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**PETITION FOR AN ORDER
APPOINTING A TEMPORARY
MANAGER FOR ANN ROBINSON
DBA BEACHVIEW ACRES WATER
ASSOCIATION**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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**COMMISSION STAFF'S PETITION FOR AN ORDER APPOINTING A TEMPORARY
MANAGER FOR ANN ROBINSON DBA BEACHVIEW ACRES WATER
ASSOCIATION**

For the reasons discussed below, Staff respectfully requests that the Public Utility Commission of Texas (Commission) issue an order appointing HILCO United Services, Inc. dba HILCO H2O (HILCO) as temporary manager to manage and operate Beachview Acres Water Association (Beachview Acres).

I. JURISDICTION AND LEGAL AUTHORITY

Under Texas Water Code (TWC) § 13.4132 and 16 Texas Administrative Code (TAC) § 24.355, the Commission may appoint a willing person to temporarily manage and operate a utility if the utility has abandoned operations. TWC § 13.412(f) and 16 TAC § 24.355(c) list numerous actions constituting “abandonment,” including, but not limited to, “failure to adequately maintain facilities or provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions.”¹ Another action constituting abandonment under the Commission rules is a utility “repeatedly failing to respond to the commission or the utility’s customers.”² A temporary manager appointed under TWC § 13.4132 and 16 TAC § 24.355 has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers.

The duties of the temporary manager are outlined in 16 TAC § 24.357.³ One such duty requires a temporary manager to post financial assurance with the Commission, unless the temporary manager or the Commission’s Executive Director ask for a waiver of the financial

¹ 16 TAC § 24.355(c)(3).

² 16 TAC § 24.355(c)(6).

³ 16 TAC § 24.357(b).

assurance or requests substitution of another means of collateral.⁴ Within 60 days of appointment, a temporary manager must make and return to the Commission an inventory of all property received.⁵ Compensation for the temporary manager comes from the utility revenues and is set by the Commission at the time of appointment.⁶ The temporary manager must collect the assets and carry on the business of the utility and use the revenues and assets of the utility in the best interests of the customers to ensure the provision of continuous and adequate service.⁷ The temporary manager is required to report to the Commission on a monthly basis the following items: an income statement for the reporting period; a summary of utility activities, such as improvements or repairs made, number of connections added, and the amount of water produced or treated; as well as any other information required by the Commission.⁸

The Commission has the authority to appoint a temporary manager by either a standard order or an emergency order after providing to the utility notice and an opportunity to be heard by the Commissioners.⁹ Under 16 TAC § 24.357(d), a temporary manager shall serve a term of 180 days, unless specified otherwise by the Commission, an extension is granted by the Commission, the temporary manager is discharged, or a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the Attorney General.

II. FACTUAL ALLEGATIONS

Beachview Acres owns and operates a public water system located in Hill County and provides water service to approximately 39 service connections under water Certificate of Convenience and Necessity (CCN) No. 13186.¹⁰ In 2010, 2015, 2018, the Texas Commission on

⁴ 16 TAC § 24.357(c).

⁵ 16 TAC § 24.357(e).

⁶ 16 TAC § 24.357(f).

⁷ 16 TAC § 24.357(g).

⁸ 16 TAC § 24.357(h).

⁹ TWC § 13.4132(a)-(b).

¹⁰ *In the Matter of an Enforcement Action Against Beachview Acres Water Association*; RN 101437135, TCEQ Docket No. 2020-0667-UCR-E, (Enforcement Docket) Emergency Order Appointing a Temporary Manager of a Water Utility at Findings of Fact Nos. 1-3 (Jun. 1, 2020) (Attachment A)

Environmental Quality (TCEQ) issued Agreed Orders against Beachview Acres in three separate enforcement actions.¹¹

On June 10, 2019, a TCEQ investigator contacted Ms. Robinson to schedule a compliance investigation of Beachview Acres. Ms. Robinson told the investigator she was moving and would no longer be taking care of the utility. Following this call, TCEQ attempted to contact Ms. Robinson numerous times, leaving multiple voicemail messages, but Ms. Robinson did not respond.

On July 11, 2019 the TCEQ conducted onsite compliance investigations and documented multiple violations, including failure to properly provide operated and maintained disinfectant equipment, failure to maintain a minimum disinfectant residual throughout the distribution system, failure to maintain service pumps in good working condition, and failure to maintain an intruder resistant fence at the main plant.¹²

HILCO personnel contacted TCEQ on April 28, 2020 to inform TCEQ of a water outage in Beachview Acres' water distribution system caused by a malfunctioning service pump. HILCO personnel reset the pump but opined to TCEQ that the pump would not last much longer.¹³ Following this outage, Beachview Acres failed to issue a required Boil Water Notice (BWN).¹⁴ A TCEQ investigator contacted Ms. Robinson to schedule a follow-up on-site investigation at the utility's facilities. Ms. Robinson stated that she was no longer responsible for the utility and refused to meet the investigator for the on-site investigation. She further stated that recordkeeping for the utility was not compliant.¹⁵

On May 5, 2020, a TCEQ investigator conducted a second compliance investigation at Beachview Acres and again documented multiple violations, including failure to have a licensed operator on site, failure to maintain service pumps, and failure to maintain an intruder resistant fence at the main plant.¹⁶

¹¹ *Id.* at Findings of Fact Nos. 5-7.

¹² *Id.* at Findings of Fact Nos. 9.

¹³ *Id.* at Finding of Fact No. 10.

¹⁴ *Id.* at Finding of Fact No. 11.

¹⁵ *Id.* at Finding of Fact No. 12.

¹⁶ *Id.* at Finding of Fact No. 13.

A second water outage was reported by a Beachview Acres customer on May 8, 2020. On the same day, HILCO personnel again visited the utility and determined the outage was caused by a malfunctioning service pump. HILCO personnel reported the outage to TCEQ and reset the pump, restoring water service. Later that day, the TCEQ water section manager contacted Ms. Robinson, advising her to issue a BWN. Ms. Robinson was unable to provide contact information for another representative of Beachview Acres to assist with issuing a BWN; subsequently, no BWN was issued.¹⁷

On June 1, 2020, the TCEQ appointed HILCO as TM of Beachview Acres via emergency order.¹⁸ The TCEQ affirmed the emergency order on July 6, 2020.¹⁹ An emergency order renewing the temporary manager appointment was signed on November 30, 2020.²⁰ On November 23, 2020, HILCO filed an application to transfer all of Beachview Acres' facilities and water CCN No. 13186; the application is pending.²¹ Staff is not seeking, nor has it obtained an order from the TCEQ.

III. RECOMMENDATION FOR APPOINTMENT OF A TEMPORARY MANAGER

Commission Staff recommends that the Commission appoint a temporary manager for Beachview Acres under TWC § 13.4132 and 16 TAC §§ 24.355 and 24.357, because the utility has abandoned operation of its facilities under 16 TAC § 24.355(c)(2), (c)(3), (c)(4), and (c)(6). Beachview Acres has: (1) failed to provide appropriate water treatment so that a potential health hazard results; (2) failed to adequately maintain facilities resulting in potential health hazards, extended outages, and repeated service interruptions; (3) failed to provide customers adequate notice of an actual or potential health hazard; and (4) repeatedly failed to respond to the TCEQ and/or Beachview Acres' customers.

Staff recommends that the Commission appoint HILCO as temporary manager. HILCO has been serving as the TCEQ-appointed temporary manager since June 1, 2020 and has

¹⁷ *Id.* at Finding of Fact Nos. 14-16.

¹⁸ *Id.* at Ordering Paragraph Nos. 1-3.

¹⁹ Enforcement Docket, Order Affirming and Modifying an Emergency Order Renewing Appointing a Temporary Manager of a Water Utility (Jul. 6, 2020) (Attachment B).

²⁰ Enforcement Docket, Emergency Order Renewing the Appointment of a Temporary Manager of a Water Utility (Nov. 30, 2020) (Attachment C).

²¹ *Application of Beachview Acres Water Association and HILCO United Services, Inc. dba Hilco H2O for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hill County*, Docket No. 51549 (pending).

indicated to Staff that it wishes to continue serving in this capacity. Furthermore, HILCO has indicated it intends to purchase Beachview Acres' facilities and transfer all water service under Beachview Acres' water CCN to its own CCN.

Staff requests that the Order appointing a temporary manager for Beachview Acres begin the temporary management no later than May 28, 2021 and remain in effect until Beachview Acres and HILCO's application for sale, transfer, or merger of facilities and certificate rights is approved, the temporary manager is discharged from its responsibilities by the Commission, or a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the Office of the Attorney General, whichever occurs earlier. Staff further requests that the Order include a term requiring HILCO to maintain its operator licenses and comply with TCEQ rules. Finally, Staff requests a waiver of the requirement in 16 TAC § 24.357(c) regarding the temporary manager's duty to post financial assurance with the Commission. The TCEQ waived this financial assurance requirement in its June 1, 2020 Emergency Order and implicitly affirmed the waiver in its July 6, 2020 Order Affirming and Modifying the Emergency Order.²²

IV. TEMPORARY MANAGER COMPENSATION

Under 16 TAC § 24.357(f), a temporary manager may be compensated for its services. The compensation amount is to come from utility revenues and is set by the Commission at the time of appointment. HILCO serves 39 connections. Staff respectfully requests that the Commission establish a rate of \$12.00 per connection per month as compensation for HILCO as the temporary manager of Beachview Acres, as recommended in the Emergency Order issued by the TCEQ on November 30, 2020 and approved in Docket No. 50914.²³ This is the typical compensation rate for a temporary manager or receiver of a utility of this size.²⁴

²² Attachment A at Ordering Paragraph 6.

²³ *Application of HILCO United Services, Inc. DBA HILCO H2O for Temporary Rates for a Nonfunctioning Utility*, Docket No. 50914, Final Order at Finding of Fact 24, Ordering Paragraph 1 (Dec. 18, 2020).

²⁴ See Affidavit of Patricia Garcia (Attachment D); see also, e.g., *Application for an Order Appointing a Temporary Manager to Aero Valley Water Service*, Docket No. 49811, Order Appointing a Temporary Manager at Ordering Paragraph No. 9 (Aug. 30, 2019).

V. STATEMENT RELATING TO BEACHVIEW ACRES WATER ASSOCIATION'S RIGHTS

The Commission must provide a utility notice and an opportunity to be heard by the Commissioners at an open meeting before appointing a temporary manager over a utility.²⁵ **The factual allegations listed in Staff's Request could be deemed admitted, and the relief sought herein could be granted by default, if Beachview Acres fails to timely request a hearing.**

VI. NOTICE

In accordance with 16 TAC § 22.74, Staff will provide a copy of this petition by certified mail, return receipt requested, to the last known address of Beachview Acres and Ms. Robinson as shown in the Commission's records:

Beachview Acres Water Association
P.O. Box 1383
Whitney, Texas 76692-1383

Staff will also provide a copy of this request by certified mail, return receipt requested, to HILCO last known address in Commission records:

HILCO United Services dba HILCO H2O
P.O. Box 26
Itasca, Texas 76055
Email: tcheek@hilco.coop

VII. CONCLUSION

For the reasons detailed above, Staff respectfully requests that the Commission appoint HILCO United Services dba HILCO H2O as the temporary manager for Ann Robinson dba Beachview Acres Water Association.

²⁵ 16 TAC § 24.355(a).

Dated: May 3, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

Rashmin J. Asher
Managing Attorney

/s/ Justin C. Adkins

Justin C. Adkins
State Bar No. 24101070
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7289
(512) 936-7268 (facsimile)
Justin.Adkins@puc.texas.gov

**DOCKET NO. 52077
CERTIFICATE OF SERVICE**

I certify that a copy of this document was sent certified mail, return receipt requested, to the last known address for the headquarters of Ann Robinson dba Beachview Acres Water Association on May 3, 2021.

/s/ Justin C. Adkins

Justin C. Adkins