



Control Number: 48455



Item Number: 4

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REQUEST OF SEGURO WATER COMPANY, LLC AND SAN PEDRO CANYON WATER RESOURCES TO PLACE BLUE CEREUS, LLC UNDER TEMPORARY MANAGEMENT OR SUPERVISION AND FOR OTHER APPROPRIATE RELIEF	§ § § § § § §	<div data-bbox="1187 267 1511 309">2018 JUN 29 PM 2:32</div> <div data-bbox="982 320 1526 387">PUBLIC UTILITY COMMISSION FILING CLERK</div> <div data-bbox="1152 431 1315 475">OF TEXAS</div>
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COMMISSION STAFF'S MOTION TO DISMISS

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this response to Order No. 1, Staff's Motion to Dismiss. Staff recommends that the petition be dismissed. In support thereof, Staff shows the following:

I. BACKGROUND

On June 11, 2018, Seguro Water Company, LLC (Seguro) and San Pedro Canyon Water Resources (San Pedro) (collectively, Petitioners) filed a request to place Blue Cereus, LLC (Blue Cereus) under temporary management or supervision for its alleged payment delinquency of the wholesale water services provided by Seguro and San Pedro.¹ On June 1, 2018, Petitioners gave Blue Cereus notice of default and termination due to the payment delinquency.² On June 20, 2018, Blue Cereus filed a motion to dismiss the petition, arguing that the water agreements with Petitioners are private contractual disputes over which the Commission does not have jurisdiction.³ Blue Cereus went on to argue that Texas Water Code (TWC) §§ 13.412 and 13.4132⁴ do not apply here because no grounds exist for authorization of temporary management or supervision.⁵

¹ Request of Seguro Water Company, LLC and San Pedro Canyon Water Resources to Place Blue Cereus, LLC Under Temporary Management or Supervision and for Other Appropriate Relief (June 11, 2018) ("Petition").

² *Id.* at 1.

³ Blue Cereus, LLC's Motion to Dismiss Request for Temporary Management or Supervision at 3 (June 20, 2018) ("Blue Cereus's Motion to Dismiss").

⁴ Tex. Water Code Ann. §§ 13.412 and 13.4132 (West 2008 & Supp. 2017) (TWC).

⁵ Blue Cereus's Motion to Dismiss at 1-3.

On June 28, 2018, the Commission Administrative Law Judge (ALJ) issued Order No. 1, requiring Staff to file comments and recommend an appropriate method for processing this request by July 20, 2018. Therefore, this pleading is timely filed.

II. MOTION TO DISMISS

Staff moves to dismiss this proceeding with prejudice for failure to state a claim for which relief can be granted pursuant to 16 Texas Administrative Code (TAC) § 22.181(a)(8). Petitioners request that the Commission place Blue Cereus under a receiver, temporary management, or supervision pursuant to TWC §§ 13.412, 13.4131, or 13.4132.⁶ These sections are part of Subchapter K of the Texas Water Code, which provide the Commission and the Texas Commission on Environmental Quality (TCEQ) with penalty and enforcement powers to address violations. The wording of TWC §§ 13.412,⁷ 13.4131,⁸ and 13.4132⁹ specify that only the Commission, or TCEQ in some instances, may initiate a proceeding to place a utility under receivership, temporary management, or supervision. For these reasons and as a fact established by law, the actions and relief that Petitioners request is solely within the purview of the Commission's Oversight & Enforcement Division and may not be initiated by a member of the public. Therefore, Staff respectfully requests that this proceeding be dismissed with prejudice. If the Commission chooses to exercise its discretion to pursue action under Subchapter K of the Texas Water Code against Blue Cereus, dismissal of this proceeding would not affect the exercise of such discretion.

III. CONCLUSION

For the reasons stated above, Staff respectfully recommends that the petition be dismissed with prejudice.

⁶ See generally Petition.

⁷ "At the request of the **utility commission** or the commission, the attorney general shall bring suit for the appointment of a receiver..." TWC § 13.412 (emphasis added).

⁸ "The **utility commission**, after providing to the utility notice and an opportunity for a hearing, may place a utility under supervision..." TWC § 13.4131 (emphasis added).

⁹ "The **utility commission** or the commission, after providing to the utility notice and an opportunity to be heard by the commissioners at a utility commission or commission meeting, may authorize a willing person to temporarily manage and operate utility..." TWC § 13.4132 (emphasis added).

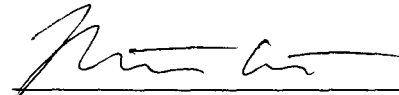
Dated: June 29, 2018

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Katherine Lengieza Gross
Managing Attorney

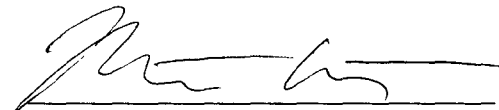


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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record in this proceeding on June 29, 2018 in accordance with the requirements of 16 TAC § 22.74.



Matthew A. Arth