



Control Number: 48650



Item Number: 41

Addendum StartPage: 0

RECEIVED

PETITION FOR AN ORDER
APPOINTING A TEMPORARY
MANAGER TO BLUE CEREUS, LLC
WITHOUT A HEARING

§
§
§
§

PUBLIC UTILITY COMMISSION
PUBLIC UTILITY OF TEXAS
FILING CLERK

**EMERGENCY ORDER APPOINTING A TEMPORARY MANAGER TO BLUE
CEREUS, LLC WITHOUT A HEARING**

This order addresses the request filed by Commission Staff for an emergency order appointing a temporary manager to Blue Cereus, LLC (Blue Cereus), holder of CCN No. 11088. The Executive Director, on behalf of the Commission,¹ issues this emergency order without a hearing, and sets a hearing on this matter at the September 12, 2019 Open Meeting currently scheduled for 9:30 a.m. at the Commission’s offices in Austin, Texas.

I. Findings of Fact

The Commission makes the following findings of fact:

1. Commission Staff, as the requesting party, is located at 1701 N. Congress Avenue, 7th Floor, Austin, Texas, 78701.
2. Blue Cereus holds CCN No. 11088 and operates two public water systems.
3. Blue Cereus currently serves approximately 102 connections in Val Verde County, Texas.
4. Jimmy Alan Hall is the President and Registered Agent of Blue Cereus.
5. Seguro Water Co., LLC and San Pedro Canyon Water Resources are the wholesale water suppliers for Blue Cereus under two agreements to sell and purchase water.
6. On June 1, 2018, Seguro Water Co., LLC and San Pedro Canyon Water Resources sent Blue Cereus a notice of default and notice of termination (notice) notifying it that the agreements would terminate on August 30, 2018, absent arrangements for payment of delinquent bills.

¹ Tex. Water Code (TWC) § 13.451(b) states that the Commission may, by order or rule, delegate to the Executive Director the authority to receive and issue emergency orders under Subchapter K-1 of the TWC. The delegation was made by Commission order on December 4, 2015 in Docket No. 43517.

411

7. Seguro Water Co., LLC and San Pedro Canyon Water Resources filed the notice with the Commission on June 11, 2018 in Docket No. 48455.²
8. Prior to requesting an emergency order, Commission Staff confirmed that Blue Cereus and the wholesale water suppliers were unable to resolve their contract disputes and the wholesale water suppliers intended to shut off the water supply on August 30, 2018. Commission Staff had also confirmed that Blue Cereus had no other options for wholesale water supply. Therefore, the discontinuation of water was imminent.
9. On August 30, 2018, the Executive Director of the Commission signed an emergency order appointing Blue Cereus's licensed water operator, Jane Whaley, as temporary manager for Blue Cereus for a term of 180 days to begin on August 30, 2018 and end on March 2, 2019.³ The Commission later affirmed the emergency order in a hearing held on September 14, 2018.⁴
10. In affirming the emergency order, the Commission found that Blue Cereus had abandoned the operation of its facilities under Tex. Water Code (TWC) § 13.412 and under 16 Tex. Admin. Code (TAC) § 24.142(a)(1)⁵ when its wholesale water suppliers notified the utility that they would discontinue wholesale water supply on August 30, 2018 after Blue Cereus failed to pay its water bills.⁶
11. The Commission also found that Blue Cereus had abandoned the operation of its facilities under TWC § 13.4132 and 16 TAC § 24.142(a)(5) when it failed to obtain an alternative water supply during an outage.
12. During the initial 180 days of temporary management, Blue Cereus and the wholesalers failed to come to an agreement resolving the alleged debt owed to the wholesalers. Blue Cereus did not make payments toward the claimed debt.
13. The existence of a verifiable debt by Blue Cereus to the wholesalers is contingent on a dispute regarding the wholesale agreements previously executed. The wholesalers claim

² *Request of Seguro Water Company, LLC and San Pedro Canyon Water Resources to Place Blue Cereus, LLC Under Temporary Management or Supervision*, Docket No. 48455, Petition (Jun. 11, 2018).

³ Emergency Order (Aug. 30, 2018)

⁴ Order Affirming and Modifying Emergency Order (Sept. 14, 2018).

⁵ As of October 17, 2018, the Commission renumbered 16 TAC Chapter 24. 16 TAC §§ 24.142 and 24.143 are now 16 TAC §§ 24.355 and 24.357, respectively.

⁶ Order Affirming and Modifying Emergency Order at 3 (Sept. 14, 2018).

- the agreements were in effect from their execution in 2009 to December 31, 2018, while Blue Cereus claims the agreements expired by their plain terms on December 31, 2014.⁷
14. During the initial 180 days of temporary management, Blue Cereus and the wholesale water suppliers did not execute any new contracts for the wholesale supply of water to Blue Cereus. Blue Cereus did not secure an alternate source of wholesale water.
 15. By the end of the initial temporary management, Blue Cereus could not guarantee a continuous and adequate supply of water to its customers.
 16. During the initial temporary management period, Mr. Hall took certain actions that Commission Staff identified as demonstrating hostility toward the Commission under TWC §§ 13.4132 and 13.412(f)(6) as well as under 16 TAC § 24.355(c)(6).
 17. Also during the initial temporary management period, Ms. Whaley failed to comply with her responsibilities as outlined in 16 TAC § 24.357.⁸
 18. On February 26, 2019, the Commission's Executive Director issued an emergency order extending the term of the Commission order appointing a temporary manager to Blue Cereus without a hearing.⁹ The emergency order appointed Lynn Sherman as temporary manager in place of Jane Whaley for a term of 180 days to end on August 30, 2019.¹⁰
 19. The Commission affirmed the emergency order at a hearing on March 13, 2019, finding that Blue Cereus continued to abandon the operation of its facilities under TWC § 13.412(f)(1) and 16 TAC §24.355(c)(1) by not resolving the conflict with the wholesalers regarding the alleged past-due balance, as the wholesalers continued to maintain they would discontinue wholesale water supply absent payment.¹¹
 20. The Commission also found that Blue Cereus continued to abandon the operation of its facilities under TWC § 13.412(f)(5) and 16 TAC § 24.355(c)(5) by failing to obtain an alternative water supply during an outage as well as under TWC § 13.412(f)(6) and 16 TAC § 24.355(c)(6) by interfering with the temporary manager's ability to meet the conditions of an order.¹²

⁷ Docket No. 48650, T.r. at 25:13-28:10 (Hall Direct) (Sept. 14, 2018).

⁸ Order Affirming and Modifying Emergency Order at Finding of Fact No. 13 (Mar. 15, 2018).

⁹ Docket No. 48650, Emergency Order Extending the Term of the Commission Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing (Feb. 26, 2019).

¹⁰ Docket No. 48650, Order Affirming and Modifying Emergency Order, Ordering Paragraph Nos. 1-2 (Mar. 15, 2019).

¹¹ *Id.* at Conclusion of Law No. 4

¹² *Id.* at Conclusions of Law Nos. 5-6

21. By appointing Lynn Sherman as temporary manager of Blue Cereus for 180 days, the Commission renewed the initial order appointing a temporary manager in accordance with TWC § 13.455 and 16 TAC §24.14, which allow an emergency order to be renewed once for a period not to exceed 180 days.¹³
22. Lynn Sherman filed a temporary manager's summary report in this docket on August 9, 2019. The report recommends that Mr. Sherman be appointed temporary manager for a second 180-day term.¹⁴
23. The report indicates that Blue Cereus has not negotiated new agreements for the wholesale supply of water with the current wholesalers, and that Blue Cereus has not secured an alternate wholesale water supply.¹⁵
24. The report states that if the Commission appoints Lynn Sherman temporary manager for an additional 180-day term, at the end of the additional term Mr. Sherman will recommend that Blue Cereus be put into receivership if the underlying issues necessitating a temporary manager are not resolved.¹⁶
25. On August 14, 2019, Commission Staff filed a request for an emergency order appointing a temporary manager to Blue Cereus, LLC without a hearing, requesting that the Commission re-appoint Lynn Sherman as temporary manager for an additional 180 days because the initial grounds for abandonment persist.¹⁷
26. Commission Staff is not seeking, nor has it obtained, an emergency order from TCEQ.
27. On August 14, 2019, Commission Staff sent a copy of the request for an emergency order appointing a temporary manager to Blue Cereus, LLC without a hearing by certified mail to Blue Cereus, the Law Office of Steve Dickman, Robert Ferguson, Kitty Lewis, Celina Romero, Kerry McGrath, and Lynn Sherman.

II. Conclusions of Law

The Commission makes the following conclusions of law:

¹³ *Id.* at Conclusion of Law No. 13.

¹⁴ Docket No. 48650, Temporary Manager's Summary Report at 5 (Aug. 9, 2019).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Docket No. 48650, Commission Staff's Application for an Order Appointing a Temporary Manager to Blue Cereus, LLC (Aug. 12, 2019).

1. The Commission has jurisdiction over this docket under TWC § 13.041(d)(2) and 16 TAC §§ 24.355 and 24.357.
2. Under TWC § 13.4132 and 16 TAC § 24.355, the Commission, after providing the utility with notice and opportunity for a hearing, may authorize a willing person to temporarily manage and operate a utility if the utility has abandoned operations.
3. TWC § 13.412 and 16 TAC § 24.355 enumerate actions that constitute abandonment, including but not limited to, “failure to pay a bill or obligation to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice or discontinuance of necessary services.”
4. Under TWC § 13.412(f)(5) and 16 TAC § 24.355(c)(5), a utility also abandons operation of its facilities if it fails to obtain an alternative water supply during an outage.
5. Blue Cereus continues to abandon the operation of its facilities under 16 TWC § 13.412 and 16 TAC § 24.355(c)(1) as it still has not resolved its conflict with the wholesale water suppliers regarding the past due balance, and the wholesale water suppliers continue to state they will discontinue wholesale water supply as stated in their June 1, 2018 letter.
6. Blue Cereus continues to abandon the operation of its facilities under TWC § 13.412(f)(5) and 16 TAC § 24.355(c)(5) by failing to obtain an alternative water supply during an outage.
7. The temporary manager 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, including, but not limited to, reading meters, billing for utility service, collecting revenues, disbursing funds, requesting rate increases if needed, assessing 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 under 16 TAC § 24.357.
8. Once appointed, these powers and duties become exclusively those of the temporary manager under 16 TAC § 24.357.
9. Under 16 TAC § 22.299(d), emergency appointment of a temporary manager may be issued with or without a hearing.
10. Under TWC § 13.455 and 16 TAC § 24.14 an emergency order may be renewed once for a period not to extend 180 days.

11. Under 16 TAC § 22.299(d), an emergency order appointing a temporary manager may be issued with or without a hearing. This order sets a hearing on September 12, 2019, at 9:30 a.m. at the Commission's offices in Austin, Texas.

III. Ordering Paragraphs

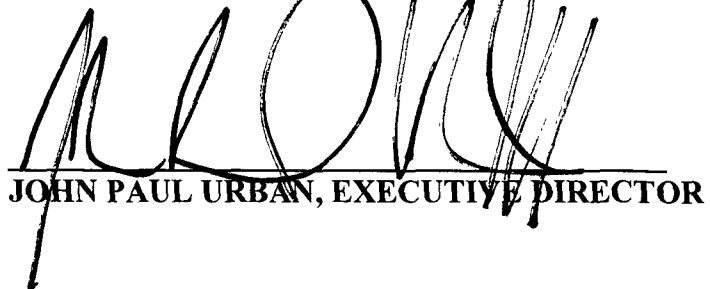
In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Commission grants Commission Staff's request for an emergency order appointing a temporary manager to Blue Cereus, LLC, and appoints Lynn Sherman as the temporary manager.
2. The Commission appoints Mr. Sherman as temporary manager of Blue Cereus for a term of 180 days to begin August 14, 2019 end on February 10, 2020, or until the Commission orders otherwise.
3. Mr. Sherman may exercise 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 the temporary manager, Mr. Sherman must comply with all requirements in TWC § 13.4132(c) and 16 TAC § 24.357(b), which include 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. Mr. Sherman must return to the Commission an inventory of all property received within 60 days of appointment as required by 16 TAC § 24.357(e).
6. Blue Cereus must continue make all of the utility's property available to Lynn Sherman so that Mr. Sherman may comply with the requirements of 16 TAC § 24.357.
7. Mr. Sherman must report to the Commission on a monthly basis. This report must 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.
8. Mr. Sherman must comply with all applicable requirements of the TWC as well as Commission and Texas Commission on Environmental Quality rules.

9. Mr. Sherman is not required to post financial assurance.
10. Mr. Sherman must be compensated for his role as a temporary manager from Blue Cereus's revenues in the amount of six dollars per connection per month.
11. The Commission must provide notice of issuance of this emergency order to Blue Cereus as soon as practicable as required by 16 TAC § 22.293(c).
12. A hearing to affirm, modify or set aside this emergency order must be held at the September 12, 2019 Open Meeting currently scheduled for 9:30 a.m., at the offices of the Commission in Austin, Texas.
13. Commission Staff must provide notice of the opportunity to participate in a hearing to affirm, modify, or set aside this emergency order to Blue Cereus no later than the tenth day before the date of the hearing and must provide that Blue Cereus 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 the 14th day of August 2019.

PUBLIC UTILITY COMMISSION OF TEXAS



JOHN PAUL URBAN, EXECUTIVE DIRECTOR