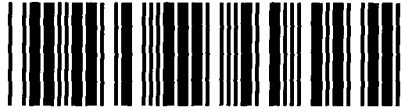


Control Number: 46309



Item Number: 4

Addendum StartPage: 0

DOCKET NO. 46309

RECEIVED

2016 SEP -9 PM 3: 00

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

§
§
§
§
§
§
§

PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK

OF TEXAS

**COMMISSION STAFF'S AMENDED REQUEST FOR AN EMERGENCY ORDER
APPOINTING A TEMPORARY MANAGER TO AERO VALLEY WATER SERVICE
WITHOUT A HEARING**

NOW COMES the Staff (Staff) of the Public Utility Commission of Texas (Commission) and files this Amended Request (Request) for an emergency 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. The Commission should issue an emergency order at the September 22, 2016 open meeting without a hearing and fix a time for a hearing that is as soon after the issuance of the emergency order as practicable. In support of this Request, Staff respectfully shows the following:

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.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

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

adequate services to customers. This includes conducting required sampling and making necessary repairs.

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

TWC § 13.4132 gives the Commission the authority to appoint a temporary manager by emergency order.⁵ 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.”⁶ The hearing may be held before the Commission or the State Office of Administrative Hearings.⁷ Notice of the Commission’s action is adequate if the notice is mailed to the last known address of the utility’s headquarters.⁸

An application for emergency order must state whether the requesting person is also seeking or has obtained an emergency order from the TCEQ.⁹ 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

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 See also 16 TAC § 24.143(a).

⁶ 16 TAC § 22.299(d).

⁷ *Id.*

⁸ 16 TAC § 22.293(c).

⁹ 16 TAC § 22.295.

prohibited”; and estimate the dates on which the action sought and activity proposed to be allowed, mandated, or prohibited should begin and end.¹⁰

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.”¹¹ If the order is issued without a hearing, the order should contain “a statement to that effect and a provision setting a time and place for a hearing before the commission or SOAH.”¹² Pursuant to TWC § 13.455 and 16 TAC § 24.14 an emergency order is limited to a term of 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).¹³ The Aero Valley PWS was assigned PWS No. 0610243 and has approximately 38 service connections.¹⁴

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 water.¹⁵ 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.¹⁶ 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, 2016.¹⁷ This order expires on October

¹⁰ *Id.*

¹¹ 16 TAC § 22.298.

¹² *Id.*

¹³ 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).

¹⁴ TCEQ Docket No. 2015-1594-UCR-E.

¹⁵ TCEQ Docket 2015-1594-UCR-E.

¹⁶ TCEQ Docket 2015-1594-UCR-E.

¹⁷ TCEQ Docket 2015-1594-UCR-E.

17, 2016. The TCEQ is prevented by law from further extending its order to appoint a temporary manager.¹⁸ Commission Staff is not seeking, nor has it obtained, an emergency order from TCEQ.

Commission Staff has coordinated with TCEQ since Mr. Horvath abandoned the system. As such, Commission Staff seeks to appoint the same temporary manager that TCEQ previously appointed so he may continue his work managing the Aero Valley system. In a separate docket, the Commission revoked Aero Valley's CCN, as it was not properly transferred to Mr. Horvath.¹⁹

IV. RECOMMENDATION FOR APPOINTMENT OF A TEMPORARY MANAGER

The Commission should appoint a temporary manager for Aero Valley through an emergency order because Mr. Horvath abandoned Aero Valley and is incapable of providing continuous and adequate service and TCEQ's appointment is set to expire on October 17, 2016.

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.

An emergency order appointing a temporary manager should begin on October 17, 2016 and should be in effect for 180 days after the appointment, thus ending on April 15, 2017, or when a utility is certified to provide service to Aero Valley's customers, whichever is the earlier occurrence. The emergency order should include in its terms a requirement for the temporary manager to employ a licensed operator and to comply with TCEQ rules. A draft proposed emergency order identifying a temporary manager and the terms of the appointment prior is included in this Request.

16 TAC § 24.143 also 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. Staff requests that the requirement for financial assurance be waived as the utility is in desperate need of repair and will require a significant investment. The cost of operating the utility and the water system often exceeds the revenues

¹⁸ TWC § 5.505.

¹⁹ Commission Docket 45277.

collected. Additionally, Staff understands that TCEQ routinely waived this financial assurance requirement.

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).²⁰ 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.”²¹ The hearing held to affirm, modify, or set aside an emergency order is subject to the APA.²² 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 the 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 the 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

²⁰ Administrative Procedure Act, TEX. GOV’T CODE ANN. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

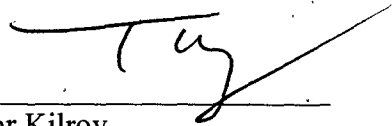
²¹ 16 TAC § 22.299(d).

²² 16 TAC § 22.297.

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 and set a subsequent hearing to affirm, modify, or set aside that order.

Respectfully Submitted,



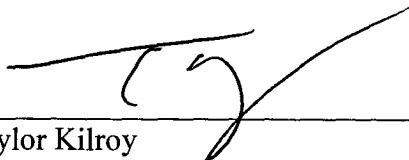
Taylor Kilroy
Attorney, Oversight and Enforcement Division
State Bar No. 24087844
(512) 936-7127 T
(512) 936-7268 F
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that on September 9, 2016, a copy of this document was sent certified mail, return receipt requested, to the last known address of the headquarters 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. 46309

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 EMERGENCY ORDER

This Order addresses the amended request of the Public Utility Commission of Texas (Commission) Staff for an emergency order appointing Mr. Mark Patterson as temporary manager to Aero Valley Water Service (Aero Valley). The Commission grants this emergency order without a hearing and sets a hearing for this matter at the October 7, 2016 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, 7th Floor, Austin, Texas 78701.
2. Aero Valley is a retail public utility that was previously owned and operated by Mr. Shawn Horvath.
3. Aero Valley has approximately 38 connections.
4. Aero Valley is comprised of one public water system (PWS), No. 0610243. The Texas Commission on Environmental Quality (TCEQ) uses the acronym PWS to describe facilities used for providing potable water service.
5. On October 20, 2015, Mr. Horvath notified TCEQ that he was abandoning Aero Valley. Subsequently, Mr. Horvath moved out of state.
6. 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.

7. This TCEQ order expires on October 17, 2016 and TCEQ is barred by law from extending this appointment under its current order.
8. On August 25, 2016, Staff filed the Petition for an Order Appointing a Temporary Manager to Aero Valley Water Service (Petition).
9. 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.
10. On September 9, 2016, Staff filed an Amended Request for an Emergency Order Appointing a Temporary Manager to Aero Valley Water Service (Amended Request).
11. The Request was sent by certified mail to the last known address of Aero Valley's headquarters in the Commission's records as well as the last known address of the owner in TCEQ's records.

II. Conclusions of Law

1. The Commission has jurisdiction over this docket pursuant to Tex. Water Code § 13.041 (TWC).
2. 16 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."
3. Pursuant to 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.
4. 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."
5. 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.

6. Under 16 TAC § 22.299(d), an emergency order to appoint 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 Amended Request for an Emergency Order Appointing a Temporary Manager to Aero Valley Water Service is granted.
2. Mark Patterson is appointed temporary manager of Aero Valley for a term of 180 days to begin on October 17, 2016 and end on April 15, 2017 or until another utility is certified to provide service to Aero Valley's customers, whichever is the earlier occurrence.
3. 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.
4. 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.
5. Mark Patterson shall comply with all applicable requirements imposed by the TCEQ.
6. Mark Patterson is not required to post financial assurance.
7. 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.
8. 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).
9. A hearing to affirm, modify or set aside this emergency order will be held at the October 7, 2016 Open Meeting currently scheduled at 9:30 a.m. at the offices of the Commission in Austin, Texas.

10. Commission Staff shall provide notice of opportunity to participate in this 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. That notice 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 on the _____ day of September, 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER