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PUBLIC UTILITY COMMISSION
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OPEN MEETING COVER SHEET

COMMISSIONER MEMORANDUM

MEETING DATE: February 27, 2020

DATE DELIVERED: February 26, 2020

AGENDA ITEM NO.: 21

CAPTION: Docket No. 48650 – Commission Staff’s
Petition for Emergency Order Appointing a
Temporary Manager to Blue Cereus, LLC
Under Texas Water Code § 13.4132 and 16
TAC § 24.142

DESCRIPTION: Chairman Walker Memorandum

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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

TO: Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

All Parties of Record (*via electronic transmission*)

FROM: Lorenzo Z Garcia
Commission Advising

A handwritten signature in black ink, appearing to be "LZG", written over the printed name "Lorenzo Z Garcia".

RE: *Commission Staff's Petition for Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC Under Texas Water Code § 13.4132 and 16 TAC § 24.142, Docket No. 48650, Commissioner Memo, February 27, 2020 Open Meeting, Item No. 21.*

DATE: February 26, 2020

Please find enclosed a memorandum by Chairman Walker regarding the above-referenced docket. No other commissioner will file a memorandum in this docket.

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Public Utility Commission of Texas

Memorandum

TO: Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

FROM: Chairman DeAnn T. Walker *DTW*

DATE: February 26, 2020

RE: Open Meeting of February 27, 2020 – Agenda Item No. 21
Docket No. 48650 – *Commission Staff's Petition for Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC Under Texas Water Code § 13.4132 and 16 TAC § 24.142*

On February 10, 2020, the executive director issued, without a hearing, an emergency order to extend Lynn Sherman's temporary management of Blue Cereus for a term of 180 days. For emergency orders issued without a hearing, the Commission must affirm, modify, or set aside the emergency order in accordance with Texas Water Code (TWC) § 13.454. As detailed below, I recommend that the Commission set aside the emergency order and direct the Commission Staff to file an application for the appointment of a temporary manager for Blue Cereus under TWC § 13.4132(a) and Texas Administrative Code (TAC) § 24.355(a).

Under TWC § 13.455, the Commission may renew an emergency order once for a period not to exceed 180 days. Mr. Sherman was appointed to an initial 180-day term as temporary manager for Blue Cereus by an emergency order filed on February 26, 2019. Mr. Sherman was appointed to a second 180-day term by an emergency order filed on August 14, 2019. Mr. Sherman's second term expired on February 10, 2020.

The August 14, 2019 emergency order was effectively a renewal of the initial emergency order. If the Commission affirms the February 10, 2020 emergency order, then the Commission will have authorized a second renewal of the initial emergency order, which I believe is contrary to the plain language of TWC § 13.455. I do not believe that this section can be read to allow the use of an emergency order to appoint the same temporary manager after an emergency order appointing that manager has already been renewed.

Commission Staff recommends that the Commission appoint Mr. Sherman, again, to serve as temporary manager of Blue Cereus. If Mr. Sherman is willing to continue to serve as temporary manager for Blue Cereus, I support his continued appointment. But the Commission must appoint him in a manner that complies with the Texas Water Code. Thus, I believe that Mr. Sherman should be appointed as temporary manager for Blue Cereus under TWC § 13.4132(a) and 16 Texas Administrative Code § 24.355(a). These statutory and rule provisions allow for the appointment of a temporary manager outside of an emergency order and, therefore, are not subject to the renewal and time limitations in TWC § 13.455.

I look forward to discussing this matter with you at the open meeting.