



Control Number: 53500



Item Number: 9

REQUEST FOR AN EMERGENCY §  
ORDER APPOINTING A TEMPORARY §  
MANAGER FOR MARION J. SMITH §  
DBA SMITH MANAGEMENT §  
SERVICES WITHOUT A HEARING §

2022 JUN -7 PM 2:00  
PUBLIC UTILITY COMMISSION  
OF TEXAS  
FILING CLERK

### ORDER AFFIRMING EMERGENCY ORDER

This Order addresses the application filed by Commission Staff for an emergency order appointing a temporary manager for Marion J. Smith dba Smith Management Services. The executive director of the Commission filed an emergency order on April 19, 2022 appointing a temporary manager, and the Commission held a hearing to affirm, modify, or set aside the emergency order at the May 12, 2022 open meeting. The Commission affirms the emergency order filed by the executive director appointing Intermediary Solutions Holdings, LLC as the temporary manager for the utility, as modified by this Order.

#### I. Findings of Fact

The Commission makes the following findings of fact.

##### Utility

1. Marion J. Smith dba Smith Management Services (the utility) owns and operates for compensation equipment and facilities for the transmission, storage, distribution, sale, or provision of potable water to the public.
2. The utility owns and operates four public water systems registered with the Texas Commission on Environmental Quality (TCEQ): Town North Village Water System, identification number 1520094; Plott Acres, identification number 1520062; Cox Addition Water System, identification number 1520106, and Town North Estates, identification number 1520152.
3. The utility provides retail water service to approximately 298 connections in Lubbock County under convenience and necessity number 11168.

**Water Service Outage**

4. On April 20, 2021, TCEQ's Lubbock regional office received five separate complaints of a water outage at Town North Village Water System. The complainants informed TCEQ staff that they had been unable to contact representatives of the utility for weeks.

**TCEQ Investigations**

5. On April 20, 2021, TCEQ staff determined that the reported water outage was caused by electrical power being shut off to the system due to the nonpayment of electrical bills.
6. TCEQ concluded that the listed owner and operator of the utility, Marion J. Smith, passed away in January 2021 and that at the time of Mr. Marion's death, the utility was being operated by Jimmy Midkiff. TCEQ also determined that during the spring of 2021, Mr. Midkiff suffered a serious medical emergency which caused him to completely stop operating the utility.
7. On April 22, 2021, TCEQ conducted investigations of all four public water systems owned and operated by the utility. TCEQ documented failure by the utility to maintain a minimum disinfectant residual throughout the distribution system at Town North Village, Plott Acres, and Town North Estates and no licensed operator could be identified at any of the four public water systems. TCEQ staff determined that the utility had failed to secure an alternative water supply during the April 20, 2021 outage and failed to issue a boil water notice to the customers of Town North Village Water System after the outage in violation of TCEQ rules.
8. TCEQ's investigation determined that no other source of water was available to more than 25 people whose water is supplied by the utility.
9. TCEQ also determined that all real property associated with the utility is owned by the Estate of Marion J. Smith, and that Lubbock County Court named Margenell Smith as executor of the Estate of Marion J. Smith.

**TCEQ Actions**

10. On May 5, 2021, the executive director of TCEQ issued an emergency order appointing Intermediary Solutions Holdings, LLC as temporary manager of the utility for a term that expired on November 1, 2021.

11. On July 7, 2021, TCEQ affirmed, with modification, the May 5, 2021 emergency order appointing Intermediary Solutions as temporary manager of the utility.
12. On November 2, 2021, the executive director of TCEQ issued a second emergency order renewing the appointment of Intermediary Solutions as temporary manager for a term set to expire on May 1, 2022.
13. On January 19, 2022, TCEQ affirmed the November 2, 2021 emergency order renewing Intermediary Solutions' appointment.
14. Intermediary Solutions has served as temporary manager of the utility since May 5, 2021.

**Emergency Order Appointing Temporary Manager**

15. On April 18, 2022, Commission Staff filed a request for the executive director of the Commission to issue an emergency order appointing a temporary manager for the utility.
16. Commission Staff alleged that the utility has abandoned operations by failing to pay a bill to an electric utility with the result of discontinuance of service, failing to provide appropriate water treatment so that a potential health hazard results, failing to provide customers adequate notice of a health hazard or potential health hazard, failing to secure an alternative available water supply during an outage, and repeatedly failing to respond to the utility's customers.
17. Commission Staff recommended that the executive director appoint Intermediary Solutions to temporarily manage and operate the utility. Commission Staff asserted that Intermediary Solutions has served as temporary manager since May 5, 2021 and is willing to continue serving as temporary manager.
18. Commission Staff recommended that the executive director issue an emergency order to appoint Intermediary Solutions as temporary manager for a term to begin on May 2, 2022, and remain in effect for 180 days or until Intermediary Solutions is discharged from these responsibilities by the Commission or a superseding action is taken by an appropriate court, whichever occurs first.
19. Commission Staff further requested that the order include a requirement that Intermediary Solutions maintain its operator licenses and comply with TCEQ rules for the duration of its appointment as temporary manager.

20. Commission Staff also requested a waiver of the requirement in 16 Texas Administrative Code (TAC) § 24.357(c) regarding the temporary manager's duty to post financial assurance with the Commission.
21. Commission Staff requested that the executive director establish a rate of twelve dollars per connection per month as Intermediary Solutions' compensation for its work as temporary manager for the utility. Commission Staff asserted that this was the same amount authorized in the two emergency orders issued by TCEQ.
22. Intermediary Solutions is the owner of North University Estates Water Company, which provides retail water service in Lubbock County under certificate of convenience and necessity number 12179.
23. Intermediary Solutions employs a licensed water operator who will operate the utility's four public water systems.
24. Intermediary Solutions is willing to continue serving as temporary manager for the utility.
25. Commission Staff recommends that the Commission affirm the April 19, 2022 emergency order appointing Intermediary Solutions as temporary manager of the utility.

**Emergency Order Appointing Temporary Manager**

26. On April 19, 2022, the PUC's executive director filed an emergency order appointing Intermediary Solutions as temporary manager of the utility for a term set to begin on May 2, 2022 and end on November 1, 2022.

**Notice**

27. On April 19, 2022, a copy of Commission Staff's request for an emergency order was sent via certified mail, return receipt requested, to the last known address of the utility's headquarters, Margenell Smith Executor of Estate of Marion J. Smith. A copy of the petition was also sent by mail to Brian Parker, owner of Intermediary Solutions.
28. In Order No. 1 filed on April 20, 2022, the Commission administrative law judge (ALJ) set a hearing on the merits at the Commission's open meeting scheduled for May 12, 2022 to address Commission Staff's request to affirm the emergency order appointing Intermediary Solutions as temporary manager for the utility.

29. In Order No. 1, the Commission ALJ instructed Commission Staff to file and serve upon the utility a notice of hearing that complies with the requirements of Texas Government Code §§ 2001.051 and 2001.052.
30. On April 25, 2022, Commission Staff filed and served upon the utility the required notice of hearing.
31. On April 26, 2022, Commission Staff sent a copy of Commission Staff's notice of issuance of emergency order to the last known address of the utility's headquarters and to Intermediary Solutions.
32. On May 9, 2022, Brian Parker of Intermediary Solutions filed a signed statement acknowledging receipt of the emergency order and that Intermediary Solutions is willing to service as temporary manager for the utility.

### **Evidentiary Record**

33. At the prehearing conference held on May 11, 2022 the Commission ALJ admitted into evidence Commission Staff's exhibit one, the April 27, 2022 affidavit of Rose Ramirez and Commission Staff's exhibit two, the April 27, 2022 affidavit of Nima Momtahan.

### **Hearing**

34. On May 12, 2022, the Commission held a hearing to affirm, modify, or set aside the emergency order filed by the executive director on April 19, 2022.

## **II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this matter under TWC §§ 13.4132, 13.451, and 13.454 and 16 TAC §§ 24.14, 24.355, and 24.357.
2. The utility is a water utility as defined under TWC § 13.002(23) and 16 TAC § 24.3(39).
3. Commission Staff filed a petition to appoint a temporary manager for Marion J. Smith dba Smith Management Services in accordance with 16 TAC §§ 22.295 and 24.355.
4. Notice of the petition was provided by certified mail to the last known address of Marion J. Smith's headquarters.

5. Under TWC § 13.4132(a) and 16 TAC § 24.355(a), the Commission may appoint a willing person to temporarily manage and operate a utility that has discontinued or abandoned operations or the provision of services after providing notice to the utility.
6. Under TWC § 13.4132(b) and 16 TAC § 24.355(b), the appointment may be by emergency order.
7. Under TWC § 13.451(b), the Commission may delegate to the executive director the authority to issue emergency orders under subchapter K-1 of the Texas Water Code.
8. The Commission filed an order in Docket No. 43517<sup>1</sup> delegating authority to the executive director to receive applications and issue emergency orders under Subchapter K-1 of the TWC.
9. The executive director filed an emergency order appointing a temporary manager for the utility in accordance with TWC § 13.4132 and 16 TAC § 24.355.
10. The Commission provided the utility with notice regarding the emergency order appointing a temporary manager in accordance with TWC § 13.4132(b) and 16 TAC § 22.297.
11. Under TWC § 13.454 (a) and (b), if the executive director issues an emergency order without a hearing, then the Commission must hold a hearing to affirm, modify, or set aside the emergency order unless the person affected by the order waives the right to a hearing.
12. Notice of the hearing to affirm, modify, or set aside the emergency order was provided in accordance with TWC § 13.451(a) and 16 TAC § 24.297 and 24.299.
13. Under TWC § 13.455 and 16 TAC § 24.14(f), the term of an emergency order must be limited to a reasonable time as specified in the Commission's order and may not exceed 180 days.
14. TWC § 13.412(f) and 16 TAC § 24.355(c) provide non-exhaustive lists of acts that constitute abandonment.

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<sup>1</sup> *Delegation of Authority Generally to the Executive Director*, Docket No. 43517, Order (Dec. 4, 2015).

15. The utility abandoned operations of its facilities under TWC § 13.412(f)(1) and 16 TAC § 24.355(c)(1) when it failed to pay a bill to an electric utility which resulted in discontinuation of necessary services.
16. The utility abandoned operations as a utility under TWC § 13.412(f)(2) and 16 TAC § 24.355(c)(2) by failing to provide appropriate water or wastewater treatment, resulting in a potential health hazard.
17. The utility abandoned operations as a utility under TWC § 13.412(f)(3) and 16 TAC § 24.355(c)(3) by failing to adequately maintain facilities or provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions.
18. The utility abandoned operations as a utility under TWC § 13.412(f)(4) and 16 TAC § 24.355(c)(4) by failing to provide customers adequate notice of a health hazard or potential health hazard.
19. The utility abandoned operations as a utility under TWC § 13.412(f)(6) and 16 TAC § 24.355(c)(6) by repeatedly failing to respond to the Commission or the utility's customers.
20. A temporary manager has all the powers 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, requesting rate increases, and performing other acts necessary to assure continuous and adequate utility service by the Commission under TWC § 13.4132(c) and 16 TAC § 24.357(b).
21. A temporary manager is required to provide the Commission with an inventory of all property received within 60 days of appointment as temporary manager under 16 TAC § 24.357(e).
22. A 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 under 16 TAC § 24.357(h).



23. The compensation for the temporary manager must come from utility revenues and will be set by the Commission at the time of appointment under 16 TAC § 24.357(f).
24. The requirement to post financial assurance with the Commission may be waived under 16 TAC § 24.357(c).
25. The Commission processed this docket in accordance with applicable statutes and Commission rules.

### **III. Ordering Paragraphs**

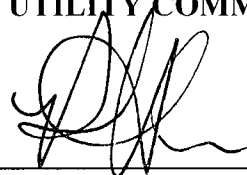
In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission affirms the emergency order issued by the executive director on April 19, 2022, as modified by this Order.
2. The Commission appoints Intermediary Solutions as temporary manager for Marion J. Smith dba Smith Management Services for a term of 180 days. The term of the appointment began on May 2, 2022 and continues through October 28, 2022 or until the Commission discharges Intermediary Solutions from this appointment, whichever occurs first.
3. If Intermediary Solutions wishes to end its temporary manager appointment for the utility prior to October 28, 2022, it must file a request at least 60 days before the date it requests the appointment to end.
4. The Commission sets the compensation for Intermediary Solutions as temporary manager for Marion J. Smith dba Smith Management Services at twelve dollars per connection per month. The temporary manager compensation must come from the utility's revenues.
5. As temporary manager, Intermediary Solutions must comply with the requirements of TWC § 13.4132(c) and 16 TAC § 24.357(b).
6. The utility and Intermediary Solutions must comply with all applicable requirements of the TWC as well as Commission and TCEQ rules.

7. Intermediary Solutions must exercise all the powers and duties necessary to ensure the continued operations of the utility and the provision of continuous and adequate service to its customers.
8. Intermediary Solutions must file an inventory of all property received within 60 days of appointment as required under 16 TAC § 24.357(e). This inventory must be filed in Docket No. 53634, *Compliance Filing for Docket No. 53500 (Request for an Emergency Order Appointing a Temporary Manager for Marion J. Smith dba Smith Management Services Without a Hearing)*.
9. During its tenure as temporary manager, Intermediary Solutions must file monthly reports. By the last day of each month the following documentation for the previous month must be filed: 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. The filings must be made in Docket No. 53634, *Compliance Filing for Docket No. 53500 (Request for an Emergency Order Appointing a Temporary Manager for Marion J. Smith dba Smith Management Services Without a Hearing)*.
10. The utility must employ a TCEQ-licensed operator for the duration of this temporary managership.
11. Intermediary Solutions is not required to post financial assurance.
12. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 7<sup>th</sup> day of June 2022.

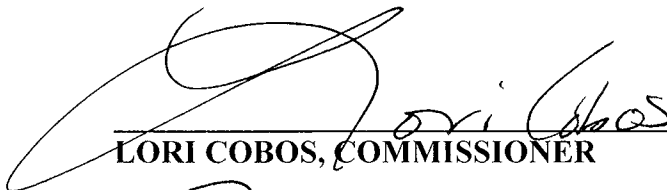
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