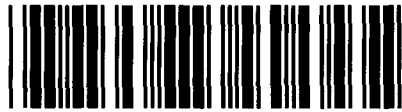




Control Number: 47797



Item Number: 2

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DOCKET NO. 47797

APPLICATION 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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OF TEXAS

**COMMISSION STAFF'S REVISED APPLICATION FOR AN ORDER APPOINTING A
TEMPORARY MANAGER TO AERO VALLEY WATER SERVICE**

NOW COMES the Staff of the Public Utility Commission of Texas (Commission Staff) and files this Revised Application for an Order Appointing a Temporary Manager to Aero Valley Water Service (Aero Valley).

I. INTRODUCTION

For the reasons discussed below, Commission Staff requests that the Commission issue an order appointing a temporary manager for Aero Valley.

In support of this Revised Application, Commission 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 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.

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

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

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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 either a standard order or an emergency order, after providing to the utility notice and an opportunity to be heard by the Commissioners.⁵

III. FACTUAL ALLEGATIONS

Aero Valley serves Northwest Regional Airport, located at 302 Phantom Way in Roanoke, TX 76262 and received certificate of convenience and necessity (CCN) No. 11401 on November 1, 1979.⁶ The system was owned and operated by Mr. Shawn Horvath. Aero Valley is comprised of one public water system (PWS) and has approximately 38 service connections.

On October 20, 2015, Mr. Horvath informed the Texas Commission on Environmental Quality (TCEQ) that Aero Valley had been experiencing an outage since October 17th, and he did not plan on providing an alternate source of water. Mr. Horvath subsequently relocated to Las Vegas, Nevada. The TCEQ appointed Eric Tamayo, the Public Works Director of the nearby City of Northlake as temporary manager through an emergency order. 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. This order expired on October 17, 2016.

On September 23, 2016, the Commission issued an Emergency Order appointing Mr.

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 The Commission revoked Aero Valley's CCN, as it was not properly transferred to Mr. Horvath. See *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 (April 25, 2017).

Patterson as temporary manager for another six months, from October 17, 2016 to April 15, 2017.⁷ The Commission later affirmed that Emergency Order on October 7, 2017.⁸ The Executive Director of the Commission then, by emergency order, extended the term of the Commission order for an additional six months, to last through October 13, 2017.⁹ The Commission affirmed that Emergency Order.¹⁰ Mr. Patterson is no longer interested in operating Aero Valley as temporary manager.

Commission Staff is not seeking, nor has it obtained, an emergency order from TCEQ.

IV. RECOMMENDATION FOR APPOINTING A TEMPORARY MANAGER

The Commission should appoint a temporary manager to Aero Valley because the utility is incapable of providing continuous and adequate service. Mr. Horvath has abandoned the system, and no entity holds a CCN over the area.

Commission Staff recommends the Commission appoint Monarch Utilities I, L.P. (Monarch) as temporary manager. Monarch serves approximately 35,000 customers in 25 counties across Texas, including a utility very close to Aero Valley. At this time, Monarch has requested that it not be compensated directly for its role as temporary manager. Monarch has stated that it intends to file an application for temporary rates in which it would request that it be authorized to implement the user rates, other tariff rates, and the customer service policies of its Commission-approved tariff that are in effect for all of Monarch's other systems.

An order appointing a temporary manager for Aero Valley should begin on the date the order is signed, and should be in effect for six months, said term ending on or about July 25, 2018 or when a retail public utility is able to legally provide service to Aero Valley's customers, whichever is the earlier occurrence. The 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

⁷ *Petition for an Order Appointing a Temporary Manager to Aero Valley Water Service in Denton County*, Docket 46309, Emergency Order (September 23, 2016).

⁸ *Petition for an Order Appointing a Temporary Manager to Aero Valley Water Service in Denton County*, Docket 46309, Order Affirming Emergency Order (October 7, 2016).

⁹ *Petition for an Order Appointing a Temporary Manager to Aero Valley Water Service in Denton County*, Docket 46309, Emergency Order Extending the Term of the Commission Order Appointing a Temporary Manager to Aero Valley Water Service (April 14, 2017).

¹⁰ *Petition for an Order Appointing a Temporary Manager to Aero Valley Water Service in Denton County*, Docket 46309, Order Affirming Emergency Order (June 29, 2016).

proposed order identifying a temporary manager and the terms of the appointment is included in this Revised Application.

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. Additionally, Staff understands that TCEQ routinely waived this financial assurance requirement in previous matters.

V. STATEMENT RELATING TO AERO VALLEY'S RIGHTS

The Commission must provide to a utility notice and an opportunity to be heard by the Commissioners at a Commission meeting before appointing a temporary manager over than utility.

The factual allegations listed in Commission Staff's Revised Application could be deemed admitted and the relief sought herein could be granted by default if you fail to timely request a hearing.

Pursuant to 16 TAC § 22.74, Commission Staff will provide a copy of this request by certified mail, return receipt requested, to the last known address of Aero Valley in the Commission's records:

Shawn Horvath
P.O. Box 1398
Roanoke, TX, 76262

Mr. Horvath has also informed Commission Staff that his current mailing address is:

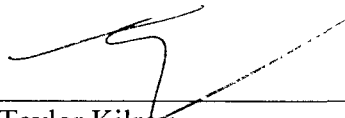
Shawn Horvath
6482 Burns Allen Ave #102
Las Vegas, NV, 89122

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

Monarch Utilities I, L.P.
12535 Reed Road
Sugar Land, TX 77478

WHEREFORE, PREMISES CONSIDERED, Commission Staff respectfully requests that the Commission grant Commission Staff's Revised Application for an Order to Appoint a Temporary Manager to Aero Valley Water Service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Taylor Kilroy', is written over a horizontal line.

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

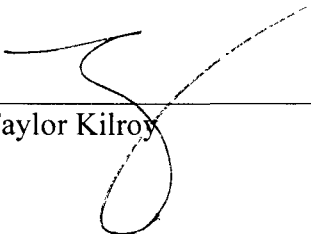
CERTIFICATE OF SERVICE

I certify that on November 27, 2017, 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 records and to Monarch Utilities I, L.P.:

Shawn Horvath
P.O. Box 1398
Roanoke, TX, 76262

Shawn Horvath
6482 Burns Allen Ave #102
Las Vegas, NV, 89122

Monarch Utilities I, L.P.
12535 Reed Road
Sugar Land, TX 77478



Taylor Kilroy

DOCKET NO. 47797

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

PROPOSED ORDER TO APPOINT A TEMPORARY MANAGER TO AERO VALLEY
WATER SERVICE

This Order addresses the application of the Public Utility Commission of Texas (Commission) Staff for an Order Appointing a Temporary Manager to Aero Valley Water Service (Aero Valley).

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 previously owned and operated by Shawn Horvath.
3. Aero Valley was granted Certificate of Convenience and Necessity (CCN) number 11401 on November 1, 1979.
4. Aero Valley is comprised of one public water system.
5. On October 20, 2015, Mr. Horvath informed the Texas Commission on Environmental Quality (TCEQ) that Aero Valley had been experiencing an outage since October 17th and he did not plan on providing an alternate source of water. Mr. Horvath subsequently relocated to Las Vegas, Nevada.
6. The TCEQ appointed Eric Tamayo, the Public Works Director of the nearby City of Northlake as temporary manager through an emergency order. 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. This order expired on October 17, 2016.

7. On September 23, 2016, the Commission issued an Emergency Order appointing Mr. Patterson as temporary manager for another six months, from October 17, 2016 to April 15, 2017. The Commission later affirmed that Emergency Order on October 7, 2017. The Executive Director of the Commission then, by emergency order, extended the term of the Commission order for an additional six months, to last through October 13, 2017. The Commission affirmed that Emergency Order.
8. Mr. Patterson is no longer interested in operating Aero Valley as temporary manager.
9. Commission Staff is not seeking, nor has it obtained an emergency order from TCEQ.
10. On November 21, 2017, Commission Staff filed an Application for an Order Appointing a Temporary Manager to Aero Valley Water Service.
11. On November 27, 2017, Commission Staff filed a Revised Application for an Order Appointing a Temporary Manager to Aero Valley Water Service (Application) that included default language pursuant to 16 Tex. Admin. Code § 25.183(b) (TAC).
12. Commission Staff recommended that Monarch Utilities I, L.P. (Monarch) be appointed as temporary manager of Aero Valley.
13. At this time, Monarch has requested that it not be compensated directly for its role as temporary manager. Monarch states that it intends to file an application for temporary rates in which it would request that it be authorized to implement the user rates, other tariff rates, and the customer service policies of its Commission-approved tariff that are in effect for all of Monarch's other systems.
14. Commission Staff's Application was sent by certified mail to the last known address of Aero Valley's headquarters in the Commission's and TCEQ's records. A copy of the petition was also sent by certified mail to Monarch.
15. Commission Staff's Application notified Aero Valley that it was entitled to an opportunity to be heard by the Commissioners at an Open Meeting of the Commission under Texas Water Code (TWC) § 13.4132(a).

II. Conclusions of Law

1. The Commission has jurisdiction over this docket pursuant to TWC § 13.4132 and 16 TAC § 24.142.
2. Under 16 TAC § 24.142, the Commission may authorize a willing person, municipality, or political subdivision 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 is incapable of legally operating as a utility in a way that ensures continuous and adequate service in the area formerly covered by CCN number 11401.
5. Aero Valley has been abandoned.
6. Aero Valley was given notice and an opportunity to be heard by the Commissioners at an Open Meeting of the Commission under Texas Water Code (TWC) § 13.4132(a).

III. Ordering Paragraphs

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

1. Commission Staff's Application for an Order Appointing a Temporary Manager to Aero Valley Water Service is granted.
2. Monarch is appointed temporary manager of Aero Valley for a term of one six months to begin on January 25, 2018 and end on July 25, 2018, or until a retail public utility is able to legally provide service to Aero Valley's customers, whichever is the earlier occurrence.
3. Monarch 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.

4. As temporary manager, Monarch shall comply with all requirements in 16 TAC § 24.143, including but not limited to reading meters, billing for utility 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. Monarch shall return to the Commission an inventory of all property received within 60 days of appointment, pursuant to 16 TAC § 24.143(e).
6. Monarch 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).
7. Monarch shall comply with all applicable requirements of the TWC as well as Commission and TCEQ rules.
8. Monarch is not required to post financial assurance.

Signed at Austin, Texas the _____ day of January 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN WALKER, CHAIRMAN

BRANDY MARTY MARQUEZ, COMMISSIONER

ARTHUR C. D'ANDREA, COMMISSIONER