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OPEN MEETING COVER SHEET

MEETING DATE: September 22, 2016

DATE DELIVERED: September 15, 2016

AGENDA ITEM NO.: #10

CAPTION: Docket No. 46309 - *Petition for an Order Appointing a Temporary Manager to Aero Valley Water Service in Denton County*

ACTION REQUESTED: Discussion and possible action with respect to Amended Proposed Emergency Order.

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Public Utility Commission of Texas

TO: Donna L. Nelson, Chairman
Kenneth W. Anderson, Jr., Commissioner
Brandy Marty Marquez, Commissioner

All Parties of Record

FROM: Jeffrey J. Huhn *JJA*
Administrative Law Judge

RE: **Open Meeting of September 22, 2016**
Docket No. 46309 – *Petition for an Order Appointing a Temporary Manager to Aero Valley Water Service in Denton County*

DATE: September 15, 2016

Enclosed is a copy of the amended Proposed Emergency Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Thursday, September 22, 2016, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the amended Proposed Emergency Order on or before Friday, September 16, 2016.

The need to address the absence of a properly authorized operator for a public water system presents good cause pursuant to 16 TAC § 22.5(b), to waive the 20-day requirement of 16 TAC § 22.35(b)(2), and have this proceeding considered at the Commission's next regularly scheduled Open Meeting of September 22, 2016.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 46309

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

**§ PUBLIC UTILITY COMMISSION
§
§ OF TEXAS
§
§**

PROPOSED EMERGENCY ORDER

This Order addresses the amended request of the Public Utility Commission of Texas (Commission) Staff for an order appointing a temporary manager to Aero Valley Water Service (Aero Valley) in Denton County. The Commission grants this emergency order without a hearing, and sets a hearing on this matter for October 7, 2016 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. Aero Valley is a retail public utility previously owned and operated by Mr. Shawn Horvath.
2. Aero Valley was granted Certificate of Convenience and Necessity (CCN) number 11401 on November 1, 1979.
3. Aero Valley has approximately 38 connections.
4. 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.
5. On October 20, 2015, Mr. Horvath notified TCEQ that he was abandoning Aero Valley. Subsequently, Mr. Horvath moved out of state.
6. In a separate proceeding the Commission revoked Aero Valley's CCN as it was not properly transferred to Mr. Horvath.¹

¹ *Petition to Revoke Aero Valley Water Service's Certificate of Public Convenience and Necessity Pursuant to Tex. Water Code Ann. § 13.254 and 16 TAC § 24.113, Docket No. 45277, Default Order (Apr. 25, 2016).*

7. TCEQ appointed Eric Tamayo, the Public Works Director of the nearby City of Northlake as temporary manager through an emergency order.² Mr. Tamayo served six months as temporary manager.
8. On April 20, 2016, TCEQ then appointed Mr. Mark Patterson of Patterson Water Supply to a six month term which expires on October 20, 2016.³ The TCEQ is prohibited by law from extending further the appointment of Mr. Patterson.⁴
9. On August 25, 2016, Commission Staff filed the petition for order appointing a temporary manager to Aero Valley Water Service.
10. Commission 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.
11. 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.
12. On September 9, 2016, Commission Staff filed an amended request for an emergency order appointing a temporary manager to Aero Valley.
13. The amended 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.
14. In order to address the absence of a properly authorized operator for the Aero Valley system, the Commission finds good cause to waive the 20-day requirement in 16 Tex.

² TCEQ Docket 2015-1594-UCR-E.

³ TCEQ Docket 2015-1594-UCR-E

⁴ TWC § 5.505

Admin. Code § 22.35(b)(2) (TAC), and consider this matter at the next regularly scheduled open meeting of September 22, 2016.

II. Conclusions of Law

1. The Commission has jurisdiction over this docket pursuant to Tex. Water Code § 13.041 (TWC).
2. Aero Valley is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(58).
3. Under 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 Commission or the TCEQ.
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 § 22.297(a) 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.⁵
7. Under 16 TAC § 22.5(b), good cause exists to waive the 20-day requirement of 16 TAC § 22.35(b)(2).

⁵ 16 TAC § 22.299(d).

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 petition for an 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 9:30 a.m., on 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 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.

11. 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 the _____ day of September 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER