



Control Number: 48680



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DeAnn T. Walker  
Chairman

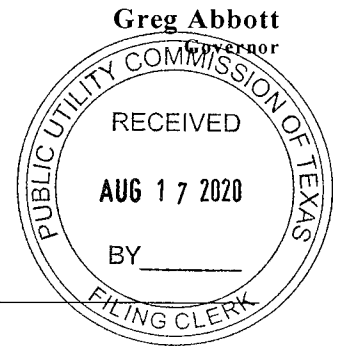
Arthur C. D'Andrea  
Commissioner

Shelly Botkin  
Commissioner

John Paul Urban  
Executive Director



*Public Utility Commission of Texas*



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

All Parties of Record  
*LB*

FROM: Hunter Burkhalter  
Chief Administrative Law Judge

RE: **Open Meeting of September 10, 2020**  
**Docket No. 48680** – *Application of Bluebonnet Hills Water Supply Corporation and the City of Cresson for Sale, Transfer, or Merger of Facilities and Certificate Rights in Parker and Johnson County*

DATE: August 17, 2020

**Because of the COVID-19 state of disaster, the Commission has moved to a work-at-home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change.**

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday, September 10, 2020, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties must file corrections or exceptions to the Proposed Order on or before Tuesday, September 1, 2020.

Because the matter is uncontested by the parties, it could normally be resolved by issuance of a Notice of Approval. However, I concluded it would be more appropriate to seek Commission approval of the transaction because it involves an issue that the Commission has recently expressed an interest in. Specifically, if the transaction is approved as contemplated by the parties, the City of Cresson will be the holder of two certificates of convenience and necessity (CCNs)—CCN number 11472 which predates the transaction at issue in this proceeding, and a new CCN number 13284 which would be issued to the city as a result of the transaction at issue in this proceeding.



Based upon recent dockets in the context of the electric industry,<sup>1</sup> it appears that the Commission may be inclined to avoid the issuance of multiple CCNs to a single entity.

**If there are no corrections or exceptions, no response is necessary.**

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<sup>1</sup> *Application of Oncor Electric Delivery Company NTU LLC to Consolidate Certificates of Convenience and Necessity in Compliance with the Final Order in Docket No. 48929, Docket No. 50069, Order (March 2, 2020); Application of Oncor Electric Delivery Company LLC to Consolidate Certificates of Convenience and Necessity, Docket No. 50070, Order (March 2, 2020).*

**DOCKET NO. 48680**

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

**PROPOSED ORDER**

This Order addresses the September 12, 2018, application of Bluebonnet Hills Water Supply Corporation and the City of Cresson for the sale, transfer, or merger of certificate rights in Parker and Johnson counties. The Commission approves the sale and transfer of all of Bluebonnet's facilities and service area under water certificate of convenience and necessity (CCN) number 12290 to Cresson, the cancellation of water CCN number 12290, and the issuance of new water CCN number 13284 to Cresson.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Bluebonnet is a non-profit corporation registered with the state of Texas under file number 75104201.
2. Bluebonnet operates, maintains, and controls facilities for providing retail water service in Johnson and Parker counties under CCN number 12290.
3. Bluebonnet controls facilities that are registered with the Texas Commission on Environmental Quality (TCEQ) under public water system identification number 1840086.
4. Cresson is a municipality in the state of Texas.
5. Cresson, operating under the name Cresson Water Works, operates, maintains, and controls facilities for providing retail water service under CCN number 11472.

**Application**

6. On September 12, 2018, Bluebonnet and Cresson filed the application at issue in this proceeding.
7. The applicants filed supplemental information on September 27 and December 7, 2018; and May 21, July 10, November 1, and December 2, 2019.
8. In the application, the applicants seek approval of the following transaction: (a) Cresson will acquire all of Bluebonnet's facilities and water service area from Bluebonnet under water CCN number 12290; (b) Bluebonnet's water CCN number 12290 will be cancelled; and (c) a new water CCN, number 13284, will be issued to Cresson.
9. The requested area to be transferred is located approximately two miles north of downtown Cresson, and is generally bounded on the north by a line one mile north of the Parker and Johnson county line, on the east by a line three-quarters of a mile east of US Highway 377, on the south by a line 400 feet south of South Skyline Court, and on the west by US Highway 377.
10. The requested area includes 436 acres and 164 current customers.
11. The requested area lies within Cresson's municipal boundaries.
12. In Order No. 3 filed on February 14, 2019, the administrative law judge (ALJ) found the application administratively complete.

**Referral to SOAH**

13. On July 22, 2019, this matter was referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.
14. On November 1, 2019, Commission Staff moved to have the case remanded from SOAH to allow for continued processing of the application on a non-contested basis.
15. In SOAH Order No. 4 filed on November 5, 2019, the SOAH ALJ remanded this matter to the Commission.

**Notice of the Application**

16. Notice of the application appeared in the September 28, 2018 issue of the *Texas Register*.

17. On July 8, 2019, the applicants filed an affidavit attesting that notice was provided to all current customers of Bluebonnet, neighboring utilities, and affected parties on March 5, 2019.
18. In SOAH Order No. 2 filed on September 5, 2019, the SOAH ALJ found the applicants' notice sufficient.

**Evidentiary Record**

19. On January 24, 2020, the parties filed an agreed motion to admit evidence.
20. In Order No. 8 filed on February 10, 2020, the ALJ admitted the following evidence into the record: (a) the application filed on September 12, 2018; (b) the applicants' supplement to the application filed on September 27, 2018; (c) the applicants' supplement to the application filed on December 7, 2018; (d) the applicants' supplement to the application filed on December 2, 2019; (e) Commission Staff's supplemental recommendation on administrative completeness filed on February 14, 2019; (f) the applicants' proof of notice and supporting documentation filed on May 21 and July 10, 2019; (g) Commission Staff's recommendation on notice filed on July 22, 2019; and (h) Commission Staff's recommendation requesting the entry of an order permitting the proposed transaction to proceed, and attachments thereto filed on December 20, 2019.
21. On June 11, 2020, Commission Staff filed an agreed supplemental motion to admit evidence on behalf of the parties.
22. On June 30, 2020, the parties filed a supplement to the agreed proposed notice of approval, to which they attached the proposed final map and certificate to be issued in this case.
23. In Order No. 12 filed on July 1, 2020, the ALJ admitted the following evidence into the record: (a) applicants' proof of closing documents filed on March 24 and 25, 2020; (b) Commission Staff's supplemental recommendation on the sufficiency of the closing documents filed on April 9, 2020; (c) applicants' consent forms filed on May 28, 2020; and (d) the final map and certificate attached to the parties' supplement to agreed proposed notice of approval filed on June 30, 2020.
24. On July 22, 2020, the applicants filed an agreed supplemental motion to admit evidence on behalf of the parties.

25. In Order No. 14 filed on August 14, 2020, the ALJ admitted into evidence Cresson's rate schedule for customers in the proposed new CCN number 13284, which was attached to the parties' July 22, 2020 motion.

**Sale**

26. In Order No. 9 filed February 12, 2020, the ALJ approved the transaction to proceed and required the applicants to file proof that the transaction had closed and that customer deposits had been addressed.

27. On March 24 and 25, 2020, the applicants filed notice that the sale had closed effective as of March 13, 2020, and that Bluebonnet held no customer deposits to transfer as part of the transaction.

28. In Order No. 10 filed on April 13, 2020, the ALJ found the closing documents sufficient.

**System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(j)(3)(A), (j)(5)(A)**

29. Cresson has not been subject to any enforcement action by the Commission, the TCEQ, the Texas Department of State Health Services, the Office of the Attorney General of Texas, or the Environmental Protection Agency in the past five years for non-compliance with rules, orders, or state statutes.

30. Cresson does not have any violations listed in the TCEQ database.

31. There is no evidence that Cresson has a history of continuing mismanagement or misuse of revenues as a utility service provider.

32. Cresson demonstrated a compliance status that is adequate for approval of the application.

**Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(e)(1), 24.239(j)(5)(B)**

33. Bluebonnet's public water system number 1840086 has a violation listed in the TCEQ database for insufficient production capacity.

34. Bluebonnet's public water system number 1840086 needs improvements that will be implemented by Cresson following the transaction. Specifically, Cresson has obtained approval from the TCEQ to construct a new well to ensure sufficient capacity.

35. Additionally, Cresson has received a grant from the Texas Department of Agriculture which will fund the necessary improvements.

36. Other than the capacity problem, Bluebonnet's public water system number 1840086, which will be taken over by Cresson, is capable of providing drinking water that meets the requirements of chapter 341 of the Texas Health and Safety Code, TCEQ rules, and chapter 13 of the TWC.
37. Once the well is constructed, the public water system will have access to an adequate supply of water.

**Need for Additional Service—TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2), 24.239(j)(5)(C)**

38. There are currently 164 existing customers in the requested area that are receiving water from Bluebonnet's public water system number 1840086 and have an ongoing need for service.
39. This application is to transfer only existing facilities, customers, and service area.
40. There is no evidence in the record indicating a need for additional service.

**Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(e)(3), 24.239(j)(5)(D)**

41. Bluebonnet and Cresson are the only utilities affected by this transfer.
42. Any landowners in the requested area that do not currently receive service from Bluebonnet will need to request service from Cresson if they require service after the transaction has been completed.
43. The quality of service provided in the requested area is expected to improve with the transfer because Cresson is better qualified to maintain and improve the system.

**Ability to Serve: Managerial and Technical—TWC §§ 13.241(a) and (b), 13.246(c)(4), 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(g) and (j)(5)(E)**

44. Cresson has a public water system registered with the TCEQ under public water system identification number 1260053 and does not have violations listed in the TCEQ database.
45. Cresson has a demonstrated history of successfully providing continuous and adequate retail water service since 2004.
46. Cresson has a TCEQ-licensed operator who will be responsible for the operation of the public water system being transferred.



47. Cresson filed documentation demonstrating that the needed improvements to the public water system being transferred will be implemented and that construction of the needed new well has been approved by the TCEQ.
48. Cresson has the managerial and technical capability to provide continuous and adequate service to the requested area.

**Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 13.301(b); 16 TAC §§ 24.11(e), 24.227(a) and (e)(6), and 24.239(g) and (j)(5)(G)**

49. Cresson meets at least two out of the five leverage tests: (a) Cresson has a debt to equity ratio of 0.16, which is less than one; and (b), Cresson has unrestricted cash available that is greater than two years of debt service.
50. Cresson demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction, thus meeting the operations test.
51. Cresson has demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.

**Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(h)**

52. There is no need to require Cresson to provide a bond or other financial assurance to ensure continuous and adequate service.

**Regionalization or Consolidation—TWC §§ 13.241(d); 16 TAC § 24.227(b)**

53. Because the requested area will not require construction of a physically separate water system, consideration of regionalization or consolidation is not required.

**Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5), 24.239(j)(5)(F)**

54. The requested area is currently being served by Bluebonnet and there will be no changes to land uses or existing CCN boundaries. Therefore, it is not feasible to obtain service from another utility.

**Environmental Integrity and Effect on the Land—TWC § 13.246(c)(7) and (c)(9); 16 TAC §§ 24.227(e)(7) and (e)(9), 24.239(j)(5)(H)**

55. The environmental integrity of the land will be minimally affected by the construction of the new well aimed at improving the public water system being transferred.

56. The requested area will continue to be served by existing facilities and only minimal additional construction is needed. Therefore, there will be minimal effect on the land.

**Improvement in Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8,) 24.239(j)(5)(I)**

57. Cresson will provide water service to the existing customers in the requested area and will make improvements to better serve the customers.

58. The rates charged to customers will change slightly. Specifically, Cresson will charge the same rates in the requested area that it charges to its existing customers. However, although Cresson's rate formula is slightly different than Bluebonnet's rate formula, the actual rates paid by the typical customer are expected to be roughly equivalent.

**Certificate and Map**

59. On May 14, 2020, Commission Staff emailed to Bluebonnet the final proposed map and to Cresson the final proposed map and certificate related to this docket.

60. On May 28, 2020, the applicants filed their consent forms concurring with the final map and certificate.

61. The final map and certificate were filed as an attachment to the supplement to the agreed proposed notice of approval filed on June 30, 2020.

62. Bluebonnet has sold and transferred all of its facilities and service area under water CCN number 12290 to Cresson.

**Informal Disposition**

63. More than 15 days have passed since the completion of the notice provided in this docket.

64. No person filed a protest or motion to intervene.

65. Bluebonnet, Cresson, and Commission Staff are the only parties to this proceeding.

66. No party requested a hearing and no hearing is needed.

67. Commission Staff recommended approval of the application.

68. This decision is not adverse to any party.

## II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under to TWC §§ 13.041, 13.241, 13.244, 13.246, 13.251, and 13.301.
2. Bluebonnet and Cresson are retail public utilities, as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Public notice of the application was provided as required by TWC § 13.301(a)(2) and 16 TAC § 24.239(a) through (c).
4. The Commission processed the application in accordance with the requirements of TWC, the Administrative Procedure Act,<sup>1</sup> and Commission rules.
5. Bluebonnet and Cresson completed the sale within the time required by 16 TAC § 24.239(o).
6. Bluebonnet and Cresson complied with the requirements of 16 TAC § 24.239(m) with respect to customer deposits.
7. After consideration of the factors in TWC § 13.246(c), Cresson demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service in the requested area as required by TWC § 13.301(b).
8. It is not necessary for Cresson to provide a bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
9. Bluebonnet and Cresson demonstrated that the sale of Bluebonnet's water system will serve the public interest and is necessary for the continued service, accommodation, convenience, and safety of the public as required by TWC §§ 13.246(b) and 13.301(d), (e).
10. Cresson must record a certified copy of the certificate granted along with map approved by this Order, along with a boundary description of the service area, in the real property records of Parker and Johnson counties within 31 days of this Order and submit to the Commission evidence of the recording as required by TWC § 13.257 (r) and (s).

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<sup>1</sup> Tex. Gov't Code §§ 2001.001–.903.

11. The requirement for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

### **III. Ordering Paragraphs**

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

1. The Commission approves the sale and transfer of all of Bluebonnet's facilities and service area under water CCN number 12290 to Cresson, the cancellation of water CCN number 12290, and the issuance of new water CCN number 13284 to Cresson, to the extent provided in this Order.
2. The Commission approves the map and certificate attached to this Order.
3. Cresson must serve every customer and applicant for service within the approved area under water CCN number 13284 who requests water service and otherwise meets the terms for Cresson's water service, and such service must be adequate and continuous.
4. Cresson must comply with the recording requirements as provided in TWC § 13.257 (r) and (s) for the areas in Parker and Johnson counties affected by the application and submit to the Commission evidence of the recording no later than 45 days after the receipt of this Order.
5. The Commission denies all other motions and any other requests for general or specific relief, not expressly granted herein.

Signed at Austin, Texas the \_\_\_\_\_ day of September 2020.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHARIMAN**

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**ARTHUR C. D'ANDREA, COMMISSIONER**

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**SHELLY BOTKIN, COMMISSIONER**