



Control Number: 50605



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DOCKET NO. 50605

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

PUBLIC UTILITY COMMISSION
OF TEXAS

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JOINT MOTION TO ADMIT EVIDENCE AND ADOPT PROPOSED ORDER

NOW COMES the Staff of the Public Utility Commission of Texas (Commission Staff) and Blue Cereus, LLC (together, parties) and submit this motion to admit evidence and adopt the attached proposed order. In support of this motion, the parties respectfully show the following:

I. BACKGROUND

On February 28, 2020, Commission Staff filed a request for an order appointing a temporary manager to Blue Cereus. The same day a Commission ALJ issued Order No. 1, which set a prehearing conference, adopted a procedural schedule, and instructed Commission Staff to provide notice of a hearing on the merits to Blue Cereus. On February 28, 2020, Commission Staff filed its timely notice of hearing to Blue Cereus. Additionally, on March 4, 2020, the parties filed a response to Order No. 1, including a stipulation of facts as outlined in an attached request for approval of a settlement agreement and proposed order. The response additionally included a joint waiver of a hearing on the merits.

On March 6, 2020, the Commission ALJ issued Order No. 2, requiring the parties to submit a joint motion to admit evidence, including but not limited to, the parties' application for approval of the settlement agreement. The order required the motion to be filed no later than March 10, 2020; therefore, this motion is timely filed.

II. JOINT MOTION TO ADMIT EVIDENCE

The parties move to admit the following evidence into the record of this proceeding: (a) Commission Staff's Notice of Hearing filed on February 28, 2020; and (b) Commission Staff's and Blue Cereus, LLC's Agreed Response to Order No. 1, Stipulation of Facts, and Application for Approval of Settlement Agreement, with attachments, filed on March 4, 2020. Commission Staff conferred with Blue Cereus on March 9, 2020 and obtained Blue Cereus's consent to file this motion jointly.

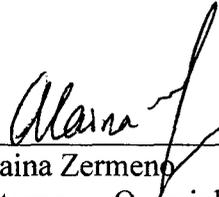
III. PROPOSED ORDER

The parties jointly move for adoption of the attached proposed order, included as Attachment A, approving the parties' settlement agreement which grants Commission Staff's request to appoint Lynn Sherman as temporary manager of Blue Cereus.

IV. CONCLUSION

The parties respectfully request that the Commission grant this joint motion to admit evidence and adopt the attached proposed order.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I certify that on March 9, 2020, 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
401 Green Acres Drive, Suite 100
Wimberley, Texas 78676-5025

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

Also via email: 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

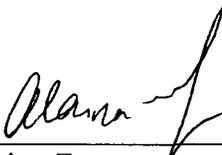
cc: Celina Romero and Kerry McGrath
Duggins, Wren, Mann, and Romero
P.O. Box 1149
Austin, Texas 78767

Also via email: cromero@dwmrlaw.com

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

ATTACHMENT A
(Proposed Order)

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