

Control Number: 50605



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

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PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
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**COMMISSION STAFF'S AND BLUE CEREUS, LLC'S
AGREED RESPONSE TO ORDER NO. 1, STIPULATION OF FACTS, AND
APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT**

NOW COMES the Staff of the Public Utility Commission of Texas (Commission Staff) and Blue Cereus, LLC (Blue Cereus) (together, "parties") and file this agreed response to Order No. 1 and stipulation of facts. Additionally, the parties enter into the attached settlement agreement and report to Commission (agreement). This agreement resolves and concludes Commission Staff's petition for an order appointing a temporary manager to Blue Cereus.

I. INTRODUCTION

On February 28, 2020, Commission Staff filed a non-emergency request for an order appointing a temporary manager to Blue Cereus.¹ Blue Cereus is currently under the temporary management of Lynn Sherman under an emergency order issued by the Commission's executive director on February 10, 2020.²

Under Texas Water Code (TWC) § 13.4132(a)(1), the Commission may authorize a willing person to temporarily manage and operate an abandoned utility after providing notice to the utility and an opportunity to be heard by the Commissioners at a Commission meeting. As described below, Blue Cereus has received adequate notice and waives its right to a hearing on the merits regarding Commission Staff's request.

II. NOTICE OF HEARING

On February 28, 2020, a Commission ALJ issued Order No. 1 in this docket, setting a hearing on the merits for an order appointing a temporary manager to Blue Cereus.³ The hearing

¹ *Petition for an Order Appointing a Temporary Manager to Blue Cereus, LLC*, Docket No. 50605, Commission Staff's Request for an Order Appointing a Temporary Manager to Blue Cereus, LLC (Petition) (Feb. 28, 2020).

² *Petition for an Order Appointing a Temporary Manager to Blue Cereus, LLC, Without a Hearing*, 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).

³ Docket 50605, Order No. 1 at 1 (Feb. 28, 2020).

is scheduled to take place at the Commission open meeting on Thursday, March 12, 2020.⁴ Order No. 1 also instructs Commission Staff to file and serve upon Blue Cereus a notice of hearing that complies with Texas Gov't. Code §§ 2001.050-.052 by March 4, 2020.⁵

On February 28, 2020, Commission Staff filed and served upon Blue Cereus a notice of hearing in compliance with Texas Gov't. Code §§ 2001.050-.052.⁶ Accordingly, the notice of hearing was timely filed.

III. STIPULATION OF FACTS

Order No. 1 sets a procedural schedule for the hearing on the merits of Commission Staff's request for appointment of a temporary manager and requires that all direct testimony and exhibits be filed by March 4, 2020.⁷ Blue Cereus and Commission Staff stipulate to the facts supporting temporary management reflected in the attached settlement agreement and report to Commission, as well as in the attached proposed order. In accordance with 16 TAC § 22.228, the parties have reduced their agreement to these facts in writing and have signed the agreement. Accordingly, the parties' agreement will serve as the full evidentiary submission by the parties. No other direct testimony or exhibits will be filed by the parties.

IV. WAIVER OF HEARING AND APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT

Blue Cereus informed Commission Staff that it waives its right to a hearing on the merits of Commission Staff's request for appointment of a temporary manager to Blue Cereus. Additionally, Lynn Sherman informed Commission Staff that he is willing to continue as temporary manager of Blue Cereus without the need for a hearing. Support for this agreement is indicated by signature of counsel for Blue Cereus and of Mr. Sherman on the attached settlement agreement. Blue Cereus, Lynn Sherman, and Commission Staff support entry of an order appointing Lynn Sherman as temporary manager.

Staff therefore respectfully requests that the parties' application for approval of the attached settlement agreement be granted.

⁴ *Id.*

⁵ *Id.*


⁶ Docket 50605, Commission Staff's Notice of Hearing (Feb. 28, 2020).

⁷ *Id.* at 2.

DATE: March 4, 2020

Respectfully Submitted:

Robert M. Long
Division Director
Oversight and Enforcement Division
State Bar No. 12525500

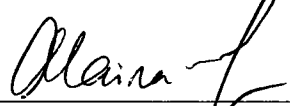


Alaina Zermeno
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P.O. Box 13326
Austin, Texas 78711-3326

DOCKET NO. 50605

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 4th day of March 2020, in accordance with 16 TAC § 22.74.



Alaina Zermeno

DOCKET NO. 50605

PETITION FOR AN ORDER § PUBLIC UTILITY COMMISSION
APPOINTING A TEMPORARY §
MANAGER TO BLUE CEREUS, LLC § OF TEXAS

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Staff of the Public Utility Commission of Texas (Commission) and Blue Cereus, LLC (Blue Cereus) (together, Parties) enter into this settlement agreement and report to Commission (agreement). This agreement fully resolves Commission Staff’s petition for an order appointing a temporary manager to Blue Cereus.

The parties agree as follows:

1. The parties stipulate to the facts contained in the attached proposed order and request approval of the order by the Commission.
2. The Commission has jurisdiction over the parties to this proceeding and the subject matter of this agreement.
3. Blue Cereus is a retail public water utility holding certificate of convenience and necessity (CCN) No. 11088.
4. Blue Cereus currently operates two public water systems serving approximately 100 connections in Val Verde County, Texas.
5. Jimmy Alan Hall is the president and registered agent of Blue Cereus.
6. Seguro Water Co., LLC and San Pedro Canyon Water Resources (together, wholesalers) are the wholesale water suppliers for Blue Cereus.
7. On June 1, 2018, the wholesalers sent Blue Cereus a notice of default and notice of termination (notice) 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.
8. The wholesalers filed the notice with the Commission on June 11, 2018 in Docket No. 48455.⁸

⁸ *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).*

9. Commission Staff confirmed that Blue Cereus and the wholesalers were unable to resolve their contract disputes, and that the wholesalers intended to shut off the water supply to Blue Cereus on August 30, 2018. Commission Staff also confirmed that Blue Cereus had no other options for wholesale water supply; therefore, the discontinuation of water was imminent.
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.⁹
11. Jane Whaley's term of temporary management was for 180 days, to begin on August 30, 2018 and end on March 2, 2019.¹⁰
12. The Commission later affirmed the emergency order in a hearing held on September 14, 2018.¹¹
13. 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)¹² 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.¹³
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)(5) when it failed to obtain an alternative water supply during an outage.
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 by Blue Cereus to the wholesalers is contingent on a dispute regarding previously executed wholesale agreements. The wholesalers claim the

⁹ *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).

¹⁰ *Id.* at Ordering Paragraph No. 2.

¹¹ Docket No. 48650, Order Affirming and Modifying Emergency Order (Sep. 14, 2018).

¹² 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.

¹³ Docket No. 48650, Order Affirming and Modifying Emergency Order (Sep. 14, 2018).

- 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, 2014.¹⁴
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. 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 Commission's executive director issued an emergency order extending the term of the Commission's order appointing a temporary manager to Blue Cereus, without a hearing.¹⁵ The order was issued under the one-time renewal authority for emergency orders in accordance with TWC § 13.455.¹⁶ The emergency order replaced Jane Whaley by appointing Lynn Sherman as temporary manager for a term of 180 days to end on August 30, 2019.¹⁷
 20. 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.¹⁸
 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.¹⁹
 22. Near the end of Lynn Sherman's 180-day term, he filed a temporary manager's summary report indicating that the underlying grounds of abandonment persisted.²⁰ Accordingly, he

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

¹⁵ 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).

¹⁶ TWC § 13.455 states that the term of an emergency order may not exceed 180 days, but may be renewed once for a period not to exceed 180 days.

¹⁷ Jane Whaley was replaced as temporary manager for failing to comply with her responsibilities under 16 TAC § 24.357. See Docket No. 48650, Order Affirming and Modifying Emergency Order at Finding of Fact No. 13 (Mar. 15, 2019).

¹⁸ Docket No. 48650, Order Affirming and Modifying Emergency Order, Conclusion of Law No. 4 (Mar. 15, 2018).

¹⁹ *Id.* at Conclusion of Law No. 4 (Mar. 15, 2019).

²⁰ Docket No. 48650, Temporary Manager's Summary Report (Aug. 9, 2019).

recommended that the Commission appoint him temporary manager for an additional term.²¹

23. On August 14, 2019, the Commission's executive director issued a new emergency order appointing a temporary manager to Blue Cereus without a hearing.²² The emergency order appointed Lynn Sherman as temporary manager for 180 days.²³
24. The Commission affirmed the emergency order after a hearing that took place during the September 12, 2019 open meeting.²⁴ The Commission found that the initial grounds for abandonment continued to exist.²⁵ The temporary management period was set to expire on February 10, 2020, or until the Commission ordered otherwise.²⁶
25. Since Lynn Sherman was re-appointed temporary manager of Blue Cereus, the owner of Blue Cereus has filed Class B rate/tariff change applications for both public water systems under its CCN.²⁷
26. Blue Cereus's rate/tariff change applications propose a \$2.00 per 1,000 gallon pass-through charge to cover wholesale water costs.²⁸
27. On November 12, 2019, the wholesalers filed a letter into Docket No. 48650 stating they 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.²⁹ The letter also stated that in the absence of such remedies, it would have no option but to cease the provision of wholesale water to Blue Cereus.³⁰
28. The wholesalers' letter stated they would wait for the outcome of the retail rate proceeding to decide whether the wholesalers would stop supplying water to Blue Cereus.³¹

²¹ *Id.*

²² Docket No. 48650, Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing (Aug. 14, 2019).

²³ *Id.*

²⁴ Docket No. 48650, Order Affirming and Modifying Emergency Order (Oct. 2, 2019).

²⁵ *Id.* at Conclusion of Law Nos. 4-5.

²⁶ *Id.* at Ordering Paragraph No. 2.

²⁷ *Application of Blue Cereus, LLC for Authority to Change Rates*, Docket No. 50239, Class B Rate/Tariff Change Applications (Oct. 18, 2019).

²⁸ Docket No. 50239, Notice of Proposed Rate Change to be Provided to Ratepayers Pursuant to Texas Water Code §§ 13.1871 and 13.18715 (Oct. 29, 2019).

²⁹ Docket No. 48650, Update from Seguro Water Company, LLC and San Pedro Canyon Water Resources at 3 (Nov. 12, 2019).

³⁰ *Id.*

³¹ *Id.*

29. The retail rate case is currently pending referral to SOAH.³²
30. 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.³³ The order was issued under the one-time renewal authority for emergency orders in accordance with TWC § 13.455.³⁴
31. 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.
32. 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.
33. On February 28, 2020, Commission Staff filed a new, non-emergency request to appoint a temporary manager to Blue Cereus in this docket.³⁵
34. On February 28, 2020, a Commission ALJ issued Order No. 1 in this docket, setting a hearing on the merits of the request for an order appointing a temporary manager to Blue Cereus at the Commission open meeting scheduled for Thursday, March 12, 2020.³⁶ Order No. 1 also instructs Commission Staff to file and serve upon Blue Cereus a notice of hearing that complies with Texas Gov't. Code §§ 2001.050-.052 by March 4, 2020.³⁷
35. Also on February 28, 2020, Commission Staff filed and served upon Blue Cereus a notice of hearing in compliance with Texas Gov't. Code §§ 2001.050-.052.³⁸
36. The parties agree that Blue Cereus continues to be abandoned under TWC § 13.412(f)(1) and 16 TAC § 24.355(c)(1) for not having resolved the past-due debt dispute with the wholesalers.

³² Docket No. 50239, Request for Referral to SOAH (Jan. 20, 2020).

³³ 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).

³⁴ In requesting this extension, Commission Staff intended to extend the second term of temporary management ordered during the September 12, 2019 open meeting.

³⁵ *Petition for an Order Appointing a Temporary Manager to Blue Cereus, LLC*, Docket No. 50605, Commission Staff's Request for an Order Appointing a Temporary Manager to Blue Cereus, LLC (Petition) (Feb. 28, 2020).

³⁶ Docket 50605, Order No. 1 at 1 (Feb. 28, 2020).

³⁷ *Id.*


³⁸ Docket 50605, Commission Staff's Notice of Hearing (Feb. 28, 2020).

37. The parties agree that Blue Cereus continues to be abandoned under TWC § 13.412(f)(5) and 16 TAC § 24.355(c)(5) for failing to obtain an alternate water supply during an outage, as the wholesalers continue to threaten the provision of wholesale water.
38. Commission Staff recommends, and Blue Cereus agrees, to the appointment of a temporary manager to Blue Cereus for a period of 180 days, effective March 12, 2020 and expiring September 8, 2020.
39. Blue Cereus agrees that it has received proper notice of its opportunity to be heard at a Commission open meeting, and that Blue Cereus waives the right to such hearing.
40. The parties request that the Commission appoint Lynn Sherman as temporary manager of Blue Cereus in accordance with the attached proposed order.
41. Lynn Sherman agrees to serve as temporary manager of Blue Cereus in accordance with the attached proposed order.
42. This agreement resolves Commission Staff's request for appointment of a temporary manager to Blue Cereus filed on February 28, 2020.
43. Unless specifically provided for in this agreement, Blue Cereus waives any notice and procedures that might otherwise be authorized or required in this proceeding.
44. Except as provided herein, nothing in this agreement shall limit Commission Staff's ability to perform its enforcement functions as set forth in TWC and the Commission's rules.
45. A party's support of the resolution in this docket in accordance with this agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forums. This agreement represents a compromise of claims and allegations, and the execution of this agreement does not admit the truth or accuracy of any such disputed claims. Because this is a settlement agreement, a party is under no obligation to take the same position as set out in this agreement in other proceedings not referenced in this agreement, whether those dockets present the same or a different set of circumstances. The parties' agreement to entry of a final order of the Commission consistent with this agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this agreement.
46. The parties contemplate that this agreement will be approved in accordance with 16 TAC § 22.246(h)(1)(C). In the event the Commission materially changes the terms of this

agreement, the parties agree that any party adversely affected by that material alteration has the right to withdraw from this agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other party written notice within 20 calendar days of the date the Commission files the final order acting on this agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this agreement made by the Commission.

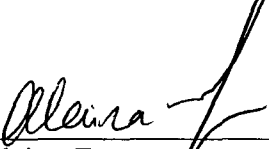
- 47. This agreement is the final and entire agreement between the parties regarding its terms and supersedes all other communications among the parties or their representatives regarding its terms.
- 48. Each person executing this agreement represents that he or she has been authorized to sign on behalf of the party represented. Copies of signatures are valid to show execution. If this agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same agreement.
- 49. Blue Cereus and Lynn Sherman warrant that they have read this agreement carefully, know the contents thereof, and sign the same as their free act.

EXECUTED by the parties by their authorized representatives designated below.



Jimmy Alan Hall
Blue Cereus, LLC
401 Green Acres Dr., Suite 100
Wimberly, Texas 78676

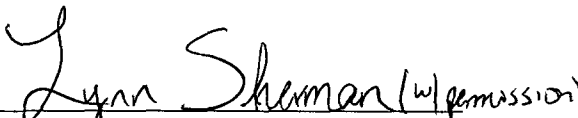
Date: 3/4/2020



Alaina Zermeno
Attorney – Oversight and Enforcement Division
Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, Texas 78701

Date: 3/4/2020

EXECUTED by affected non-parties in support of the agreement.


Lynn Sherman
Temporary Manager for Blue Cereus, LLC
P.O. Box 5605
Austin, Texas 78763

Date: 3/4/2020

DOCKET NO. 50605

PETITION FOR AN ORDER § PUBLIC UTILITY COMMISSION
APPOINTING A TEMPORARY §
MANAGER TO BLUE CEREUS, LLC § OF TEXAS

PROPOSED ORDER

This order approves the settlement agreement and report to Commission (agreement) between Commission Staff and Blue Cereus, LLC (Blue Cereus) relating to Commission Staff's request for an order appointing a temporary manager to Blue Cereus. Commission Staff recommends the Commission appoint Lynn Sherman to serve as temporary manager of Blue Cereus for 180 days, beginning March 12, 2020 and ending September 8, 2020. Blue Cereus agrees to the appointment of Lynn Sherman for the described period. The Commission approves the agreement.

I. Findings of Fact

The Commission makes the following findings of fact:

Respondent

1. Blue Cereus is a retail public water utility holding certificate of convenience and necessity (CCN) No. 11088.
2. Blue Cereus currently operates two public water systems serving approximately 100 connections in Val Verde County, Texas.
3. Jimmy Alan Hall is the president and registered agent of Blue Cereus.
4. Seguro Water Co., LLC and San Pedro Canyon Water Resources (together, wholesalers) are the wholesale water suppliers for Blue Cereus.

Underlying Cause of Abandonment

5. On June 1, 2018, the wholesalers sent Blue Cereus a notice of default and notice of termination (notice) 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.

6. The wholesalers filed the notice with the Commission on June 11, 2018 in Docket No. 48455.¹
7. Commission Staff confirmed that Blue Cereus and the wholesalers were unable to resolve their contract disputes, and that the wholesalers intended to shut off the water supply to Blue Cereus on August 30, 2018. Commission Staff also confirmed that Blue Cereus had no other options for wholesale water supply; therefore, the discontinuation of water was imminent.

History of Temporary Management

8. 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
9. Jane Whaley's term of temporary management was for 180 days, to begin on August 30, 2018 and end on March 2, 2019.³
10. The Commission later affirmed the emergency order in a hearing held on September 14, 2018.⁴
11. 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)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
12. 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.⁷

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).

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. 14, 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. 14, 2018).

⁷ *Id.*

13. 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.
14. The existence of a verifiable debt 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
15. 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. Blue Cereus did not secure an alternate source of wholesale water.
16. By the end of the initial temporary management period, Blue Cereus could not guarantee a continuous and adequate supply of water to its customers.
17. On February 26, 2019, the Commission's executive director issued an emergency order extending the term of the Commission's order appointing a temporary manager to Blue Cereus, without a hearing.⁹ The order was issued under the one-time renewal authority for emergency orders in accordance with TWC § 13.455.¹⁰ The emergency order replaced Jane Whaley by appointing Lynn Sherman as temporary manager for a term of 180 days to end on August 30, 2019.¹¹
18. 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.¹²
19. 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.¹³

⁸ Docket No. 48650, T.r. 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 TWC § 13.455 states that the term of an emergency order may not exceed 180 days, but may be renewed once for a period not to exceed 180 days.

¹¹ Jane Whaley was replaced as temporary manager for failing to comply with her responsibilities under 16 TAC § 24.357. See Docket No. 48650, Order Affirming and Modifying Emergency Order at Finding of Fact No. 13 (Mar. 15, 2018).

¹² Docket No. 48650, Order Affirming and Modifying Emergency Order, Conclusion of Law No. 4 (Mar. 15, 2019).

¹³ *Id.* at Conclusion of Law No. 5 (Mar. 15, 2019).

20. Near the end of Lynn Sherman's 180-day term, he filed a temporary manager's summary report indicating that the underlying grounds of abandonment persisted.¹⁴ Accordingly, he recommended that the Commission appoint him temporary manager for an additional term.¹⁵
21. On August 14, 2019, the Commission's executive director issued a new emergency order appointing a temporary manager to Blue Cereus without a hearing.¹⁶ The emergency order appointed Lynn Sherman as temporary manager for 180 days.¹⁷
22. The Commission affirmed the emergency order after a hearing that took place during the September 12, 2019 open meeting.¹⁸ The Commission found that the initial grounds for abandonment continued to exist.¹⁹ The temporary management period was set to expire on February 10, 2020, or until the Commission ordered otherwise.²⁰

Conditions Leading to Current Emergency Temporary Management

23. Since Lynn Sherman was re-appointed temporary manager of Blue Cereus, the owner of Blue Cereus has filed Class B rate/tariff change applications for both public water systems under its CCN.²¹
24. Blue Cereus's rate/tariff change applications propose a \$2.00 per 1,000 gallon pass-through charge to cover wholesale water costs.²²
25. On November 12, 2019, the wholesalers filed a letter into Docket No. 48650 stating they 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.²³ The letter also stated that in the

¹⁴ Docket No. 48650, Temporary Manager's Summary Report (Aug. 9, 2019).

¹⁵ *Id.*

¹⁶ Docket No. 48650, Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing (Aug. 14, 2019).

¹⁷ *Id.*

¹⁸ Docket No. 48650, Order Affirming and Modifying Emergency Order (Oct. 2, 2019).

¹⁹ *Id.* at Conclusion of Law Nos. 4-5.

²⁰ *Id.* at Ordering Paragraph No. 2.

²¹ *Application of Blue Cereus, LLC for Authority to Change Rates*, Docket No. 50239, Class B Rate/Tariff Change Applications (Oct. 18, 2019).

²² Docket No. 50239, Notice of Proposed Rate Change to be Provided to Ratepayers Pursuant to Texas Water Code §§ 13.1871 and 13.18715 (Oct. 29, 2019).

²³ Docket No. 48650, Update from Seguro Water Company, LLC and San Pedro Canyon Water Resources at 3 (Nov. 12, 2019).

absence of such remedies, it would have no option but to cease the provision of wholesale water to Blue Cereus.²⁴

26. The wholesalers' letter stated they would wait for the outcome of the retail rate proceeding to decide whether the wholesalers would stop supplying water to Blue Cereus.²⁵
27. The retail rate case is currently pending referral to SOAH.²⁶
28. 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.²⁷ The order was issued under the one-time renewal authority for emergency orders in accordance with TWC § 13.455.²⁸
29. 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.

Non-Emergency Request for Temporary Management

30. 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.
31. On February 28, 2020, Commission Staff filed a new, non-emergency request to appoint a temporary manager to Blue Cereus in this docket.²⁹

Notice

32. On February 28, 2020, a Commission ALJ issued Order No. 1 in this docket, setting a hearing on the merits of the request for an order appointing a temporary manager to Blue Cereus at the Commission open meeting scheduled for Thursday, March 12, 2020.³⁰ Order No. 1 also instructs Commission Staff to file and serve upon Blue Cereus a notice of hearing that complies with Texas Gov't. Code §§ 2001.050-.052 by March 4, 2020.³¹

²⁴ *Id.*

²⁵ *Id.*

²⁶ Docket No. 50239, Request for Referral to SOAH (Jan. 20, 2020).

²⁷ 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).

²⁸ In requesting this extension, Commission Staff intended to extend "new" the term of temporary management ordered at the September 12, 2019 open meeting.

²⁹ *Petition for an Order Appointing a Temporary Manager to Blue Cereus, LLC*, Docket No. 50605, Commission Staff's Request for an Order Appointing a Temporary Manager to Blue Cereus, LLC (Petition) (Feb. 28, 2020).

³⁰ Docket 50605, Order No. 1 at 1 (Feb. 28, 2020).

³¹ *Id.*

33. On February 28, 2020, Commission Staff filed and served upon Blue Cereus a notice of hearing in compliance with Texas Gov't. Code §§ 2001.050-.052.³²

Settlement Agreement

34. On March 4, 2020, the parties entered into an agreement resolving Commission Staff's request.
35. The parties agree that Blue Cereus continues to be abandoned under TWC § 13.412(f)(1) and 16 TAC § 24.355(c)(1) for not having resolved the alleged past-due debt dispute with the wholesalers.
36. The parties agree that Blue Cereus continues to be abandoned under TWC § 13.412(f)(5) and 16 TAC § 24.355(c)(5) for failing to obtain an alternate water supply during an outage, as the wholesalers continue to threaten wholesale water supply.
37. Commission Staff recommends, and Blue Cereus agrees, to the appointment of a temporary manager to Blue Cereus for a period of 180 days, effective March 12, 2020 and expiring September 8, 2020.

Waiver of Opportunity for Hearing

38. Blue Cereus has received proper notice of its opportunity to be heard at a Commission open meeting, and Blue Cereus has waived the right to such hearing.
39. The parties request that the Commission appoint Lynn Sherman as temporary manager of Blue Cereus without need for a hearing.
40. Lynn Sherman agrees to serve as temporary manager of Blue Cereus without need for a hearing.

Informal Disposition

41. Blue Cereus and Commission Staff are the only parties to this proceeding.
42. No person filed a protest or motion to intervene.
43. Parties waived the right to a hearing.
44. Commission Staff recommended approval of the agreement.
45. Entry of this order is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law:

³² Docket 50605, Commission Staff's Notice of Hearing (Feb. 28, 2020).

1. The Commission has jurisdiction over this matter under TWC §§ 13.4132 and 13.412 as well as under 16 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 § 13.412(f)(1), abandonment may include, but is not limited to, failure to pay a bill or obligation owed to a retail public utility with the result that the utility service provider has issued a notice of discontinuance of necessary services.
4. Blue Cereus abandoned its operations under TWC § 13.412(f)(1) by failing to resolve the alleged past-due balance claimed by the wholesalers when the wholesalers threatened to stop wholesale water supply to Blue Cereus on August 30, 2018. Blue Cereus continues to abandon its operations by not resolving the alleged past-due debt dispute as the wholesalers maintain their threat to the water supply.
5. Under TWC § 13.412(f)(5), abandonment may include, but is not limited to, failure to secure an alternative water supply during an outage.
6. Blue Cereus abandoned its operations under TWC § 13.412(f)(5) when it failed to secure an alternate wholesale water supply in the face of an imminent threat to its supply on August 30, 2018, as provided in the wholesalers' notice. Blue Cereus continues to abandon its operations by not securing an alternate wholesale water supply despite renewed threats to the provision of wholesale water.
7. 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, 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. 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 has voluntarily waived the right to such hearing.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Commission approves the agreement.
2. Blue Cereus must comply with the terms of this agreement and this order.
3. Lynn Sherman is appointed temporary manager of Blue Cereus for a term of 180 days to begin on March 12, 2020 and end on September 8, 2020, or until the Commission orders otherwise.
4. 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.
5. 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.
6. Mr. Sherman shall return to the Commission an inventory of all property received within 60 days after appointment, in accordance with 16 TAC § 24.357(e).
7. Blue Cereus must continue to 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.
8. 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.
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 six dollars 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 underling 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 ____ day of _____ 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER