

Control Number: 50605



Item Number: 13

Addendum StartPage: 0

PETITION FOR AN ORDER
 APPOINTING A TEMPORARY
 MANAGER TO BLUE CEREUS, LLC

§
 §
 §

2020 MAR 16 PM 3:49
 PUBLIC UTILITY COMMISSION
 PUBLIC UTILITY COMMISSION
 FILING CLERK
 OF TEXAS

ORDER APPOINTING A TEMPORARY MANAGER

This Order addresses Commission Staff's petition to appoint Lynn Sherman as temporary manager for Blue Cereus, LLC. The Commission approves the petition to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Respondent and Interested Parties

1. Blue Cereus is a domestic limited liability company registered with the Texas secretary of state on April 19, 2006 under filing number 800643728.
2. Blue Cereus is a retail public water utility with two public water systems that serve approximately 100 connections in Val Verde County under certificate of convenience and necessity (CCN) number 11088.
3. Seguro Water Co., LLC and San Pedro Canyon Water Resources (collectively, the wholesalers) are the wholesale water suppliers for Blue Cereus.

Abandonment

4. On June 1, 2018, the wholesalers sent Blue Cereus a notice of default and notice of termination notifying Blue Cereus that their agreements for the wholesale provision of water would terminate on August 30, 2018, absent arrangements for payment of alleged delinquent bills.
5. The wholesalers filed the notice with the Commission on June 11, 2018 in Docket No. 48455.¹

¹ Request of Seguro Water Co., LLC and San Pedro Canyon Water Resources to Place Blue Cereus, LLC Under Temporary Management or Supervision, Docket No. 48455, Petition (Jun. 11, 2018).

6. Blue Cereus and the wholesalers have not resolved their contract disputes, and the wholesalers intend to shut off the water supply to Blue Cereus.
7. Blue Cereus has no other option for wholesale water supply; therefore, the discontinuation of water is imminent.
8. Blue Cereus is, and continues to be, abandoned for not having resolved the alleged past-due debt with the wholesalers.
9. Blue Cereus is, and continues to be, abandoned for failing to obtain an alternate water supply during an outage, as the wholesalers continue to threaten the wholesale water supply to Blue Cereus.

History of Temporary Management

10. 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.²
11. Ms. Whaley's term of temporary management was for 180 days, beginning on August 30, 2018 and ending on March 2, 2019.³
12. The Commission later affirmed the emergency order following a hearing held on September 14, 2018.⁴
13. In affirming the emergency order, the Commission found that Blue Cereus had abandoned the operation of its facilities under Texas Water Code (TWC) § 13.4132 and under 16 Texas Administrative Code (TAC) § 24.142(a)(1)⁵ when the wholesalers notified Blue Cereus that they would discontinue wholesale water supply on August 30, 2018 after Blue Cereus failed to pay its water bills.⁶

² *Petition for an Order Appointing a Temporary Manager to Blue Cereus, LLC, Without a Hearing*, Docket No. 48650, Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC, Without a Hearing (Aug. 30, 2018).

³ *Id.* at Ordering Paragraph No. 2.

⁴ Docket No. 48650, Order Affirming and Modifying Emergency Order (Sep. 17, 2018).

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

⁶ Docket No. 48650, Order Affirming and Modifying Emergency Order (Sep. 17, 2018).

14. The Commission also found that Blue Cereus had abandoned the operation of its facilities under TWC § 13.4132 and 16 TAC § 24.142(a)(1) when it failed to obtain an alternative water supply during an outage.⁷
15. 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.
16. The existence of a verifiable debt owed by Blue Cereus to the wholesalers is contingent on a dispute regarding previously executed wholesale agreements. The wholesalers claim 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, 2014.⁸
17. During the initial 180 days of temporary management, Blue Cereus and the wholesalers did not execute any new contracts for the wholesale supply of water to Blue Cereus, and Blue Cereus did not secure an alternate source of wholesale water.
18. By the end of the initial temporary management period, Blue Cereus could not guarantee a continuous and adequate supply of water to its customers.
19. On February 26, 2019, the executive director of the Commission issued an emergency order extending the term of the Commission's order appointing a temporary manager to Blue Cereus without a hearing.⁹ The emergency order replaced Ms. Whaley by appointing Lynn Sherman as temporary manager for a term of 180 days to end on August 30, 2019.
20. The Commission affirmed the emergency order following a hearing convened during the March 13, 2019 open meeting. 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.¹⁰

⁷ *Id.* at Conclusion of Law No. 5.

⁸ Docket No. 48650, Tr. at 25:13–28:10 (Hall Direct) (Sep. 14, 2018).

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

¹⁰ Docket No. 48650, Order Affirming and Modifying Emergency Order, Conclusion of Law No. 4 (Mar. 15, 2019).

21. 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 alternate water supply during an outage.¹¹
22. Near the end of Mr. Sherman's 180-day term, he filed a temporary manager's summary report indicating that the underlying grounds of abandonment persisted.¹² Mr. Sherman recommended that the Commission extend his temporary manager appointment for an additional 180-day term.¹³
23. On August 14, 2019, the executive director of the Commission issued a new emergency order appointing Mr. Sherman as temporary manager to Blue Cereus for another 180 days.¹⁴
24. The Commission affirmed the emergency order after a hearing convened during the September 12, 2019 open meeting.¹⁵ The Commission found that the initial grounds for abandonment continued to exist.¹⁶ The temporary management period was set to expire on February 10, 2020, unless the Commission ordered otherwise.¹⁷

Conditions Leading to Current Temporary Management

25. Since Mr. Sherman was reappointed temporary manager of Blue Cereus, the owner of Blue Cereus has filed Class B rate and tariff change applications for both public water systems under Blue Cereus's CCN.¹⁸

¹¹ *Id.* at Conclusion of Law No. 5.

¹² Docket No. 48650, Temporary Manager's Summary Report (Aug. 9, 2019).

¹³ *Id.*

¹⁴ Docket No. 48650, Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing (Aug. 14, 2019).

¹⁵ Docket No. 48650, Order Affirming and Modifying Emergency Order (Oct. 2, 2019).

¹⁶ *Id.* at Conclusions of Law Nos. 4–5.

¹⁷ *Id.* at Ordering Paragraph No. 2.

¹⁸ *Application of Blue Cereus, LLC for Authority to Change Rates*, Docket No. 50239, Class B Rate/Tariff Change Applications (Jan. 21, 2020).

26. Blue Cereus's rate and tariff change applications propose a \$2.00 per 1,000 gallon pass-through charge to cover wholesale water costs.¹⁹
27. On November 12, 2019, the wholesalers filed a letter into Docket No. 48650 that states the following: the wholesalers are willing to work with Blue Cereus's temporary manager and Commission Staff to develop a wholesale rate for water that is fair and reasonable, and to allow that cost of water to be added to Blue Cereus's rate applications;²⁰ that, in the absence of such remedies, the wholesalers have no option but to cease the provision of wholesale water to Blue Cereus;²¹ and the wholesalers will await the outcome of the retail rate proceeding to decide whether they will stop supplying water to Blue Cereus.²²
28. The retail rate case is currently pending referral to the State Office of Administrative Hearings.²³
29. On February 10, 2020, the executive director of the Commission issued an emergency order extending the term of the Commission order appointing a temporary manager to Blue Cereus without a hearing.²⁴
30. The executive director's order set a hearing to affirm, modify, or set aside the emergency order for the Commission open meeting scheduled on February 27, 2020.

Request for Temporary Management

31. At the February 27, 2020 open meeting, the Commission did not affirm, modify, or set aside the emergency order. Instead, the Commission recommended that Commission Staff file a non-emergency request for appointment of a temporary manager to Blue Cereus while the executive director's emergency order was still in effect.

¹⁹ Docket No. 50239, Notice of Proposed Rate Change to be Provided to Ratepayers Pursuant to Texas Water Code §§ 13.1871 and 13.18715 (Jan. 21, 2020).

²⁰ Docket No. 48650, Update from Seguro Water Company, LLC and San Pedro Canyon Water Resources at 3 (Nov. 12, 2019).

²¹ *Id.*

²² *Id.*

²³ Docket No. 50239, Request for Referral to SOAH (Jan. 20, 2020).

²⁴ Docket No. 48650, Emergency Order Extending the Term of the Commission Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing (Feb. 10, 2020).

32. On February 28, 2020, Commission Staff filed a new, non-emergency request to appoint a temporary manager to Blue Cereus in this docket.²⁵

Notice

33. On February 28, 2020, the administrative law judge (ALJ) filed Order No. 1, setting a hearing on the merits of the petition for an order appointing a temporary manager to Blue Cereus at the Commission open meeting scheduled for Thursday, March 12, 2020.
34. Order No. 1 also instructed Commission Staff to file and serve upon Blue Cereus a notice of hearing that complies with Texas Government Code §§ 2001.050 through 2001.052 by March 4, 2020.
35. On February 28, 2020, Commission Staff filed and served upon Blue Cereus a notice of hearing in compliance with Texas Government Code §§ 2001.050 through 2001.052.

Agreement

36. On March 4, 2020, the parties entered into an agreement regarding Commission Staff's petition.
37. Commission Staff recommends, and Blue Cereus agrees to, the appointment of Mr. Sherman as temporary manager for Blue Cereus, effective March 12, 2020.

Evidentiary Record

38. At the March 12, 2020 open meeting, the ALJ admitted the following evidence into the record: Blue Cereus's application, filed on February 28, 2020; Commission Staff's and Blue Cereus's agreed response to Order No. 1, filed on March 4, 2020; Commission Staff's and Blue Cereus's stipulation of facts, filed on March 4, 2020; and Commission Staff's and Blue Cereus's application for approval of settlement agreement, with attachments, filed on March 4, 2020.

Waiver of Opportunity for Hearing

39. Blue Cereus received proper notice of its opportunity for a hearing, and Blue Cereus waived the right to such a hearing.

²⁵ *Petition for an Order Appointing a Temporary Manager to Blue Cereus, LLC*, Docket No. 50605, (Pending).

40. The parties request that the Commission appoint Mr. Sherman as temporary manager of Blue Cereus without the need for a hearing.
41. Mr. Sherman agrees to and is willing to serve as temporary manager of Blue Cereus without the need for a hearing.

Informal Disposition

42. Blue Cereus and Commission Staff are the only parties to this proceeding.
43. No person filed a protest or motion to intervene.
44. The parties waived the right to a hearing, and no hearing is needed.
45. Commission Staff recommended approval of the agreement.
46. This decision is not adverse to any party.
47. To timely address the petition by Commission Staff to appoint a temporary manager for Blue Cereus, the Commission finds good cause exists to waive the 20-day requirement in 16 TAC § 22.35(b)(2) and to consider this matter at the next regularly scheduled open meeting of March 12, 2020.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this matter under TWC §§ 13.412 and 13.4132 and 16 TAC § 24.355.
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. Blue Cereus abandoned, and continues to abandon, its operations under TWC § 13.4132 by failing to resolve the past-due balance alleged by the wholesalers and the wholesalers' ongoing threat to stop wholesale water supply to Blue Cereus.

4. Blue Cereus abandoned, and continues to abandon, its operations under TWC § 13.4132 by failing to secure an alternate wholesale water supply in the face of an imminent threat to its supply that has existed since August 30, 2018.
5. The temporary manager has all the power 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, accessing all system components, and requesting rate increases, and performing other acts necessary to assure continuous and adequate utility service as authorized by the Commission under TWC § 13.4132(c).
6. Blue Cereus was given notice and an opportunity to be heard by the Commissioners at an open meeting of the Commission as required by TWC § 13.4132(a), and Blue Cereus voluntarily waived the right to such a hearing.
7. The filing of the agreement meets the requirements of 16 TAC § 22.246(h)(1).
8. The Commission processed this docket in accordance with applicable statutes and Commission rules.
9. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding except for 16 TAC § 22.35(b)(2), which requires that the proposed order be served on all parties no less than 20 days before the Commission is scheduled to consider the application in an open meeting. Under 16 TAC § 22.5(b), good cause exists to waive the requirement of 16 TAC § 22.35(b)(2).

III. Ordering Paragraphs

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

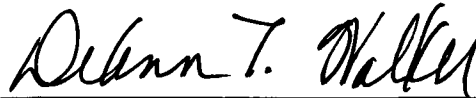
1. The Commission approves the petition to the extent provided in this Order.
2. Blue Cereus must comply with the terms of this Order.
3. The Commission appoints Mr. Sherman as temporary manager of Blue Cereus. Mr. Sherman's appointment as temporary manager will begin on the date this Order is signed and will continue until the Commission orders otherwise.

4. If Mr. Sherman wishes to end his temporary manager appointment for Blue Cereus, he must file a request in the present docket at least 60 days before the date he requests his appointment to end.
5. Blue Cereus, or any agent on its behalf, must continue to make all of the utility's property available to Mr. Sherman so that he may comply with the requirements of TWC § 13.4132 and 16 TAC § 24.355.
6. Mr. Sherman must 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.
7. As temporary manager, Mr. Sherman must comply with all requirements of TWC § 13.4132(c).
8. Mr. Sherman must file a report to the Commission no later than 30 days from the date of this Order and continuing each month thereafter. The report must include an income statement for the reporting period and a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of wastewater treated.
9. Mr. Sherman must comply with all applicable requirements of the TWC as well as Commission and Texas Commission on Environmental Quality rules.
10. Mr. Sherman is not required to post financial assurance.
11. Mr. Sherman must charge rates as currently outlined in Blue Cereus's water tariffs filed in Docket No. 48650.
12. Mr. Sherman must be compensated for his role as temporary manager from Blue Cereus's revenues in the amount of \$6.00 per connection per month.
13. This Order resolves only the claims identified in this Order related to Blue Cereus's abandonment of its operations.
14. Entry of this Order does not indicate the Commission's endorsement of approval of any principle or methodology that may underly the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.

15. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 16th day of March 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER

W2013

q:\cadm\orders\final\50000\50605 fo docx