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

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§ PUBLIC UTILITY COMMISSION
§ FILING CLERK

OF TEXAS

ORDER SETTING ASIDE EMERGENCY ORDER

This Order addresses the February 10, 2020 emergency order issued by the executive director appointing Lynn Sherman as temporary manager for Blue Cereus, LLC. Before issuing the February 10, 2020 emergency order, the executive director had previously appointed Mr. Sherman to two consecutive 180-day terms via an initial February 26, 2019 emergency order and a second August 14, 2019 emergency order. The Commission may only renew an emergency order once for a period not to exceed 180 days.¹ Accordingly, the Commission sets aside the emergency order issued by the executive director appointing Mr. Sherman as the temporary manager for Blue Cereus.

I. Findings of Fact

The Commission makes the following findings of fact.

Respondent

1. Blue Cereus holds certificate of convenience and necessity (CCN) number 11088 and operates two public water systems.
2. Blue Cereus owns and operates for compensation facilities and equipment for the transmission, storage, distribution, sale, or provision of potable water service to the public.
3. Blue Cereus currently serves approximately 100 connections in Val Verde County, Texas.
4. Seguro Water Co., LLC and San Pedro Canyon Water Resources are the wholesale water suppliers for Blue Cereus.

Background

5. On February 26, 2019, the Commission's executive director issued an emergency order appointing a temporary manager to Blue Cereus without a hearing. The emergency order

¹ Tex. Water Code Ann. §§ 13.455 (West 2020); 16 Tex. Admin. Code § 24.14(g).

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appointed Lynn Sherman as temporary manager for a term of 180 days to end on August 30, 2019.

6. The Commission affirmed the February 26, 2019 emergency order at a hearing on March 13, 2019, concluding that Blue Cereus continued to abandon the operation of its facilities under Texas Water Code (TWC) § 13.412(f)(1) and 16 Texas Administrative Code (TAC) § 24.355(c)(1) by not resolving a conflict with the wholesalers regarding an alleged past-due balance despite the wholesalers continued warnings that they would discontinue water supply absent payment.
7. The Commission further concluded 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.
8. On August 14, 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. The emergency order appointed Lynn Sherman as temporary manager for a second term of 180 days to end on February 10, 2020.
9. The Commission affirmed the August 14, 2019 emergency order on October 3, 2019, concluding that Blue Cereus continued to abandon the operation of its facilities under TWC § 13.4132 and 16 TAC § 24.355(c)(1) for failing to resolve its conflict with the wholesalers regarding the alleged past-due balance despite the wholesalers continued warnings that they would discontinue water supply absent payment.
10. The Commission further concluded that Blue Cereus continued to abandon the operation of its facilities under TWC § 13.412(f)(5) and 16 TAC § 24.344(c)(5) by failing to obtain an alternative water supply during an outage.

Emergency Order

11. On February 10, 2020, Commission Staff filed a request for an emergency order appointing a temporary manager to Blue Cereus without a hearing. Commission Staff requested that

the Commission reappoint Lynn Sherman as temporary manager for a third 180-day term because the initial grounds for abandonment persist.

12. Commission Staff did not seek, nor did it obtain, an emergency order from the Texas Commission on Environmental Quality.
13. On February 10, 2020, 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. The emergency order appointed Lynn Sherman as temporary manager for a third term of 180 days to end on August 10, 2020.
14. In Order No. 3 filed on February 12, 2020, the administrative law judge set a hearing to affirm, modify, or set aside the February 10, 2020 emergency order for the Commission's February 27, 2020 open meeting.

Notice

15. On February 10, 2020, Commission Staff sent a copy of the request for an emergency order appointing a temporary manager to Blue Cereus without a hearing by certified mail to Blue Cereus, the wholesalers, and Mr. Sherman.
16. On February 14, 2020, Commission Staff filed a notice of hearing stating that on the same day it sent notice of the hearing to affirm, modify, or set aside the February 10, 2020 emergency order by certified mail to Blue Cereus, the wholesalers, and Mr. Sherman.

Intervenors

17. No motions to intervene were filed in this proceeding.

Hearing

18. On February 20, 2020, Commission Staff and Blue Cereus filed an agreed response to Order No. 3 in which the two parties stated that they waived their right to a hearing on the merits of the February 10, 2020 emergency order. Therefore, the Commission did not convene a hearing to affirm, modify, or set aside the February 10, 2020 emergency order at the March 12, 2020 open meeting.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this matter under Texas Water Code (TWC) §§ 13.4132 and 13.454 and 16 Texas Administrative Code (TAC) §§ 24.355 and 24.357.
2. Under TWC § 13.4132(a)(1), the Commission may authorize a willing person to temporarily manage and operate a utility that has discontinued or abandoned operations after providing to the utility notice and an opportunity to be heard by the commissioners at a Commission meeting.
3. Under TWC § 13.451(b), the Commission may delegate to the executive director the authority to issue emergency orders under subchapter K-1 of the Texas Water Code.
4. Under TWC § 13.454, if the executive director issues an emergency order without a hearing, then the Commission must hold a hearing to affirm, modify, or set aside the emergency order unless the person affected by the order waives the right to a hearing.
5. Under TWC § 13.454(a), the person affected by the emergency order is Blue Cereus.
6. A hearing to affirm, modify, or set aside the February 10, 2020 emergency order was not required because Commission Staff and Blue Cereus waived their right to a hearing under TWC § 13.454(a).
7. Under TWC § 13.455 and 16 TAC § 24.14(f), the Commission may renew an emergency order once for a period not to exceed 180 days.
8. The Commission may not affirm the February 28, 2020 emergency order in accordance with TWC § 13.455 and 16 TAC § 24.14(g).

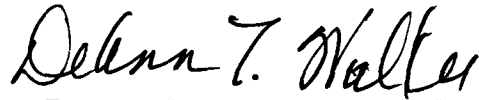
III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.


1. The Commission sets aside the February 10, 2020 emergency order issued by the executive director appointing Lynn Sherman as the temporary manager for Blue Cereus.
2. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the 10th day of March 2020.

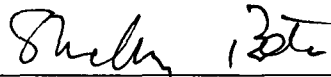
PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER

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