEMPORARY
MANAGER TO AERO VALLEY WATER SERVICE AND NOTICE OF
OPPORTUNITY FOR A HEARING**

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

I. INTRODUCTION

For the reasons discussed below, a person should be appointed to temporarily manage and operate Aero Valley. In support of this Petition, Staff respectfully shows the following:

II. JURISDICTION AND LEGAL AUTHORITY

The Commission, after providing notice and opportunity for a hearing to the utility, may authorize a willing person to temporarily manage and operate a utility if the utility has abandoned operations.¹ 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 provide appropriate water treatment so that a potential health hazard results, ‘failure to adequately maintain facilities, resulting in potential health hazards, or ‘repeatedly failing to respond to the utility commission or the commission. 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.

¹ TEX. WATER CODE ANN. §§ 13.4132 and 13.4132, and 16 TEX. ADMIN. CODE § 24.142.

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16 TAC § 24.143 outlines the duties of the temporary manager and requires the temporary manager to post financial assurance with the commission, unless the executive director asks for a waiver of the financial assurance or requests substitution of another means of collateral. Within 60 days of appointment, a temporary manager should make and return to the commission an inventory of all property received. Compensation for the temporary manager comes from the utility revenues and will be set by the commission at the time of appointment.² The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interest of the customers to ensure that continuous and adequate service is provided.³ The temporary manager is required to report to the commission on a monthly basis on the income; summary of improvements or repairs; and any other information required by the commission.⁴

Pursuant to the contested case provisions of the Texas Administrative Procedure Act,⁵ a party is entitled to an opportunity for a hearing after reasonable notice of not less than 10 days, and to respond to and present evidence and argument on each issue involved in the case. If a hearing is not requested within 30 days after service of notice of an opportunity for hearing a default occurs.⁶ Upon default, the presiding officer may issue a default order, disposing of the proceeding without a hearing, in an informal basis.⁷

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).⁸ The PWS has approximately 38 service connections.⁹

On October 20, 2015, Mr. Horvath informed TCEQ that Aero Valley had been experiencing an outage since October 17th and he did not plan on providing an alternate source of

² 16 TAC § 24.143(f). This compensation agreement can be changed with the Commission's approval.

³ 16 TAC § 24.143(g)

⁴ 16 TAC § 24.143(h).

⁵ Administrative Procedure Act, TEX GOV'T CODE ANN. §§ 2001.001-.902 (West 2016)(APA).

⁶ 16 TAC § 22.183.

⁷ APA § 2001.056 (4) and 16 TAC § 22.183.

⁸ 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).

⁹ TCEQ Docket No. 2015-1594-UCR-E.

water.¹⁰ 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.¹¹ 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, 2016.¹² This order expires on October 20, 2016.

The TCEQ is prevented by law from reappointing a temporary manager.¹³ Commission Staff has coordinated with TCEQ since Mr. Horvath abandoned the system. In a separate docket, the Commission revoked Aero Valley's CCN, as it was not properly transferred to Mr. Horvath.¹⁴

IV RECOMMENDATION FOR APPOINTMENT OF A TEMPORARY MANAGER

The Commission should appoint a temporary manager for Aero Valley because Mr. Horvath abandoned Aero Valley and is incapable of providing continuous and adequate service.

Commission Staff recommends the Commission appoint Mr. Mark Patterson to serve as temporary manager for Aero Valley. Mr. Patterson is currently the owner and operator of Patterson Water Supply in Collinsville, Texas. Mr. Patterson holds a Class B Groundwater Treatment Operator license, #WG0008889 as well as a Class B Wastewater Treatment Operator license, #WW0036801. Mr. Patterson has over 20 years of experience in the industry.

V NOTICE OF OPPORTUNITY FOR HEARING

16 TAC §§ 22.54 and 22.55 require Commission Staff to provide reasonable notice to persons affected by a proceeding in accordance with the APA. In order to proceed on a default basis, 16 TAC § 22.183 requires Commission Staff to provide notice by certified mail, return receipt requested, to a certificate holder's last known address in the Commission's records or to the person's registered agent for process on file with the Secretary of State.

¹⁰ TCEQ Docket 2015-1594-UCR-E.

¹¹ TCEQ Docket 2015-1594-UCR-E.

¹² TCEQ Docket 2015-1594-UCR-E.

¹³ TWC § 5.505

¹⁴ Commission Docket 45277.

In accordance with these provisions, Commission Staff will provide a copy of this petition by certified mail, return receipt requested, to Mr. Horvath's last known address in the Commission's records:

Shawn Horvath
5281 Kelly Drive
Roanoke, Texas 76262

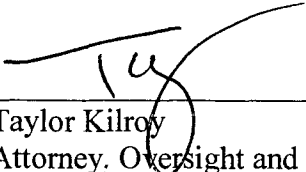
In the TCEQ order appointing Mr. Patterson as temporary manager, TCEQ also sent notice to Mr. Horvath at the following address:

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

VI. REQUEST

Commission Staff respectfully requests that the Commission grant Commission Staff's request to issue an order appointing a temporary manager for Aero Valley.

Respectfully Submitted,


Taylor Kilroy

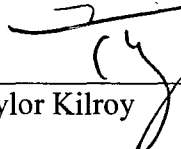
Attorney, Oversight and Enforcement Division
State Bar No. 24087844
(512) 936-7127 T
(512) 936-7268 F
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that on August 25, 2016, pursuant to 16 Tex. Admin. Code 22.183(b)(2), a copy of this document was sent certified mail, return receipt requested, to the last known address of Aero Valley Water Service in the Commission's and TCEQ's records:

Shawn Horvath
5281 Kelly Drive
Roanoke, Texas 76262

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



Taylor Kilroy

DOCKET NO. _____

PETITION FOR AN ORDER	§	PUBLIC UTILITY COMMISSION
APPOINTING A TEMPORARY	§	
MANAGER TO AERO VALLEY	§	
WATER SERVICE PURSUANT TO	§	OF TEXAS
TEX. WATER CODE ANN. § 13.4132	§	
AND 16 TAC § 24.142	§	
	§	

PROPOSED ORDER

This Order addresses the petition of the Public Utility Commission of Texas (Commission) Staff for an order appointing Mr. Mark Patterson as temporary manager to Aero Valley Water Service (Aero Valley).

I. Findings of Fact

1. Aero Valley is a retail public utility that was previously owned and operated by Mr. Shawn Horvath
2. Aero Valley has approximately 38 connections.
3. Aero Valley is comprised of one public water system (PWS). The Texas Commission on Environmental Quality (TCEQ) uses the acronym PWS to describe facilities used for providing potable water service.
4. On October 20, 2015, Mr. Horvath notified TCEQ that he was abandoning Aero Valley. Subsequently, Mr. Horvath moved out of state.
5. Staff identified Mr. Mark Patterson as being willing to temporarily manage Aero Valley. Mr. Patterson is currently the owner and operator of Patterson Water Supply in Collinsville, Texas. Mr. Patterson holds a Class B Groundwater Treatment Operator license, #WG0008889 as well as a Class B Wastewater Treatment Operator license, #WW0036801. Mr. Patterson has over 20 years of experience in the industry. Additionally, Mr. Mark Patterson has served as the temporary manager of Aero Valley since April 20, 2016 under a TCEQ order.
6. On August 25, 2016, Staff filed the Petition for Order Appointing a Temporary Manager to Aero Valley Water Service (Petition).
7. The Petition was sent by certified mail to the owner of Aero Valley's last known address in the Commission's and TCEQ's records.

8. The TCEQ has not issued an emergency order nor is one being sought at the TCEQ regarding a temporary manager.

II. Conclusions of Law

1. 16 Tex. Admin. Code (TAC) § 24.3(41) defines a retail public utility as 'any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.
2. Pursuant to Texas Water Code (TWC) § 13.4132, and 16 TAC § 24.142, the Commission may authorize a willing person to temporarily manage and operate a utility if the utility has abandoned operations.
3. TWC § 13.412 and 16 TAC § 24.142 enumerate actions that constitute abandonment, including but not limited to 'failure to provide appropriate water treatment so that a potential health hazard results, 'failure to adequately maintain facilities, resulting in potential health hazards, or 'repeatedly failing to respond to the utility commission or the commission.
4. Aero Valley was abandoned on October 20, 2015 when Mr. Horvath notified TCEQ that he would not seek an alternate water source after an extended outage.
5. TWC § 13.4132 and 16 TAC § 24.143(a) give the Commission the authority to appoint a temporary manager.
6. 16 TAC §§ 22.54 and 22.55 require Commission Staff to provide reasonable notice to persons affected by a proceeding in accordance with the APA.
7. In order to proceed on a default basis, 16 TAC § 22.183 requires Commission Staff to provide notice by certified mail, return receipt requested, to a certificate holder's last known address in the Commission's records or to the person's registered agent for process on file with the Secretary of State.
8. Staff's Petition met all requirements for an application for an default order pursuant to 16 TAC §§ 22.54, 22.55, and 22.183.

III. Ordering Paragraphs

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

1. Commission Staff's Petition for an Order Appointing a Temporary Manager to Aero Valley Water Service is granted.
2. A hearing to determine to affirm, modify or set aside this order will be held on _____ before the Commission.
3. Mark Patterson is appointed temporary manager of Aero Valley for a term of six months to begin on October 20, 2016 or until another utility is certified to provide service to Aero Valley's customers, whichever is the earlier occurrence.
4. Mark Patterson has all the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers.
5. 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.
6. Mark Patterson shall comply with all applicable requirements imposed by the TCEQ.
7. Mark Patterson is not required to post financial assurance.
8. Mark 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. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or special relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS on the _____ day of August, 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER