



Control Number: 48455



Item Number: 2

Addendum StartPage: 0

2018 JUN 20 PM 12:47

REQUEST OF SEGURO WATER CO. §  
 LLC AND SAN PEDRO CANYON §  
 WATER RESOURCES TO PLACE §  
 BLUE CEREUS, LLC UNDER §  
 TEMPORARY MANAGEMENT OR §  
 SUPERVISION §

BEFORE THE

PUBLIC UTILITY COMMISSION  
FILING CLERK

PUBLIC UTILITY COMMISSION

OF TEXAS

**BLUE CEREUS, LLC'S MOTION TO DISMISS  
 REQUEST FOR TEMPORARY MANAGEMENT OR SUPERVISION**

Blue Cereus, LLC ("Blue Cereus") submits this Motion to Dismiss the request filed by Seguro Water Company, LLC ("Seguro") and San Pedro Canyon Water Resources ("San Pedro") to place Blue Cereus under a receiver, under temporary management, or under supervision (the "Seguro / San Pedro Request"). As described in this motion, the Seguro / San Pedro Request fails to even allege, much less show, any basis for the Public Utility Commission of Texas (the "Commission") to seek appointment of a receiver under Texas Water Code ("TWC") § 13.412, or a temporary manager under § 13.4132, or to initiate supervision under TWC § 13.4131. The dispute over amounts allegedly owed by Blue Cereus to Seguro and San Pedro for wholesale water is a classic private contractual dispute over which the Commission should be extremely wary to assert jurisdiction. This dispute does not implicate or jeopardize the continuous and adequate water service that Blue Cereus has been providing its retail customers for the past almost ten years and in compliance with all Commission rule requirements. For the reasons set forth in this motion, the Commission must summarily dismiss the Seguro / San Pedro Request.

**I. No Grounds Exist for the Appointment of a Receiver Under TWC § 13.412 or for Temporary Management under TWC § 13.4132.**

Under TWC § 13.412, the Commission may request the Texas Attorney General to bring suit for appointment of a receiver to collect the assets and carry on the business of a water utility



that has abandoned operation of its facilities. Abandonment may include *“failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services.”* TWC § 13.412(f)(1). However, the Seguro / San Pedro Request merely alleges that Blue Cereus is delinquent in payments owed for wholesale water under two 2009 private agreements (not provided with the Seguro / San Pedro Request). Seguro and San Pedro do not even allege that each of them is a retail public utility as required by TWC § 13.412(f)(1), and indeed neither Seguro nor San Pedro are retail public utilities as they provide water on a wholesale basis only to Blue Cereus and do not provide potable water service for compensation. See definition of “retail public utility” at TWC § 13.002(19). Neither has Seguro nor San Pedro alleged any of the other bases for “abandonment” as defined at TWC § 13.412(f). Since the Seguro /San Pedro Request does not even allege, much less demonstrate, adequate grounds for “abandonment”, the Commission does not have any legal or factual basis by which it can exercise jurisdiction for seeking appointment of a receiver under TWC § 13.412. Consequently, the Commission does not have any grounds whatsoever for it to authorize temporary management of Blue Cereus under TWC § 13.4132 which grounds must also be based on a finding of discontinuance or abandonment of operations.

## **II. No Grounds Exist for Commission Supervision Under TWC § 13.4131.**

Under TWC § 13.4131, the Commission may place a utility under supervision for gross or continuing mismanagement, or for gross or continuing noncompliance with Commission rules or a Commission order. While the Seguro / San Pedro Request sets forth a lengthy wish list of things they want the Commission to require of Blue Cereus, Seguro and San Pedro do not make any allegation of any “gross or continuing mismanagement” nor any “gross or continuing noncompliance” with Commission rules or an order. Since the Seguro /San Pedro Request does not even allege, much less demonstrate, adequate grounds for Commission supervision of Blue Cereus,

the Commission does not have any basis whatsoever upon which it can exercise jurisdiction for supervision under TWC § 13.4131.

**III. The Alleged Delinquency in Amounts Owed to Seguro and San Pedro is a Private Contractual Dispute as to Which the Commission Should Refrain From Inserting Itself.**

Following the receipt of Seguro and San Pedro's Notice of Default and Termination letter of June 1, 2018 (attached to the Seguro / San Pedro Request), Blue Cereus engaged legal counsel and responded by a letter dated June 14, 2018, a copy of which is provided as Attachment A. As indicated in the Blue Cereus response letter, this dispute is a private contractual one for which the proper forum is set out in the contract itself. As Seguro and San Pedro have not even alleged any proper basis for Commission jurisdiction in this dispute, the Commission should be extremely reluctant to involve itself in this private contractual dispute. Although the Seguro / San Pedro Request alleges that "there is an imminent risk that Blue Cereus will be unable to provide continuous and adequate service" to its retail customers as a result of this contractual dispute, Seguro and San Pedro do not allege any facts whatsoever to support that allegation. In fact, the compliance record of Blue Cereus shows nothing that could conceivably constitute a failure to provide continuous and adequate retail service.

The Seguro / San Pedro Request appears to be an attempt to use the Commission to gain leverage in its contractual dispute with Blue Cereus. The Commission does not have jurisdiction over this dispute and has too many demands on its personnel and financial resources to waste any more time on the Seguro / San Pedro Request. Therefore the Commission should emphatically reject this ploy by Seguro and San Pedro. If Seguro and San Pedro continue to press this matter at the Commission, Blue Cereus will seek imposition of a Commission order to reimburse Blue Cereus for its costs, including attorney fees, of responding to this baseless and frivolous action.

#### **IV. Conclusion and Prayer**

For the reasons set forth above, the Commission should summarily dismiss the Seguro / San Pedro Request and grant any such other relief as to which Blue Cereus may be entitled.

Respectfully submitted,



---

Stephen C. Dickman  
State Bar No. 05836500  
Law Office of Stephen C. Dickman  
6005 Upvalley Run  
Austin, Texas 78731  
Telephone: (512) 922-7137  
Facsimile: (512) 454-8495  
**ATTORNEY FOR**  
**BLUE CEREUS, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document was served on all parties of record via E-mail, regular mail, hand delivery or fax on June 20, 2018.

  
\_\_\_\_\_  
Stephen C. Dickman

# LAW OFFICE OF STEPHEN C. DICKMAN

6005 Upvalley Run  
Austin, Texas 78731  
Tel: 512-922-7137  
Fax: 512-454-8495  
Email: [sdickmanlaw@att.net](mailto:sdickmanlaw@att.net)  
Website: <https://www.sdickmanlaw.com>

June 14, 2018

Mr. Kerry McGrath  
Duggins Wren Mann & Romero, LLP  
One American Center  
600 Congress Ave., Suite 1900  
Austin, Texas 78701

Re: Notice of Default and Termination for Wholesale Water Agreements between  
Blue Cereus, LLC and Seguro Water Co., LLC and San Pedro Canyon Water  
Resources

Dear Mr. McGrath:

I have been retained by Blue Cereus, LLC ("Blue Cereus") in connection with the claims of Seguro Water Co., LLC ("Seguro") and San Pedro Canyon Water Resources ("San Pedro") for amounts allegedly due under their respective 2009 Agreements to Sell and Purchase Water with Blue Cereus. Blue Cereus denies that it is liable for the amounts claimed to be due and owing as described in your Notice of Default and Notice of Termination dated June 1, 2018 (the "Notice of Default").

As Seguro's Manager Bob Ferguson is aware, the two wholesale water supply agreements were never intended to be enforced as strict contractual obligations between the Parties but were rather a memorialization of what the Parties desired if the number of residential customers increased, if the subdivisions were adequately built out, and if adequate retail rates were authorized under the TCEQ's retail rate setting jurisdiction (now in the PUC). The actual agreement as orally established between Jimmy Alan Hall and Bob Ferguson and as implemented under longstanding practice was for Blue Cereus to collect authorized retail rates from the customers of the two respective subdivisions, satisfy some of the operating expenses of Blue Cereus, and pay the remainder to Seguro and San Pedro based on the amount that Bob Ferguson informed Mr. Hall was needed to cover Seguro's and San Pedro's overhead expenses. Therefore, the amounts that Blue Cereus paid over the years varied from month to month.

Consistent with this arrangement, Seguro and San Pedro never invoiced Blue Cereus for amounts purportedly due under the agreements. Accordingly, your Notice of Default is erroneous in stating that the amounts listed in Attachments A and B to the Notice of Default were actually invoiced to Blue Cereus. To the extent Seguro and San Pedro believe those amounts were invoiced to Blue Cereus, please provide me a copy of those invoices as listed in Attachments A and B. Also consistent with this understanding of the Parties, under Section 3.02

*Attachment A*

Mr. Kerry McGrath  
June 14, 2018  
Page 2

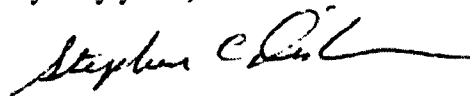
of the agreements, the Parties agreed to begin negotiations on a new volumetric water rate for 2010. Pursuant to this provision, Mr. Ferguson and Mr. Hall annually discussed the establishment of a new monthly rate for the following year. This "agreement to agree" on new rates each year is reflected in the amounts demanded by Seguro/San Pedro and paid by Blue Cereus.

Blue Cereus is also aware that the wholesale water master meter for the La Caleta Estates subdivision was recently calibrated, and possibly the master meter for the San Pedro Village subdivision as well. Blue Cereus requests that all documentation related to the calibration of the master meters be provided to it, including results of calibration testing and invoices for the cost of conducting the calibration.

Blue Cereus believes a number of issues need to be discussed and resolved between the Parties before Seguro and San Pedro resort to any of its claimed civil or administrative remedies as stated in the Notice of Default. Toward this end, Blue Cereus believes that a mediation session would be an effective means of identifying actual issues and a way toward resolution. One such possibility could be an agreement for Seguro and San Pedro to buy out Blue Cereus' distribution systems and related assets for a fair market appraised value. In any event, the agreements specify in Section 5.03 that prior to the institution of any civil or administrative action, the Parties must attempt to settle any controversy arising under the agreements through a collaborative dispute resolution process or other means of alternative dispute resolution. While the water rates are not enforceable under the facts and the law, Blue Cereus asserts that the Parties should abide by Section 5.03.

Please contact me if you would like to discuss these matters in more detail. Also, please send all communications regarding this matter to me as counsel for Blue Cereus and do not contact Carol Winkley directly as she has requested of Seguro and San Pedro.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen C. Dickman", with a stylized flourish at the end.

Stephen C. Dickman

cc: Mr. Jimmy Alan Hall, President of Blue Cereus, LLC