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DRAFT PRELIMINARY ORDER

MEETING DATE: August 29, 2019
DATE DELIVERED: August 22, 2019
AGENDA ITEM NO.: 28
CAPTION: Docket No. 48680; SOAH Docket No 473-19-6298.WS – Application of Bluebonnet Hills Water Supply Corporation and the City of Cresson for Sale, Transfer, or Merger of Facilities and Certificate Rights in Parker County
DESCRIPTION: Draft Preliminary Order

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


Greg Abbott
Governor

Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

All Parties of Record

FROM: Jesus Cano 
Commission Advising

RE: *Application of Bluebonnet Hills Water Supply Corporation and the City of Cresson for Sale, Transfer, or Merger of Facilities and Certificate Rights in Parker County, Docket No. 48680, SOAH Docket No. 473-19-6298.WS, Draft Preliminary Order, August 29, 2019 Open Meeting, Item No. 28*

DATE: August 22, 2019

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the August 29, 2019 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the August 29, 2019 open meeting

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**PUC DOCKET NO. 48680
SOAH DOCKET NO. 473-19-6298.WS**

APPLICATION OF BLUEBONNET	§	
HILLS WATER SUPPLY	§	
CORPORATION AND THE CITY OF	§	PUBLIC UTILITY COMMISSION
CRESSON FOR SALE, TRANSFER, OR	§	
MERGER OF FACILITIES AND	§	OF TEXAS
CERTIFICATE RIGHTS IN PARKER	§	
COUNTY	§	

DRAFT PRELIMINARY ORDER

Bluebonnet Hills Water Supply Corporation and the City of Cresson, Texas filed an application for the sale, transfer, or merger (STM) of Bluebonnet’s facilities and certificate rights to the City of Cresson. This preliminary order identifies the issues that must be addressed.

The City seeks approval to acquire facilities and to transfer a water service area from Bluebonnet in Parker and Johnson Counties under water Certificate of Convenience and Necessity (CCN) number 12290. The requested area includes approximately 436 acres and 164 connections. The City operates a facilities-only CCN under CCN number 11472 in Johnson and Hood Counties through the utility Cresson Water Works.

Bluebonnet and the City filed this application on September 12, 2018. Order No. 3 issued on February 14, 2019 found the application administratively complete. Order No. 4 issued on June 13, 2019 found notice to be insufficient and established the opportunity for the applicants to cure the insufficient notice by June 24, 2019. The City filed a response on July 10, 2019 and provided proof of notice. On July 22, 2019, Commission Staff recommended that notice be found sufficient. No order has been issued finding notice sufficient as of the date of this order. The Commission referred this proceeding to the State Office of Administrative Hearings (SOAH) on July 22, 2019. No interventions have been granted.

Bluebonnet and the City were directed and Commission Staff and other interested persons were allowed to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by

August 8, 2019. Commission Staff timely filed a list of issues. Neither Bluebonnet nor the City filed a list of issues.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.¹ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

Application

1. Did the City give proper notice to the public? TWC § 13.301(a)(2); 16 TAC § 24.239(b)–(f).
2. What is the effective date of the proposed transaction?
3. Was Bluebonnet’s application filed at least 120 days before the effective date of the transaction? TWC § 13.301(a); 16 TAC § 24.239(a).
4. Did Bluebonnet notify the City of the requirements of TWC § 13.301 and provide a copy of 16 TAC § 24.239 before signing an agreement to sell, assign, lease, or rent its facilities? TWC § 13.301(k); 16 TAC § 24.239(t).
5. Were Bluebonnet’s facilities or systems partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the Commission? TWC § 13.301(j); 16 TAC § 24.239(s).
 - a. If so, were these surcharges over and above revenues required for normal operating expenses and return?
 - b. If so, did Bluebonnet provide the City with a written disclosure relating to the contributions before the date of the sale or transfer?
 - i. Did the disclosure contain the total dollar amount of the contributions?

¹ Tex. Gov’t Code Ann. § 2003.049(e).

- ii. Did the disclosure contain a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the Commission in rate-making proceedings?

Public Interest

6. Will approving the proposed transaction serve the public interest? TWC §§ 13.301(b)–(g); 16 TAC §§ 24.239(i)–(j).
 - a. Has the City demonstrated adequate financial, managerial, and technical capability for continuous and adequate service to the service area being acquired and to any areas currently certified to the City? TWC §§ 13.301(e)(2), (h), 13.246(c); 16 TAC § 24.239(g)–(j).
 - i. What is the adequacy of service currently provided to the requested area? 16 TAC § 24.239(j)(5)(B).
 - ii. Is there a need for additional service in the requested area? 16 TAC § 24.239(j)(5)(C).
 - iii. What is the effect of approving the transaction on the City, Bluebonnet, on the landowners in the area, and any retail public utility of the same kind already serving the area within two miles of the boundary of the requested area? 16 TAC § 24.239(j)(5)(D).
 - iv. What is the ability of the City to provide adequate service? 16 TAC § 24.239(j)(5)(E).
 - v. What is the feasibility of obtaining service from an adjacent retail public utility? 16 TAC § 24.239(j)(5)(F).
 - vi. Is the City able to demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the Bluebonnet water system? TWC §§ 13.246(c)(6), 13.251; 16 TAC § 24.239(j)(4).
 - vii. What is the financial stability of the City, including, if applicable, the adequacy of the debt-equity ratio of the City if the transaction is approved? 16 TAC § 24.239(j)(5)(G).

- viii. If the City has not demonstrated adequate financial capability, should the Commission require the City to provide financial assurance? 16 TAC § 24.239(h).
 - ix. If the Commission requires the City to provide financial assurance, what form and amount of financial assurance should the Commission require? 16 TAC §§ 24.11, 24.239(h).
 - x. What impact does this transaction have on the environmental integrity of the requested area? 16 TAC § 24.239(j)(5)(H).
 - xi. Is there a probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction? 16 TAC § 24.239(j)(5)(I).
 - xii. What is the effect, if any, on the land to be included in the amended certificated area? TWC § 13.246(c)(9).
- b. Does the City have a history of noncompliance with the requirements of the Commission, the Texas Commission on Environmental Quality, or the Department of State Health Services? 16 TAC § 24.239(j)(3)(A).
 - c. Has Bluebonnet or the City failed to comply with any Commission or TCEQ order? Have the conditions of any judicial decree, compliance agreement, or other enforcement order not been substantially met? 16 TAC § 24.239(j)(5)(A).
 - d. Does the City have a history of continuing mismanagement or misuse of revenues as a utility service provider? 16 TAC § 24.239(j)(3)(B).
 - e. What is the experience of the City as a utility service provider? TWC § 13.301(b); 16 TAC § 24.239(g).
7. Does the water system being purchased from Bluebonnet have any deficiencies or problems that need correction to be in compliance with the rules of the Commission or TCEQ?
- a. If so, what are those deficiencies or problems?
 - b. How and when will those deficiencies or problems be corrected?
 - c. Does the City have access to adequate financial resources to timely correct those deficiencies and problems?

8. Should the Commission approve the City's purchase and transfer of Bluebonnet's water systems identified in the application and operated under water CCN 12290?

Cancellation of Transferee's Certificate of Convenience and Necessity

9. Should the Commission cancel Bluebonnet's water CCN number 12290? TWC § 13.301(b).

Amendment of Transferor's Certificate of Convenience and Necessity

10. Does the service area encompassed by this transaction require construction of a physically separate water system?
11. If so, has the City met the requirements of 16 TAC § 24.227(b)?
12. Is amending the City's CCN necessary for the service, accommodation, convenience, or safety of the public? 16 TAC § 24.227(c).
13. If applicable, what are the City's efforts to extend retail water utility service to any economically distressed areas located within the City's certificated service area? 16 TAC § 24.227(f).
14. Should the Commission amend the City's CCN to include the area described by the application encompassed by water CCN 12290?

Post-Transaction Requirements

15. Does Bluebonnet currently retain any customer deposits including any membership fees or other types of retained funds from its members? 16 TAC § 24.239(m).
- a. If so, what is the total amount of those retained funds? 16 TAC § 24.239(m).
 - b. Does Bluebonnet have the proper records to allow retained funds and any unpaid interest to be returned? 16 TAC § 24.239(m).
 - c. Will retained funds be returned to customers or transferred to the City? 16 TAC § 24.239(m).

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

II. Effect of Preliminary Order

This order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of August 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER