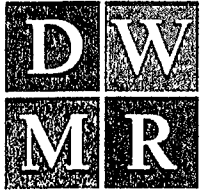


Control Number: 48650



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Addendum StartPage: 0



DUGGINS
WREN
MANN &
ROMERO, LLP

One American Center
600 Congress
Suite 1900
Austin, TX 78701

P.O. Box 1149
Austin, TX 78767

p: 512.744.9300
f: 512.744.9399
www.dwmrlaw.com

Anna Treviño
Filing Clerk
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

RECEIVED
2019 SEP -5 PM 4:05
PUBLIC UTILITY COMMISSION
FILING CLERK
September 5, 2019

RE: Docket No. 48650 – Petition for an Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing

Letter to Blue Cereus, LLC Temporary Manager regarding wholesale contracts

Dear Ms. Treviño:

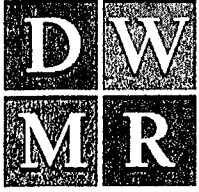
Attached please find a courtesy copy of a letter and attachments that I sent to Lynn Sherman, Temporary Manager of Blue Cereus, LLC. Please file the letter and attachments in the Commission's interchange in the above-referenced docket.

Sincerely,

Celina Romero
cromero@dwmrlaw.com
512.495.8814

Enclosures

2451



DUGGINS
WREN
MANN &
ROMERO, LLP

One American Center
600 Congress
Suite 1900
Austin, TX 78701

September 5, 2019

P.O. Box 1149
Austin, TX 78767

VIA EMAIL AND REGULAR MAIL

p: 512.744.9300
f: 512.744.9399
www.dwmrlaw.com

Lynn Sherman
Temporary Manager of Blue Cereus, LLC
P.O. Box 5605
Austin, Texas 78763
lsherman@h2otx.com

RE: Contract for Provision of Wholesale Water

Dear Mr. Sherman:

We need to finalize the agreements between Seguro Water Co., LLC/San Pedro Canyon Water Resources and you as Temporary Manager of Blue Cereus, LLC for the provision of potable water on a wholesale basis as soon as possible.

The Executive Director of the Public Utility Commission of Texas (the Commission) issued an Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing (the Emergency Order) on August 14, 2019 that appointed you the Temporary Manager of Blue Cereus for another 180 days (expiring February 10, 2020), subject to the Commission's decision to affirm, set aside, or modify the Emergency Order that is scheduled for the September 12, 2019 open meeting. Your term as Temporary Manager began on February 26, 2019.

During the course of this proceeding, I have provided draft wholesale rate contracts to you *via* email on June 17, July 29, and August 13, 2019. When my clients and I met with you on August 14, I again provided you with drafts of the contracts. In addition, in earlier email exchanges between us on March 19 and 20, 2019, we agreed to a Term Sheet setting out the conditions for entry of an Agreed Temporary Injunction Order in a lawsuit pending in the Val Verde District Court, which included the terms of a wholesale rate contract to cover the timeframe when you are appointed Temporary Manager and/or Receiver of Blue Cereus. To date, you have not returned the executed contracts and you have not provided any proposed modifications to the draft contracts. (Attached to this letter are the last versions of the Term Sheet and the wholesale rate contracts swapped between us.)

My clients are not obligated to provide water to Blue Cereus and they have been more than patient as you have gotten acquainted with the operation of Blue Cereus. They agreed with you to operate under the rates established under the 2009 Wholesale Rate Contracts to provide wholesale potable water under those rates until new rates can be established and new contracts executed. You have been the Temporary Manager for six months and



September 5, 2019
Page 2

may be appointed for an additional six month term. A signed contract will ensure that my clients are paid for the water they are currently voluntarily providing to Blue Cereus. Moreover, a signed contract is necessary even if the Commission acts to refer this proceeding to a receivership.

Please contact me as soon as possible so we can address this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Celina Romero', with a small flourish at the end.

Celina Romero
cromero@dwmrlaw.com
512.495.8814

cc: Robert Ferguson *via* email
Kitty Lewis *via* email
Wayne Lewis *via* email
Mick Long *via* email
Steve Dickman *via* email
PUC Interchange *via* electronic filing

Enclosures

Term Sheet for entry of Agreed Temporary Injunction Order in:

Blue Cereus, LLC v. Seguro Water Co., LLC et al, Cause No. 34167, in the 83rd Judicial District Court, Val Verde County, Texas

1. Background
 - a. By emergency order of the Executive Director of the PUC dated February 26, 2019, which was affirmed by order of the Public Utility Commission dated March 15, 2019:
 - i. Lynn Sherman has been appointed as Temporary Manger of Blue Cereus LLC; and
 - ii. The term of the temporary management of Blue Cereus has been extended to August 30, 2019.
 - b. Lynn Sherman, as Temporary Manager, has the authority to bill the retail customers, enter into wholesale rate contracts, put in place emergency rates, and perform such other powers and duties as authorized by statute and PUC rules.
2. During the term of the temporary management or receivership, if any, of Blue Cereus, Seguro Water Co., LLC and San Pedro Water Resources (“Wholesalers”) agree to provide treated, potable water to Blue Cereus under the same terms and conditions as set forth in the 2009 wholesale contracts between the Wholesalers and Blue Cereus, provided that:
 - a. Blue Cereus is under the management of either: i) a temporary manager appointed by the PUC; or ii) a receiver appointed via a proceeding brought by the Texas Attorney General;
 - b. Before the entry of the Agreed Temporary Injunction Order, Lynn Sherman and the Wholesalers agree in writing on a temporary wholesale rate to be imposed during the temporary management and/or receivership of the Blue Cereus system, which will amount to and include the following (collectively the “temporary wholesale rate”:
 - i. The temporary wholesale rate established in the Wholesalers’ 2009 contracts with Blue Cereus, plus the \$20 per connection per month emergency rate (and its associated terms and conditions) granted by the Public Utility Commission in its order Establishing Emergency Rates, dated September 17, 2018;
 - ii. Wholesalers’ agreement to forgo the imposition and/or accrual of any interest or penalties for late payment or otherwise during the pendency of the temporary wholesale rate; and
 - iii. Lynn Sherman’s and the Wholesalers agreement to adjust the temporary wholesale rate by no later than May 15, 2019 to reflect a cost of service analysis to be performed by the Wholesalers and agreed to by Mr. Sherman after he is able to evaluate such analysis and assess the revenues and operating costs of the retail system.

The temporary wholesale rate, as adjusted, will remain in effect during the pendency of the temporary management and/or receivership, if any, of Blue Cereus.
3. The parties to the litigation in which the Temporary Injunction is being sought agree and demonstrate through legal documents that they have the legal capacity to bind the entities

they purport to represent (e.g., Seguro Water Co., LLC, San Pedro Water Resources, and Blue Cereus, LLC).

4. Upon the entry of an agreement between the parties to the litigation that resolves all claims between them, the Temporary Injunction will expire and the underlying lawsuit will be dismissed.

TEMPORARY WHOLESALE RATE CONTRACT
BETWEEN SEQURO WATER CO., LLC AND TEMPORARY MANAGER

Seguro Water Co., LLC (“Seguro” or “Wholesaler”) and Lynn Sherman, in his capacity as Temporary Manager of Blue Cereus, LLC (the “Temporary Manager”) (collectively referred to as the “Parties”) agree to enter into this Temporary Wholesale Rate Contract (“Contract”) under the following terms and conditions:

Article 1.

Provision of Wholesale Water

1.01. Provision of Water. Seguro agrees to provide treated, potable wholesale water to Blue Cereus, LLC (Blue Cereus) during the period of time that Lynn Sherman acts as the duly appointed Temporary Manager of Blue Cereus pursuant to an order of the Public Utility Commission of Texas (“PUC”) in Docket No. 48650, or any other applicable docket, under the terms and conditions as set forth in this Contract.

1.02. Prompt Payment. The Temporary Manager agrees to promptly pay Wholesaler the Temporary Wholesale Rates set forth herein together with the emergency rate authorized by the PUC in the Emergency Order Establishing an Emergency Rate, dated September 17, 2018, in Docket No. 48650 (“Emergency Rate Order”). Payment will be deemed promptly paid if paid within the timeframe set out in Paragraph 2.03, below.

1.03. TERM. This Contract commences on the date on which the PUC first appointed a Temporary Manager in PUC Docket No. 48650, or August 30, 2018, and expires on the date on which Lynn Sherman is no longer the Temporary Manager of Blue Cereus (“Term of Contract”), unless expressly modified in writing by the Parties.

1.04. Quality of Water. Wholesaler will provide potable, treated water that meets all applicable federal and state drinking water standards to Blue Cereus at the Point of Delivery. Wholesaler will take all actions it deems reasonably necessary to provide Blue Cereus with water in accordance with this Contract.

1.05. Point of Delivery. The Point of Delivery is located at the delivery side of the 4” Neptune Master Meter for Seguro.

1.06. Quantity of Delivered Water. Wholesaler will supply treated water to Blue Cereus in an amount not to exceed an average daily delivery of 60,000 gallons and not to exceed an average monthly delivery of 2,000,000 gallons and not to exceed 24,000,000 gallons per year, as measured at the Point of Delivery.

1.07. Water Pressure. Wholesaler will deliver the water it provides pursuant to this Contract at the minimum pressure design requirement and flow rate established by Texas Commission on Environmental Regulation (“TCEQ”) 30 TAC § 290.44(d), as measured at the point of delivery.

1.08. Shortage of Supply of Water. With all possible dispatch, Wholesaler shall remedy all temporary or partial failures to deliver water in the agreed quantities due to short-term problems, such as line breaks, pump outages, power outages, or pressure system failures that generally are remedied within twenty-four (24) hours from their occurrence. However, should the amount of water available to Wholesaler or flow rate of delivered water diminish due to a shortage in the water supply due to drought, weather conditions, or Force Majeure, Wholesaler may reduce or limit the supply of water agreed to be provided in this Contract, and shall not be under any obligation to supply more than such diminished amount of water during such water shortage will allow.

1.09. Meter Installation and Maintenance.

- a. Installation and Maintenance. Wholesaler has installed and will continue to furnish, operate, and maintain, at its expense, at its Point of Delivery, the necessary metering equipment, including a meter house or pit, a rate-of-flow controller, and the required devices of standard type for properly measuring the quantity of water delivered by Seguro to Blue Cereus.
- b. Calibration, Inaccuracies and Readings. Such meter shall be calibrated with such frequency as is required by TCEQ regulations, e.g., every three (3) years. Seguro will pay for all costs associated with the maintenance, repair and calibration costs of the master meter. However, should any Party to this agreement request that calibration of such meters occur more frequently than every three (3) years, the requesting Party shall bear the cost of calibrating the metering equipment for that event.

**Article 2.
Temporary Wholesale Rates**

2.01. Temporary Rates for Wholesale Water. The monthly base fee and volumetric rate for wholesale water during the Term of this Contract (the “Temporary Wholesale Rate”), unless otherwise agreed to in writing between the Parties, is:

| Base and Volumetric Rate | 2018 | 2019 |
|---|--|--|
| Base Monthly Fee (flat fee) | \$3400 | \$3400 |
| First 1,000 gallons up to 800,000 gallons delivered | \$1.67 per 1,000 gallons or portion of 1,000 gallons delivered | \$1.71 per 1,000 gallons or portion of 1,000 gallons delivered |
| Above 800,000 gallons up to 1,500,000 gallons delivered | \$2.09 per 1,000 gallons or portion of 1,000 gallons delivered | \$2.13 per 1,000 gallons or portion of 1,000 gallons delivered |
| Above 1,500,000 gallons up to 2,100,000 gallons delivered | \$2.39 per 1,000 gallons or portion of 1,000 gallons delivered | \$2.44 per 1,000 gallons or portion of 1,000 gallons delivered |

| | | |
|-----------------------------------|--|--|
| Above 2,100,000 gallons delivered | \$2.99 per 1,000 gallons or portion of 1,000 gallons delivered | \$3.05 per 1,000 gallons or portion of 1,000 gallons delivered |
|-----------------------------------|--|--|

2.02 Emergency Rate. In addition to the Temporary Wholesale Rates identified above, the Temporary Manager will assess and collect a \$20.00 per connection per month emergency rate for each retail connection, as ordered by the Public Utility Commission in its Emergency Rate Order. The Emergency Rate shall be applied in accordance with that Order, which provides: (a) \$6 per connection per month to be allocated as compensation for the Temporary Manager, (b) an amount equal to the past due interest and late fees owned to Seguro by Blue Cereus each month, and (c) the remainder to be allocated towards the current debt owed to Seguro by Blue Cereus each month.

2.03. Billing and Payment. By the 10th day of each month, Wholesaler will provide a billing statement to the Temporary Manager of the amount of water delivered to Blue Cereus during the preceding month and the payment due under the terms of this Contract. The Temporary Manager shall pay the amount billed on or before the 10th day of the calendar month following the month the Temporary Manager received the billing statement.

Article 3. General Provisions

3.01. Entire Agreement. This Contract contains the complete and entire agreement between the Parties respecting the matters addressed herein and supersedes all prior contracts, negotiations, agreements, representations, and understanding, if any, between the Parties respecting these matters.

3.02 Modification. This Contract may not be modified, discharged, or changed in any respect except by a further agreement in writing duly executed by all the Parties to this Contract.

3.03. Assignment. A Party may not assign this Contract without the prior written consent of the other party, which consent shall not be unreasonably withheld.

3.04. Notices. All notices required or permitted under this Contract shall be in writing and will be delivered to the following persons in person, by regular mail or electronic mail and shall be effective upon receipt:

For Seguro: Seguro Water Company, LLC
 P.O. Box 781248
 San Antonio, Texas 78278

With a copy to:
 Kitty and Wayne Lewis
 210 Kings Way
 Del Rio, TX 78840

For Temporary Manager/Blue Cereus:

3.05. Force Majeure. “Force Majeure” means and refers to acts of Nature or God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of the government of the United States, the State of Texas, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, pumps, canals or other facilities, partial or entire failure of water supply, or any other cause not reasonably within the control of the party claiming such inability. If, by reason of Force Majeure, any party shall be rendered wholly or partially unable to carry out its obligations under this Contract, then that party shall give written notice of the full particulars of such Force Majeure to the other party within a reasonable time after its occurrence. The obligations of the party giving such notice, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability claimed and for no longer period, and that party shall in good faith use its best efforts to remove or overcome such inability with all reasonable dispatch. The provisions of this paragraph shall not relieve a Party of its obligations to make payments for water to Wholesaler under the Contract.

3.06. Representations of Parties. Each of the Parties hereby represents that it has the legal capacity to enter into this Contract.

[remainder of page intentionally left blank]

Executed and Signed this _____ day of _____, 2019, with an Effective Date of August 30, 2018.

Seguro Water Co., LLC:

By: _____

Kitty Lewis

Title: _____

Date: _____

By: _____

Wayne Lewis

Title: _____

Date: _____

By: _____

Robert Ferguson

Title: _____

Date: _____

Lynn Sherman, Temporary Manager
On behalf of Blue Cereus, LLC

Signed: _____

Dated: _____

TEMPORARY WHOLESALE RATE CONTRACT
BETWEEN SAN PEDRO WATER RESOURCES AND TEMPORARY MANAGER

San Pedro Water Resources (“San Pedro” or “Wholesaler”) and Lynn Sherman, in his capacity as Temporary Manager of Blue Cereus, LLC (the “Temporary Manager”) (collectively referred to as the “Parties”) agree to enter into this Temporary Wholesale Rate Contract (“Contract”) under the following terms and conditions:

Article 1.

Provision of Wholesale Water

1.01. Provision of Water. San Pedro agrees to provide treated, potable wholesale water to Blue Cereus, LLC (Blue Cereus) during the period of time that Lynn Sherman acts as the duly appointed Temporary Manager of Blue Cereus pursuant to an order of the Public Utility Commission of Texas (“PUC”) in Docket No. 48650, or any other applicable docket, under the terms and conditions as set forth in this Contract.

1.02. Prompt Payment. The Temporary Manager agrees to promptly pay Wholesaler the Temporary Wholesale Rates set forth herein together with the emergency rate authorized by the PUC in the Emergency Order Establishing an Emergency Rate, dated September 17, 2018, in Docket No. 48650 (“Emergency Rate Order”). Payment will be deemed promptly paid if paid within the timeframe set out in Paragraph 2.03, below.

1.03. TERM. This Contract commences on the date on which the PUC first appointed a Temporary Manager in PUC Docket No. 48650, or August 30, 2018, and expires on the date on which Lynn Sherman is no longer the Temporary Manager of Blue Cereus (“Term of Contract”), unless expressly modified in writing by the Parties.

1.04. Quality of Water. Wholesaler will provide potable, treated water that meets all applicable federal and state drinking water standards to Blue Cereus at the Point of Delivery. Wholesaler will take all actions it deems reasonably necessary to provide Blue Cereus with water in accordance with this Contract.

1.05. Point of Delivery. The Point of Delivery is located at the delivery side of the Master Meter for San Pedro.

1.06. Quantity of Delivered Water. Wholesaler will supply treated water to Blue Cereus in an amount not to exceed an average daily delivery of 60,000 gallons and not to exceed an average monthly delivery of 2,000,000 gallons and not to exceed 24,000,000 gallons per year, as measured at the Point of Delivery.

1.07. Water Pressure. Wholesaler will deliver the water it provides pursuant to this Contract at the minimum pressure design requirement and flow rate established by Texas Commission on Environmental Regulation (“TCEQ”) 30 TAC § 290.44(d).

1.08. Shortage of Supply of Water. With all possible dispatch, Wholesaler shall remedy all temporary or partial failures to deliver water in the agreed quantities due to short-term problems, such as line breaks, pump outages, power outages, or pressure system failures that generally are remedied within twenty-four (24) hours from their occurrence. However, should the amount of water available to Wholesaler or flow rate of delivered water diminish due to a shortage in the water supply due to drought, weather conditions, or Force Majeure, Wholesaler may reduce or limit the supply of water agreed to be provided in this Contract, and shall not be under any obligation to supply more than such diminished amount of water during such water shortage will allow.

1.09. Meter Installation and Maintenance.

- a. Installation and Maintenance. Wholesaler has installed and will continue to furnish, operate, and maintain, at its expense, at its Point of Delivery, the necessary metering equipment, including a meter house or pit, a rate-of-flow controller, and the required devices of standard type for properly measuring the quantity of water delivered by San Pedro to Blue Cereus.
- b. Calibration, Inaccuracies and Readings. Such meter shall be calibrated with such frequency as is required by TCEQ regulations, e.g., every three (3) years. San Pedro will pay for all costs associated with the maintenance, repair and calibration costs of the master meter. However, should any Party to this agreement request that calibration of such meters occur more frequently than every three (3) years, the requesting Party shall bear the cost of calibrating the metering equipment for that event.

**Article 2.
Temporary Wholesale Rates**

2.01. Temporary Rates for Wholesale Water. The monthly base fee and volumetric rate for wholesale water during the Term of this Contract (the “Temporary Wholesale Rate”), unless otherwise agreed to in writing between the Parties, is:

| Base and Volumetric Rate | 2018 | 2019 |
|---|--|--|
| Base Monthly Fee (flat fee) | \$1100 | \$1100 |
| First 1,000 gallons up to 800,000 gallons delivered | \$2.52 per 1,000 gallons or portion of 1,000 gallons delivered | \$2.57 per 1,000 gallons or portion of 1,000 gallons delivered |
| Above 800,000 gallons up to 1,500,000 gallons delivered | \$2.81 per 1,000 gallons or portion of 1,000 gallons delivered | \$2.87 per 1,000 gallons or portion of 1,000 gallons delivered |
| Above 1,500,000 gallons up to 2,100,000 gallons delivered | \$3.51 per 1,000 gallons or portion of 1,000 gallons delivered | \$3.59 per 1,000 gallons or portion of 1,000 gallons delivered |

3.05. Force Majeure. “Force Majeure” means and refers to acts of Nature or God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of the government of the United States, the State of Texas, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, pumps, canals or other facilities, partial or entire failure of water supply, or any other cause not reasonably within the control of the party claiming such inability. If, by reason of Force Majeure, any party shall be rendered wholly or partially unable to carry out its obligations under this Contract, then that party shall give written notice of the full particulars of such Force Majeure to the other party within a reasonable time after its occurrence. The obligations of the party giving such notice, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability claimed and for no longer period, and that party shall in good faith use its best efforts to remove or overcome such inability with all reasonable dispatch. The provisions of this paragraph shall not relieve a Party of its obligations to make payments for water to Wholesaler under the Contract.

3.06. Representations of Parties. Each of the Parties hereby represents that it has the legal capacity to enter into this Contract.

Executed and Signed this _____ day of _____, 2019, with an Effective Date of August 30, 2018.

San Pedro Water Resources:

By: _____
Robert Ferguson

Title: _____

Date: _____

Lynn Sherman, Temporary Manager
On behalf of Blue Cereus, LLC

Signed: _____

Dated: _____