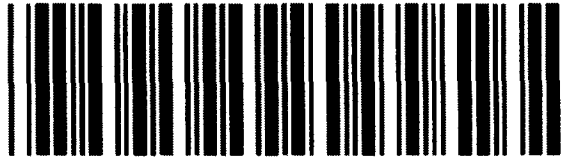


**ATTACHMENT 8**  
**CMRR Bob Ferguson (Notice of Hearing)**  
**In-Transit**

## Ship Request Form

---

**Ship Request #:** 229580

---

**Sender**

**Name:** Tasha Lopez  
**Account #:** 47300 PUC  
**Phone:** 512-936-7401  
**Email:**  
**Company:** Public Utility Commission

**eRR Track:** 9171999991703751938737

---

**Recipient**

**Attn To:** Robert Ferguson  
**Company:** San Pedro Canyon Water Resources  
**Address:** P.O. Box 781248  
  
**City:** San Antonio  
**State:** TX  
**Zip:** 78278  
**Country:** US

---

**Shipping Instructions**

---

**Items**

Units	Description	Code	Origin	Unit Value	Total Value
0 00					

ALERT: MAIL SERVICE IS DISRUPTED IN SOME PARTS OF THE SOUTHEAST U.S. DUE TO HUR...

# USPS Tracking®

FAQs > (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Track Another Package +

Tracking Number: 9171999991703751938737

Remove X

Expected Delivery by

**TUESDAY**

**3** SEPTEMBER  
2019 ⓘ

**In-Transit**

September 3, 2019  
In Transit, Arriving Late

Get Updates ▼

Feedback

---

Text & Email Updates



---

Return Receipt Electronic



---

Tracking History



---

Product Information



---

See Less ^

## Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

**FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)**

Feedback

### The easiest tracking number is the one you don't have to know.

With Informed Delivery®, you never have to type in another tracking number. Sign up to:

- See images\* of incoming mail.
- Automatically track the packages you're expecting.
- Set up email and text alerts so you don't need to enter tracking numbers.
- Enter USPS Delivery Instructions™ for your mail carrier.

### Sign Up

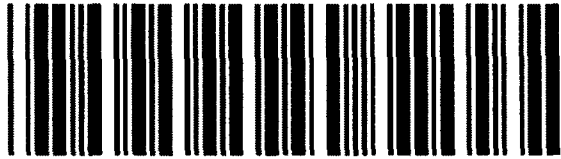
**([https://reg.usps.com/entreg/RegistrationAction\\_input?](https://reg.usps.com/entreg/RegistrationAction_input?app=UspsTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgc)**

**\*NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.**

**ATTACHMENT 9**  
**CMRR Steve Dickman (Notice of Hearing)**  
**Delivered**

## Ship Request Form

---

**Ship Request #:** 229579

---

**Sender**

**Name:** Tasha Lopez  
**Account #:** 47300 PUC  
**Phone:** 512-936-7401  
**Email:**  
**Company:** Public Utility Commission

**eRR Track:** 9171999991703751938720

---

**Recipient**

**Attn To:** Steve Dickman  
**Company:** Law Office of Steve Dickman  
**Address:** 6005 Upvalley Run  
  
**City:** Austin  
**State:** TX  
**Zip:** 78731  
**Country:** US

---

**Shipping Instructions**

---

**Items**

Units	Description	Code	Origin	Unit Value	Total Value
0.00					

**ALERT: MAIL SERVICE IS DISRUPTED IN SOME PARTS OF THE SOUTHEAST U.S. DUE TO HUR...****USPS Tracking®****FAQs >** (<https://www.usps.com/faqs/uspstracking-faqs.htm>)**Track Another Package +****Tracking Number:** 9171999991703751938720

Remove X

Your item was delivered to an individual at the address at 11:04 am on August 31, 2019 in AUSTIN, TX 78731.

**✓ Delivered**

August 31, 2019 at 11:04 am  
Delivered, Left with Individual  
AUSTIN, TX 78731

Feedback

**Get Updates** ✓**Text & Email Updates****Return Receipt Electronic****Tracking History****Product Information****See Less** ^**Can't find what you're looking for?**

Go to our FAQs section to find answers to your tracking questions.

**FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)**

Feedback

## **The easiest tracking number is the one you don't have to know.**

With Informed Delivery®, you never have to type in another tracking number. Sign up to:

- See images\* of incoming mail.
- Automatically track the packages you're expecting.
- Set up email and text alerts so you don't need to enter tracking numbers.
- Enter USPS Delivery Instructions™ for your mail carrier.

### **Sign Up**

**([https://reg.usps.com/entreg/RegistrationAction\\_input?](https://reg.usps.com/entreg/RegistrationAction_input?app=UspsTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgc)**

**\*NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.**



**ATTACHMENT 10**  
**CMRR Kitty Lewis (Notice of Hearing)**  
**In-Transit**

## Ship Request Form

---

**Ship Request #:** 229581

---

**Sender**

**Name:** Tasha Lopez  
**Account #:** 47300 PUC  
**Phone:** 512-936-7401  
**Email:**  
**Company:** Public Utility Commission

**eRR Track:** 9171999991703751938744

---

**Recipient**

**Attn To:** Kitty Lewis  
**Company:** Serguro Water Co , LLC  
**Address:** 210 Kings Way  
  
**City:** Del Rio  
**State:** TX  
**Zip:** 78840  
**Country:** US

---

**Shipping Instructions**

---

**Items**

Units	Description	Code	Origin	Unit Value	Total Value
0 00					

**ALERT: MAIL SERVICE IS DISRUPTED IN SOME PARTS OF THE SOUTHEAST U.S. DUE TO HUR...****USPS Tracking®****FAQs >** (<https://www.usps.com/faqs/uspstracking-faqs.htm>)**Track Another Package +****Tracking Number:** 9171999991703751938744

