



Control Number: 57065



Item Number: 21

RECEIVED
2024 NOV 13 PM 4:02
PUBLIC WORKS DIVISION

OPEN MEETING COVER SHEET COMMISSIONER MEMORANDUM

MEETING DATE: November 14, 2024

DATE DELIVERED: November 13, 2024

AGENDA ITEM NO.: 11

CAPTION: Docket No. 57065 – Petition for an Order
Appointing a Temporary Manager to
Windermere Oaks Water Supply Corporation

DESCRIPTION: Chairman Thomas Gleeson Memorandum

Public Utility Commission of Texas

Memorandum

TO: Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson
Commissioner Courtney K. Hjaltman

FROM: Chairman Thomas J. Gleeson 

DATE: November 13, 2024

RE: November 14, 2024 Open Meeting – Item No. 11
PUC Docket No. 57065 - *Petition for an Order Appointing a Temporary Manager to Windermere Oaks Water Supply Corporation*

Before the Commission is a petition from Commission Staff to appoint a temporary manager for Windermere Oaks Water Supply Corporation. The Commission held a hearing on the merits in this case on October 24, 2024. Commission Staff contends that Windermere has abandoned operations under Commission rules by: 1) “failing to adequately maintain facilities or provide sufficient facilities resulting in potential hazards, extended outages, or repeated service interruptions;”¹ and 2) displaying a pattern of hostility toward or repeatedly failing to respond to the Commission.²

Basis for Appointing a Temporary Manager

This is an unusual and difficult case. In most cases involving the appointment of a temporary manager, management and operation of the affected utility has been abandoned. Here, Windermere’s board remains engaged in managing Windermere. Staff alleged a number of problems with Windermere’s operations, including repeated failure to respond to Commission orders or satisfy requirements established by Commission order in Docket No. 55454. Staff asserted that Windermere has failed to: file required annual reports, file a list of current members, file a records management procedure and annual meetings procedure, adopt amended bylaws, and conduct a financial audit.³ Staff also noted that Windermere has issued five boil water notices since December 2023 and had line losses of 28.3% in 2023.⁴ In my view, Staff has proven abandonment by Windermere through Windermere’s repeated failure

¹ Commission Staff’s Petition for an Order Appointing a Temporary Manager to Windermere Oaks Water Supply Corporation (Staff Petition) at 6-7 (Sept. 12, 2024); 16 TAC § 24.355(c)(3)

² Staff Petition at 3-8; 16 TAC § 24.355(c)(6).

³ Staff Petition at 3-6; Staff exhibit 10.

⁴ Staff Petition at 6-7; Staff exhibits 9 and 10.

to respond to the Commission under 16 TAC § 23.355(c)(6) but has not proven abandonment under 16 TAC § 24.355(c)(3). Therefore, there is a need for the appointment of a temporary manager in this case. Significantly, Windermere board member Jeff Walker stated at the hearing that Windermere does not oppose appointment of a temporary manager.⁵

Scope of Duties for the Temporary Manager

The duties and responsibilities for temporary managers are outline in Texas Water Code § 13.4132 and 16 TAC § 24.357. Temporary managers typically address operational issues such as conducting repairs, issuing bills and implementing temporary rates.⁶ 16 TAC § 24.357(i) further provides: “[d]uring the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.” It is not entirely clear what the phrase “operating within all legal requirements” means; but given that the board remains active in managing Windermere there may be certain responsibilities that are solely or more appropriately within the board’s purview.

Therefore, one of the difficulties in this case is determining the appropriate division of responsibility between the temporary manager and the board for “operating within all legal requirements.” For example, should the board or the temporary manager be primarily responsible for resolving the various compliance issues from Docket No. 55454 raised by Staff? Additionally, should the board or the temporary manager oversee the ongoing IRS audit that was referenced during the hearing on the merits? Should the Commission prohibit the temporary manager from purchasing or selling real property, as requested by Mr. Walker?⁷ Who should be responsible for addressing Windermere’s outstanding legal expense debt? Moreover, if the Commission decides that some of the issues mentioned above should be addressed by the temporary manager, is Anser able and willing to do so?

It is important for the responsibilities of the board and the temporary manger to be clearly identified in writing. At this point, I am not prepared to propose how these responsibilities should be divided. I suggest that we task the temporary manager to work with the board to create list that identifies the responsibilities of the temporary manager and the responsibilities of the board. The temporary manager should file this running list, along with relevant updates, with the Commission as part of the temporary manager’s monthly reports, as contemplated by 16 TAC § 24.357(h)(3).

Following are additional thoughts on how to proceed in this case, but I welcome input from my fellow commissioners on any or all of these items.

1. OPDM filed a memo in this case on November 12, 2024 requesting that a representative from Anser be present at our November 14 open meeting to answer questions regarding their potential appointment as temporary manager. No one from Anser was present at

⁵ October 24, 2024 Hearing Tr. at 22, 25, and 126.

⁶ See Texas Water Code § 13.4132(c) and 16 TAC § 24.357(b).

⁷ 16 TAC § 24.357(g) provides that “the temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers....” This language could be construed to authorize temporary managers to buy and sell real estate owned by the affected utility.

the hearing on the merits. It is unclear what experience Anser has in serving as a temporary manager for a water and sewer utility. Additionally, as noted above, it is unclear to me how responsibilities should be divided between the board and the temporary manager going forward and what responsibilities Anser is willing and able to undertake. We should explore this with Anser at the open meeting.

2. If the Commission appoints Anser as temporary manager, I recommend that the term be effective on the date of the order in this case and that it be for a term of one year. We should assess the progress of Windermere before the expiration of this term and leave open the possibility of extending this term, as necessary.
3. I recommend that the Commission clarify that compensation for Anser be set at \$12 per month per water connection and \$12 per month per sewer connection. Staff's petition proposed compensation of \$12 per connection. I presume Staff intended that this fee be assessed on both water and sewer connections, but we should clarify this in our order appointing the temporary manager.
4. I recommend that the Commission waive the requirement regarding the temporary manager's duty to post financial assurance with the Commission.⁸
5. Finally, I recommend that we direct the Office of Policy Development to draft a proposed order consistent with the Commission's decision in this case and with previous, relevant Commission orders.

I look forward to discussing this matter with you at the open meeting.

⁸ 16 TAC § 24.357(c).