Remove X

**Expected Delivery by****TUESDAY****3**SEPTEMBER  
2019 ⓘ

8:00pm

**In-Transit**September 3, 2019  
In Transit, Arriving Late**Get Updates** ▼

Feedback

**Text & Email Updates****Return Receipt Electronic****Tracking History****Product Information****See Less** ^

## Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

**FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)**

Feedback

### The easiest tracking number is the one you don't have to know.

With Informed Delivery®, you never have to type in another tracking number. Sign up to:

- See images\* of incoming mail.
- Automatically track the packages you're expecting.
- Set up email and text alerts so you don't need to enter tracking numbers.
- Enter USPS Delivery Instructions™ for your mail carrier.

#### Sign Up

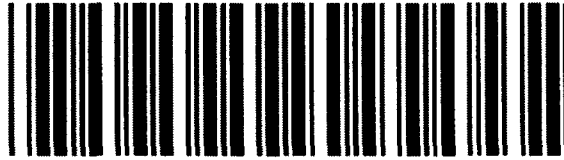
**([https://reg.usps.com/entreg/RegistrationAction\\_input?](https://reg.usps.com/entreg/RegistrationAction_input?app=UspsTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgc)**

**\*NOTE:** Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.

**ATTACHMENT 11**  
**CMRR Celina Romero (Notice of Hearing)**  
**Available for Pick-Up**

## Ship Request Form

---

**Ship Request #:** 229582

---

**Sender**

**Name:** Tasha Lopez  
**Account #:** 47300 PUC  
**Phone:** 512-936-7401  
**Email:**  
**Company:** Public Utility Commission

**eRR Track:** 9171999991703751938751

---

**Recipient**

**Attn To:** Celina Romero and Kerry McGrath  
**Company:** Duggins Wrean Mann and Romero  
**Address:** P.O. Box 1149

**City:** Austin  
**State:** TX  
**Zip:** 78767  
**Country:** US

---

**Shipping Instructions**

---

**Items**

Units	Description	Code	Origin	Unit Value	Total Value
0 00					

ALERT: MAIL SERVICE IS DISRUPTED IN SOME PARTS OF THE SOUTHEAST U.S. DUE TO HUR...



FAQs > (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Track Another Package +

Tracking Number: 9171999991703751938751

Remove X

Your item arrived at the AUSTIN, TX 78767 post office at 10:06 am on September 3, 2019 and is ready for pickup.

Available for Pickup

September 3, 2019 at 10:06 am  
Available for Pickup  
AUSTIN, TX 78767

Feedback

Get Updates ✓

Text & Email Updates	✓
Return Receipt Electronic	✓
Tracking History	✓
Product Information	✓

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

**FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)**

Feedback

## **The easiest tracking number is the one you don't have to know.**

With Informed Delivery®, you never have to type in another tracking number. Sign up to:

- See images\* of incoming mail.
- Automatically track the packages you're expecting.
- Set up email and text alerts so you don't need to enter tracking numbers.
- Enter USPS Delivery Instructions™ for your mail carrier.

### **Sign Up**

**([https://reg.usps.com/entreg/RegistrationAction\\_input?](https://reg.usps.com/entreg/RegistrationAction_input?app=UspsTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgc)**

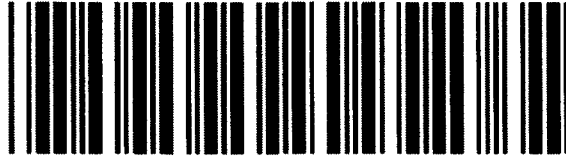
**\*NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.**



**ATTACHMENT 12**  
**CMRR Lynn Sherman (Notice of Hearing)**  
**In-Transit**

## Ship Request Form

---

**Ship Request #:** 229583

---

**Sender**

**Name:** Tasha Lopez  
**Account #:** 47300 PUC  
**Phone:** 512-936-7401  
**Email:**  
**Company:** Public Utility Commission

**eRR Track:** 9171999991703751938768

---

**Recipient**

**Attn To:** Lynn Sherman Law Firm  
**Company:** Lynn Sherman Law Firm  
**Address:** P.o Box 5605  
  
**City:** Austin  
**State:** TX  
**Zip:** 78763  
**Country:** US

---

**Shipping Instructions**

---

**Items**

Units	Description	Code	Origin	Unit Value	Total Value
0 00					

ALERT: MAIL SERVICE IS DISRUPTED IN SOME PARTS OF THE SOUTHEAST U.S. DUE TO HUR...

USPS Tracking®

FAQs > (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Track Another Package +

Tracking Number: 9171999991703751938768

Remove X

Expected Delivery by

TUESDAY

3 SEPTEMBER  
2019 ⓘ

In-Transit

September 3, 2019  
In Transit, Arriving Late

Get Updates ▼

Feedback

Text & Email Updates



Return Receipt Electronic



Tracking History



Product Information



See Less ^

## Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

**FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)**

Feedback

### The easiest tracking number is the one you don't have to know.

With Informed Delivery®, you never have to type in another tracking number. Sign up to:

- See images\* of incoming mail.
- Automatically track the packages you're expecting.
- Set up email and text alerts so you don't need to enter tracking numbers.
- Enter USPS Delivery Instructions™ for your mail carrier.

### Sign Up

**([https://reg.usps.com/entreg/RegistrationAction\\_input?](https://reg.usps.com/entreg/RegistrationAction_input?app=UspsTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgc)**

**\*NOTE:** Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.

## **ATTACHMENT 13**

**Commission Staff's Request for an Emergency Order  
Appointing a Temporary Manager to Blue Cereus, LLC  
Without a Hearing**

DOCKET NO. 48650

RECEIVED

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

§  
§  
§  
§

PUBLIC UTILITY COMMISSION

OF TEXAS

**COMMISSION STAFF'S REQUEST FOR AN EMERGENCY ORDER APPOINTING A  
TEMPORARY MANAGER TO BLUE CEREUS, LLC WITHOUT A HEARING**

NOW COMES the Staff of the Public Utility Commission of Texas (Commission) and files this request for an emergency order appointing a temporary manager to Blue Cereus, LLC (Blue Cereus) without a hearing.

**I. INTRODUCTION**

Blue Cereus has been in temporary management under Commission orders since August 30, 2018.<sup>1</sup> Lynn Sherman has been the temporary manager since February 26, 2019.<sup>2</sup> Blue Cereus has been under temporary management in accordance with TWC §§ 13.4132 and 13.412(f)(1) and (5) as well as with 16 TAC § 24.355(c)(1) and (5).<sup>3</sup>

Lynn Sherman filed a temporary manager's summary report in this docket on August 9, 2019. The report demonstrates that the need for a temporary manager persists. Lynn Sherman recommends, and Commission Staff agrees, that Mr. Sherman should be appointed as the temporary manager of Blue Cereus for an additional 180-day term. After this term, Mr. Sherman intends to recommend that Blue Cereus be placed in receivership if the underlying issues necessitating a temporary manager are not resolved.<sup>4</sup> The current temporary management period expires on August 30, 2019.<sup>5</sup>

For the reasons discussed below, Commission Staff requests that the Executive Director of the Commission issue an emergency order appointing Lynn Sherman as temporary manager for

<sup>1</sup> Docket No. 48650, Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing (Aug. 30, 2018).

<sup>2</sup> 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).

<sup>3</sup> Docket No. 48650, Order Affirming and Modifying Emergency Order, Conclusions of Law Nos. 4-5 (Mar. 15, 2019). (These provisions enumerate actions that constitute abandonment of a utility's operations wherein (1) the utility has failed to pay a bill or obligation to a retail public utility with the result that the utility service provider has issued a notice or discontinuance of necessary services, and (2) failure to obtain an alternative water supply during an outage).

<sup>4</sup> Docket No. 48650, Temporary Manager's Summary Report at 5 (Aug. 9 2019).

<sup>5</sup> Docket No. 48650, Order Affirming and Modifying Emergency Order, Ordering Paragraph No. 2 (Mar. 15, 2019).

Blue Cereus for an additional 180-day term. The Executive Director should issue this emergency order and fix a time for a hearing that is as soon after the issuance of the emergency order as is practicable. In support of this request, Commission Staff respectfully shows the following:

## **II. JURISDICTION AND LEGAL AUTHORITY**

Under Texas Water Code (TWC) § 13.4132 and 16 Texas Administrative Code (TAC) § 24.355, the Commission may authorize a willing person to temporarily manage and operate a utility if the utility has abandoned operations. 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 of discontinuance of necessary services.” A temporary manager appointed under TWC § 13.4132 and 16 TAC §§ 24.355 and 24.357 has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers.

16 TAC § 24.357 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 inventory of all property received.<sup>6</sup> Compensation for the temporary manager comes from the utility revenues and will be set by the Commission at the time of appointment.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 16 TAC § 22.299(d) describes the procedures for

---

<sup>6</sup> 16 TAC § 24.357(e).

<sup>7</sup> 16 TAC § 24.357(f).

<sup>8</sup> 16 TAC § 24.357(g).

<sup>9</sup> 16 TAC § 24.357(h).

<sup>10</sup> See also 16 TAC § 24.357(a).

an emergency order and states that an emergency order to appoint a temporary manager may be issued with or without a hearing, as long as the Commission or Executive Director fixes a place and time for a hearing that is "as soon as practicable after the order is issued." The hearing may be held before the Commission or the State Office of Administrative Hearings (SOAH).<sup>11</sup> Notice of the Commission's action is adequate if the notice is mailed to the last known address of the utility's headquarters.<sup>12</sup>

An application for an emergency order must state whether the requesting person is also seeking or has obtained an emergency order from the Texas Commission on Environmental Quality (TCEQ).<sup>13</sup> It must also contain sufficient information to identify the facility and location to be affected by the order; describe the conditions of the emergency that justify the issuance of the order; allege facts supporting any findings required to appoint a temporary manager; estimate the dates on which the proposed order should begin and end; describe the action sought and the activity proposed to be allowed, mandated, or prohibited; and estimate the dates on which the action sought and activity proposed to be allowed, mandated, or prohibited should begin and end.<sup>14</sup>

Under 16 TAC § 22.298, an emergency order must contain a description of the condition justifying the issuance of the order; any finding of fact required under this subchapter; a statement of the term of the order, including the dates on which it shall begin and end; and a description of the action sought. If the order is issued without a hearing, the order should contain a statement to that effect and the procedure by which a person waives a right to a hearing.<sup>15</sup>

TWC § 13.455 and 16 TAC § 24.14 limit the term of an emergency order to 180 days, but permit the Commission to renew it once for an additional 180 days.

### III. FACTUAL ALLEGATIONS

Blue Cereus is a retail water utility located in Val Verde County, Texas possessing certificate of convenience and necessity No. 11008. Blue Cereus provides service to two public water systems, La Caleta Estates and San Pedro Village,<sup>16</sup> and currently has 102 total active connections.<sup>17</sup> Jimmy Alan Hall is the President of and Registered Agent for Blue Cereus.

---

<sup>11</sup> 16 TAC § 22.299(d).

<sup>12</sup> 16 TAC § 22.293(c).

<sup>13</sup> 16 TAC § 22.295.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> La Caleta Estates, PWS TX2330063 and San Pedro Village, PWS TX2330046.

<sup>17</sup> Docket No. 48650, Temporary Manager's Summary Report at 1 (Aug. 9, 2019).



Blue Cereus receives wholesale water supply under two separate agreements executed in 2009: one with Seguro Water Co., LLC and one with San Pedro Canyon Water Resources (agreements).<sup>18</sup> Seguro Water Co., LLC and San Pedro Canyon Water Resources (collectively, wholesalers) have been the exclusive wholesale water suppliers since 2008 and 2009 for the San Pedro and La Caleta public water systems (PWS), respectively.<sup>19</sup> On June 1, 2018, the wholesalers 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.<sup>20</sup> The notice implied that the wholesalers would discontinue the supply of water to Blue Cereus if payment was not made by the August 30<sup>th</sup> deadline.<sup>21</sup> The wholesalers filed the notice with the Commission on June 11, 2018 in Docket No. 48455.<sup>22</sup> As of August 1, 2018 billing, the wholesalers assert that Blue Cereus owes San Pedro Canyon Water Resources \$48,527.18<sup>23</sup> and Seguro Water Co., LLC \$117,498.22.<sup>24</sup> Blue Cereus did not pay the debt alleged by the wholesalers.

#### IV. PROCEDURAL HISTORY

In response to the notice indicating a threat to Blue Cereus's water supply, the Commission's Executive Director issued an emergency order appointing a temporary manager to Blue Cereus on August 30, 2018.<sup>25</sup> The emergency order named Blue Cereus's operator, Jane Whaley, as the temporary manager for a term of 180 days to end on March 2, 2019.<sup>26</sup> The Commission affirmed the emergency order at a hearing on September 14, 2018,<sup>27</sup> finding that Blue Cereus had abandoned operation of its facilities under TWC § 13.4132 and 16 TAC § 24.142(a)(1)

---

<sup>18</sup> *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).

<sup>19</sup> Docket No. 48650, T.r. at 24:20-28:9 (Hall Direct) (Sep. 14, 2018).

<sup>20</sup> Docket No. 48455, Petition (Jun. 11, 2018).

<sup>21</sup> *See id.* (The Notice states that by August 20, 2018, Blue Cereus "should make arrangements for an alternative water supply or cure the defaults prior to termination of the Seguro and San Pedro Agreements").

<sup>22</sup> *Id.*

<sup>23</sup> Docket No. 48650, Commission Staff's Request for an Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing (Aug. 30, 2018)(Attachment 3, Blue Cereus's Water Bill from San Pedro Canyon Water Resources, dated Aug. 1, 2018).

<sup>24</sup> *Id.* at Attachment 2 (Blue Cereus's Water Bill from Seguro Water Co., LLC, dated Aug. 1, 2018).

<sup>25</sup> Docket No. 48650, Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing (Aug. 30, 2018).

<sup>26</sup> *Id.* at Ordering Paragraph No. 2.

<sup>27</sup> Docket No. 48560, Order Affirming and Modifying Emergency Order, Ordering Paragraphs Nos. 2-7 (Sep. 17, 2018).

and (5)<sup>28</sup> when the wholesalers notified Blue Cereus they would discontinue wholesale water supply to the utility on August 30, 2018 after the utility failed to pay the outstanding wholesale water bills, and when the utility failed to obtain an alternative water supply during an outage.<sup>29</sup>

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, and Blue Cereus made no payments toward the claimed debt.<sup>30</sup> The existence of a verifiable debt to the wholesalers is largely contingent on a dispute regarding the wholesale agreements executed in 2009 that outline the payment scheme for the wholesale supply of water to Blue Cereus. The wholesalers claim the agreements were in effect from their execution in 2009 to December 31, 2018,<sup>31</sup> while Blue Cereus claims the agreements expired by their plain terms on December 31, 2014.<sup>32</sup> Blue Cereus also failed to secure an alternate supply of water during the initial temporary management period.<sup>33</sup>

Because (1) the alleged debt had not been settled between Blue Cereus and the wholesalers by the end of the first temporary management period, (2) no contract existed for the wholesale supply of water to Blue Cereus at that time, and (3) Blue Cereus had not secured an alternate wholesale supply of water, Blue Cereus could not guarantee a continuous and adequate supply of water to its customers once the temporary management period expired. Additionally, Commission Staff identified specific actions by Mr. Hall during the temporary management period demonstrating hostility toward the Commission, which constituted an additional ground for abandonment under TWC §§ 13.4132 and 13.412(f)(6) as well as under 16 TAC § 24.355(c)(6).<sup>34</sup> Commission Staff also identified deficiencies in Ms. Whaley's performance as temporary manager for failing to comply with her responsibilities as outlined in 16 TAC § 24.357.<sup>35</sup> For these reasons, the Commission's Executive Director issued an emergency order extending the term of the

---

<sup>28</sup> 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.

<sup>29</sup> Docket No. 48650, Order Affirming and Modifying Emergency Order, Conclusions of Law Nos. 4 and 5 (Sep. 17, 2018).

<sup>30</sup> Docket No. 48650, Order Affirming and Modifying Emergency Order, Finding of Fact No. 10 (Mar. 15, 2019).

<sup>31</sup> Docket No. 48650, Commission Staff's Request for an Emergency Order Extending the Term of the Commission Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing (Feb. 26, 2019)(Attachment 1, Letter from Jack R. Stern, attorney for Seguro, et al., dated Dec. 28, 2018).

<sup>32</sup> Docket No. 48650, T.r. at 25:13-28:10 (Hall Direct) (Sep. 14, 2018).

<sup>33</sup> Docket No. 48650, Blue Cereus, LLC's Response to Commission Staff's First Set of Requests for Information No. 6 (Feb. 19, 2019).

<sup>34</sup> Docket No. 48650, Commission Staff's Request for an Emergency Order Extending the Term of the Commission Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing at 6-7 (Feb. 26, 2019).

<sup>35</sup> *Id.* at 7-8.

Commission order appointing a temporary manager to Blue Cereus, LLC without a hearing on February 26, 2019.<sup>36</sup> The Commission affirmed the emergency order at a hearing on March 13, 2019 and appointed Lynn Sherman<sup>37</sup> as temporary manager for Blue Cereus for a term of 180 days to end on August 30, 2019.<sup>38</sup>

In its order, the Commission found 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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup>

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

## **V. RECOMMENDATION FOR APPOINTMENT OF A TEMPORARY MANAGER**

The Commission order currently in effect appointing a temporary manager to Blue Cereus expires on August 30, 2019. The Commission should appoint a temporary manager for Blue Cereus because the utility continues to abandon the operation of its facilities under TWC § 13.412(f) and 16 TAC § 24.355.

Blue Cereus and the wholesalers have been unable to resolve the alleged debt owed to the wholesalers, and have been unable to negotiate new agreements for the wholesale supply of water to Blue Cereus. Commission Staff has also confirmed that Blue Cereus has not secured an alternate

---

<sup>36</sup> 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).

<sup>37</sup> Jane Whaley was replaced as temporary manager of Blue Cereus due to noncompliance with her responsibilities as temporary manager under 16 TAC § 24.357. See Docket No. 48650, Order Affirming and Modifying Emergency Order, Findings of Fact Nos. 12-13 (Mar. 15, 2019).

<sup>38</sup> Docket No. 48650, Order Affirming and Modifying Emergency Order, Ordering Paragraph Nos. 1-2 (Mar. 15, 2019).

<sup>39</sup> *Id.* at Conclusion of Law No. 4.

<sup>40</sup> *Id.* at Conclusions of Law Nos. 5-6.

<sup>41</sup> *Id.* at Conclusion of Law No. 13.

wholesale water supply; therefore the discontinuation of water is imminent, and will remain imminent beyond the August 30, 2019 end date for the current period of temporary management.

**A. Lynn Sherman is Actively Negotiating Wholesale Water Contracts**

As temporary manager for Blue Cereus, Lynn Sherman has been in frequent communication with the wholesalers' attorney to negotiate new wholesale water supply contracts; however, he needs additional time to fully investigate a water loss problem he has uncovered, and to negotiate the alleged past-due debt issue.<sup>42</sup>

Mr. Sherman indicates in his temporary manager's summary report that a gross disparity has historically existed, and continues to exist, between the water usage billed by Blue Cereus and the amount of water reportedly supplied by the wholesalers.<sup>43</sup> Mr. Sherman indicates this is largely due to wholesale storage tank leaks and improper wholesale meter placement with respect to water supplied to the San Pedro Village PWS, and due to a lack of appropriate calibration of the wholesale meter with respect to water supplied to the La Caleta Estates PWS.<sup>44</sup> Mr. Sherman additionally indicates that some of the water loss may be due to age of Blue Cereus's retail meters.<sup>45</sup> These disparities must be resolved before Mr. Sherman can agree to the terms of any new wholesale water contracts on behalf of Blue Cereus.<sup>46</sup>

Mr. Sherman additionally indicates that successful negotiation of new wholesale water supply contracts with the current wholesalers will be unlikely without Blue Cereus and the wholesalers coming to an agreement on the alleged past-due debt.<sup>47</sup> Despite significant efforts, Mr. Sherman has been unable to substantiate or disprove the validity of the debt, though he is working with Blue Cereus and the wholesalers to come to a settlement agreement on the issue.<sup>48</sup>

---

<sup>42</sup> Docket No. 48650, Temporary Manager's Summary Report at 3-5 (Aug. 9, 2019).

<sup>43</sup> *Id.* at 3-4.

<sup>44</sup> *Id.* at 3.

<sup>45</sup> *Id.*

<sup>46</sup> *See id.* at 3-4 (Mr. Sherman's Temporary Manager Summary Report indicates that the meter discrepancies have prompted him to pay only the base fees as discussed in the existing 2009 agreements. He has declined to pay volumetric charges until the water loss is resolved, and indicates that he and the wholesalers need to reach an agreement on how to resolve this issue moving forward.)

<sup>47</sup> *See id.* at 5.

<sup>48</sup> *Id.* (Mr. Sherman's Temporary Manager Summary Report indicates that he sees merits on both sides of Blue Cereus's and the wholesalers' "competing legal issues," referencing the past-due debt the wholesalers claim they are owed by Blue Cereus stemming from the 2009 agreements).

### **B. Blue Cereus has Not Secured an Alternate Wholesale Water Supply**

As an alternative to executing new contracts with the current wholesalers, Mr. Sherman has indicated that Jimmy Alan Hall is considering use of a new wholesale water supply. With Mr. Sherman's knowledge and input, Mr. Hall has secured a letter of intent to drill a well for one of Blue Cereus's two public water systems.<sup>49</sup> Mr. Hall has also priced and explored interconnecting with a nearby retail water utility and is looking into alternative well sites for both of Blue Cereus's water systems.<sup>50</sup> As of the filing of this application, however, Blue Cereus has not formally secured an alternate source of wholesale water.

### **C. Lynn Sherman Recommends Further Temporary Management of Blue Cereus**

In his summary report, Lynn Sherman recommends the Commission re-appoint him as temporary manager of Blue Cereus for an additional 180 days to resolve the issues between the utility and the wholesalers with the goal of negotiating new contracts for the wholesale supply of water.<sup>51</sup> However, Mr. Sherman indicates that if he is not successful in this goal, he is prepared to recommend appointment of a receiver for the purpose of placing Blue Cereus into bankruptcy at the end of his term, thus eliminating the past-due debt issue and allowing a new owner to take control of Blue Cereus.<sup>52</sup>

Commission Staff recommends the Commission appoint Lynn Sherman as temporary manager for Blue Cereus. The appointment of Mr. Sherman as temporary manager ensures that Blue Cereus's customers receive continuous and adequate service while Blue Cereus actively works toward securing an alternate source of wholesale water or toward negotiating new contracts with the current wholesalers. The wholesalers have committed to work with the temporary manager and to continue to provide wholesale water to the utility as they resolve their contract disputes with Blue Cereus. Commission Staff does not anticipate the need to appoint a receiver if Blue Cereus is able to negotiate new agreements with the wholesalers, or if Blue Cereus secures an alternate wholesale water provider.

An order appointing a temporary manager should begin immediately and should be in effect for 180 days to end on February 10, 2020 or until the Commission orders otherwise. The order should include in its terms a requirement for the temporary manager to employ a licensed

---

<sup>49</sup> *Id.* at 5.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

operator and to comply with TCEQ rules. A draft proposed order identifying Lynn Sherman as temporary manager and the terms of the appointment is included in this application.

16 TAC § 24.357 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. The cost of operating the utility and the water system often exceeds the revenues collected. Additionally, Staff understands that TCEQ routinely waived this financial assurance requirement.

## VI. SUBSEQUENT HEARING

Under 16 TAC § 24.357, an emergency order issued without a hearing is not subject to the requirements of the Administrative Procedure Act (APA).<sup>53</sup> If an emergency order is issued without a hearing, "the commission or executive director shall set a time and place for a hearing to be held before the commission or SOAH to affirm, modify, or set aside the order as soon as practicable after the order is issued."<sup>54</sup> Under 16 TAC § 22.299(b), the hearing held to affirm, modify, or set aside an emergency order is subject to the APA. In accordance with 16 TAC § 22.297(d)(2), Commission Staff will provide notice of the opportunity to participate in a hearing to affirm, modify, or set aside the emergency order issued by the Commission no later than the tenth day before the date of the hearing. This notice will also include information on how an affected person may waive the right to a hearing.

Commission Staff will provide a copy of this request by certified mail, return receipt requested, to the last known address of Blue Cereus in the Commission's records:

Blue Cereus's Last Known Address in Commission Records:

Blue Cereus, LLC  
4600 Mueller Blvd., Ste. 2121  
Austin, Texas 78723

cc: Steve Dickman  
Law Office of Steve Dickman  
6005 Upvalley Run  
Austin, TX 78731

Also via email: sdickmanlaw@att.net

---

<sup>53</sup> Administrative Procedure Act, Tex. Gov't Code §§ 2001.001-.902 (APA).

<sup>54</sup> 16 TAC § 22.299(d).

Commission Staff will also provide a copy of this request by certified mail, return receipt requested, to San Pedro Canyon Water Resources and Seguro Water Co., LLC:

Robert Ferguson  
San Pedro Canyon Water Resources  
P.O. Box 781248  
San Antonio, Texas 78278

Kitty Lewis  
Seguro Water Co., LLC  
210 Kings Way  
Del Rio, Texas 78840

cc: Celina Romero and Kerry McGrath  
Duggins, Wren, Mann, and Romero  
P.O. Box 1149  
Austin, Texas 78767

Also via email: [cromero@dwmrlaw.com](mailto:cromero@dwmrlaw.com)

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

Lynn Sherman Law Firm  
P.O. Box 5605  
Austin, Texas 78763

Also via email: [lsherman@h2otx.com](mailto:lsherman@h2otx.com)

WHEREFORE, PREMISES CONSIDERED, Commission Staff respectfully requests that the Executive Director grant Commission Staff's request for an emergency order appointing a temporary manager to Blue Cereus, LLC without a hearing.

Respectfully Submitted,



Alaina Zermeno  
Attorney, Oversight and Enforcement Division  
State Bar No. 24098656  
(512) 936-7385 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 August 14, 2019, a copy of this document was sent certified mail, return receipt requested, to the last known address of the headquarters of Blue Cereus in the Commission's records and to San Pedro Canyon Water Resources, Seguro Water Co., I.L.C, and to Lynn Sherman:

Blue Cereus's Last Known Address in Commission Records:

Blue Cereus, LLC  
4600 Mueller Blvd., Ste. 2121  
Austin, Texas 78723

cc: Steve Dickman  
Law Office of Steve Dickman  
6005 Upvalley Run  
Austin, TX 78731

Also via email: [sdickmanlaw@att.net](mailto:sdickmanlaw@att.net)

Addresses for San Pedro Canyon Water Resources and Seguro Water Co, LLC:

Robert Ferguson  
San Pedro Canyon Water Resources  
P.O. Box 781248  
San Antonio, Texas 78278



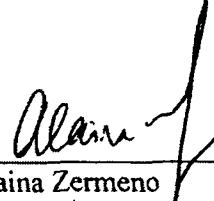
Kitty Lewis  
Seguro Water Co., LLC  
210 Kings Way  
Del Rio, Texas 78840

cc: Celina Romero and Kerry McGrath  
Duggins, Wren, Mann, and Romero  
P.O. Box 1149  
Austin, Texas 78767

Also via email: cromero@dwmrlaw.com

Address for Lynn Sherman:

Lynn Sherman Law Firm  
P.O. Box 5605  
Austin, Texas 78763

  
Alaina Zermeno

**ATTACHMENT 1**  
**Proposed Emergency Order**

**PUC DOCKET NO. 48650**

<b>PETITION FOR AN ORDER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>APPOINTING A TEMPORARY</b>	<b>§</b>	
<b>MANAGER TO BLUE CEREUS, LLC</b>	<b>§</b>	<b>OF TEXAS</b>
<b>WITHOUT A HEARING</b>	<b>§</b>	

**PROPOSED 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,<sup>1</sup> 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, 7<sup>th</sup> 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.

---

<sup>1</sup> 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.

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.<sup>2</sup>
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.<sup>3</sup> The Commission later affirmed the emergency order in a hearing held on September 14, 2018.<sup>4</sup>
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)<sup>5</sup> 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.<sup>6</sup>
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

---

<sup>2</sup> *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).

<sup>3</sup> Emergency Order (Aug. 30, 2018)

<sup>4</sup> Order Affirming and Modifying Emergency Order (Sept. 14, 2018).

<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup>
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.<sup>8</sup>
  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.<sup>9</sup> 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.<sup>10</sup>
  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.<sup>11</sup>
  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.<sup>12</sup>

---

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

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

<sup>9</sup> 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).

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

<sup>11</sup> *Id.* at Conclusion of Law No. 4

<sup>12</sup> *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.<sup>13</sup>
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.<sup>14</sup>
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.<sup>15</sup>
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.<sup>16</sup>
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.<sup>17</sup>
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:

---

<sup>13</sup> *Id.* at Conclusion of Law No. 13.

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

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 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 14<sup>th</sup> day of August 2019.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

**JOHN PAUL URBAN, EXECUTIVE DIRECTOR**

**ATTACHMENT 14**  
**Signed Emergency Order Appointing a Temporary  
Manager to Blue Cereus, LLC Without a Hearing**

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

§  
§  
§  
§

**RECEIVED**  
**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,<sup>1</sup> 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, 7<sup>th</sup> 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.

<sup>1</sup> 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.

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.<sup>2</sup>
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.<sup>3</sup> The Commission later affirmed the emergency order in a hearing held on September 14, 2018.<sup>4</sup>
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)<sup>5</sup> 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.<sup>6</sup>
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

---

<sup>2</sup> *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).

<sup>3</sup> Emergency Order (Aug. 30, 2018)

<sup>4</sup> Order Affirming and Modifying Emergency Order (Sept. 14, 2018).

<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup>
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.<sup>8</sup>
  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.<sup>9</sup> 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.<sup>10</sup>
  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.<sup>11</sup>
  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.<sup>12</sup>

---

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

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

<sup>9</sup> 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).

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

<sup>11</sup> *Id.* at Conclusion of Law No. 4

<sup>12</sup> *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.<sup>13</sup>
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.<sup>14</sup>
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.<sup>15</sup>
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.<sup>16</sup>
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.<sup>17</sup>
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:

---

<sup>13</sup> *Id.* at Conclusion of Law No. 13.

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

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 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 14<sup>th</sup> day of August 2019.**

**PUBLIC UTILITY COMMISSION OF TEXAS**



**JOHN PAUL URBAN, EXECUTIVE DIRECTOR**

**ATTACHMENT 15**  
**Notice of Hearing**

DOCKET NO. 48650

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

§  
§  
§  
§

PUBLIC UTILITY COMMISSION  
OF TEXAS

RECEIVED  
2019 AUG 30 AM 11:41  
PUBLIC UTILITY COMMISSION  
FILING CLERK

**COMMISSION STAFF'S NOTICE OF HEARING**

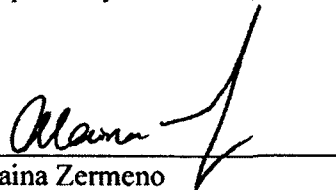
NOW COMES the Staff of the Public Utility Commission of Texas (Commission Staff) and files this Notice of Hearing.

On August 19, 2019, a Commission ALJ issued Order No. 1 in the above-styled case, requiring Commission Staff to file and serve upon Blue Cereus, LLC a notice of hearing that complies with the requirements of Texas Government Code §§ 2001.051-.052 and 16 TAC § 22.297(d)(2).

Under Texas Government Code §§ 2001.051(1) and 16 TAC § 22.297(d)(2), proper notice of hearing must be provided no less than 10 days prior to the date of the hearing. The hearing is set for September 12, 2019.

On August 30, 2019, Commission Staff sent via certified mail, return receipt requested, a copy of this notice and the attached Notice of Hearing.

Respectfully Submitted,



Alaina Zermeno  
Attorney – Oversight and Enforcement Division  
State Bar No. 24098656  
(512) 936-7385 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 August 30, 2019, a copy of this document was sent certified mail, return receipt requested, to the last known address of the headquarters of Blue Cereus in the Commission's records:

Blue Cereus, LLC  
4600 Mueller Blvd., Ste. 2121  
Austin, Texas 78723

cc: Steve Dickman  
Law Office of Steve Dickman  
6005 Upvalley Run  
Austin, TX 78731

Also via email: [sdickmanlaw@att.net](mailto:sdickmanlaw@att.net)

Commission Staff also provided a copy of this request by certified mail, return receipt requested, to San Pedro Canyon Water Resources and Seguro Water Co., LLC:

Robert Ferguson  
San Pedro Canyon Water Resources  
P.O. Box 781248  
San Antonio, Texas 78278

Kitty Lewis  
Seguro Water Co., LLC  
210 Kings Way  
Del Rio, Texas 78840


cc: Celina Romero and Kerry McGrath  
Duggins, Wren, Mann, and Romero  
P.O. Box 1149  
Austin, Texas 78767

Also via email: [cromero@dwmrlaw.com](mailto:cromero@dwmrlaw.com)

Commission Staff also provided a copy of this request by certified mail, return receipt requested, to Lynn Sherman:

Lynn Sherman Law Firm  
P.O Box 5605  
Austin, Texas 78763

Also via email: lsherman@h2otx.com

  
Alaina Zermeno

**DeAnn T. Walker**  
Chairman

**Arthur C. D'Andrea**  
Commissioner

**Shelly Botkin**  
Commissioner

**John Paul Urban**  
Executive Director



**Greg Abbott**  
Governor

## ***Public Utility Commission of Texas***

**DOCKET NO. 48650**

### **NOTICE OF HEARING ON EMERGENCY ORDER**

**APPLICATION:** Commission Staff's Request for an Emergency Order Appointing a Temporary Manager to Blue cereus, LLC Without a Hearing.

The Public Utility Commission of Texas (Commission) Staff applied to the Commission for an order appointing a temporary manager to manage the retail water utility services and operations of Blue Cereus, LLC located in Val Verde County. Notice of the petition was mailed on August 14, 2019, to the last known address of Blue Cereus, LLC's headquarters and to the additional addresses listed in Commission Staff's petition.

The Commission has the legal authority to hold hearings and to appoint a temporary manager under Texas Water Code (TWC) §§ 13.041, 13.412, and 13.4132 as well as 16 Texas Administrative Code (TAC) §§ 24.355 and 24.357.

The Emergency Order was issued without a hearing under the authority of TWC §§ 13.4132 and 13.451. A copy of the Emergency Order is provided with this Notice. TWC § 13.451 authorizes the Commission to issue an emergency order after providing notice and opportunity for a hearing that the Commission considers practicable under the circumstances, or without notice or opportunity for a hearing. If the Commission considers the provision of notice and opportunity for a hearing practicable, the Commission shall provide notice not later than the 10<sup>th</sup> day before the date set for the hearing. Under TWC § 5.504 if an emergency order is issued without a hearing, the order shall set a time and place for a hearing to affirm, modify, or to set aside the emergency order to be held before the Commission or its designee as soon as practicable after the order is issued.

**EMERGENCY ORDER HEARING:** In accordance with TWC § 13.451, the Public Utility Commission of Texas will convene a hearing the Emergency Order at the Commission's offices at 9:30 a.m., Thursday, September 12, 2019, 1701 N. Congress Avenue, Austin, Texas 78701.

The Commission will consider evidence on whether to affirm, modify, or set aside the Emergency Order. The hearing will be conducted in accordance with Chapter 2001 of the Texas Government Code, TWC chapter 13, and Commission rules in 16 Texas Administrative Code chapter 24.

*Persons planning to attend this hearing who have disabilities requiring auxiliary aids or services should notify the Commission as far in advance as possible so that appropriate arrangements can be made. Requests can be made by mail, telephone or in person to the Commission's Office of Customer Protection, 1701 N. Congress Ave., Austin, Texas 78701, phone number (512) 936-7150 or (512) 936-7136 for the teletypewriter for the deaf.*



Printed on recycled paper

An Equal Opportunity Employer

1701 N. Congress Avenue PO Box 13326 Austin, TX 78711 512/936-7000 Fax: 512/936-7003 web site: [www.puc.texas.gov](http://www.puc.texas.gov)

PUC DOCKET NO. 48650 RECEIVED

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

§  
§  
§  
§

PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY OF TEXAS  
FILING OFFICE

**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,<sup>1</sup> 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, 7<sup>th</sup> 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.

<sup>1</sup> 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

0001

0005

000154

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.<sup>2</sup>
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.<sup>3</sup> The Commission later affirmed the emergency order in a hearing held on September 14, 2018.<sup>4</sup>
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)<sup>5</sup> 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.<sup>6</sup>
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

---

<sup>2</sup> *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).

<sup>3</sup> Emergency Order (Aug. 30, 2018)

<sup>4</sup> Order Affirming and Modifying Emergency Order (Sept. 14, 2018).

<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>
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.<sup>9</sup> 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.<sup>10</sup>
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.<sup>11</sup>
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.<sup>12</sup>

---

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

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

<sup>9</sup> 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).

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

<sup>11</sup> *Id.* at Conclusion of Law No. 4

<sup>12</sup> *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.<sup>13</sup>
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.<sup>14</sup>
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.<sup>15</sup>
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.<sup>16</sup>
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.<sup>17</sup>
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:

---

<sup>13</sup> *Id.* at Conclusion of Law No. 13.

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

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 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 14<sup>th</sup> day of August 2019.**

**PUBLIC UTILITY COMMISSION OF TEXAS**



**JOHN PAUL URBAN, EXECUTIVE DIRECTOR**