



Control Number: 50585



Item Number: 19

Addendum StartPage: 0

## PUC Interoffice Memorandum

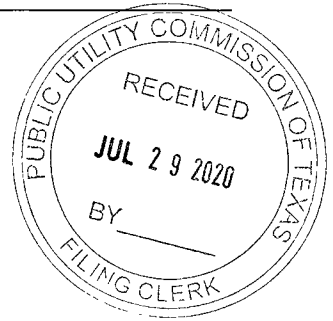
**To:** Robert Dakota Parish, Attorney  
Legal Division

**From:** Jolie Mathis, Utility Engineering Specialist  
Infrastructure Division

Fred Bednarski, Financial Analyst  
Rate Regulation Division

**Date:** July 29, 2020

**Subject:** **Docket No. 50585, Application of Polonia Water Supply Corporation and the City of Lockhart for Sale, Transfer, or Merger of Facilities and Certificate Rights in Caldwell County**



On February 24, 2020, the City of Lockhart (Purchaser) and Polonia Water Supply Corporation (Polonia WSC or Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Caldwell County, Texas, pursuant to Texas Water Code (TWC) § 13.301; 16 Texas Administrative Code (TAC) § 24.11 and 16 TAC § 24.239. Specifically, the Purchaser seeks approval to acquire facilities and to transfer a portion water service area from Polonia WSC under water Certificate of Convenience and Necessity (CCN) No. 10420. The requested area includes approximately 2,373 acres and 25 connections.

### **Background**

The Applicants are seeking to amend a water CCN for the service area containing approximately 2,373 acres and 25 existing customers.

### **Notice**

The comment period ended July 11, 2020, and 1 protest was received.

### **Criteria Considered**

TWC Chapter 13 and 16 TAC Chapter 24, require the Commission to consider certain criteria when granting or amending a water or sewer CCN. Therefore, the following criteria were considered:

***TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.***

The Polonia WSC has Texas Commission on Environmental Quality (TCEQ) approved PWS Nos. 0280005 and 0280007. The Polonia WSC does not have any violations listed in the TCEQ database.

No additional construction is necessary for the City of Lockhart to serve the requested area.

***TWC § 13.246(c)(2) requires the Commission to consider the need for additional service in the requested area.***

There are currently 25 existing customers in the requested area, therefore, there is a need for service. No additional service is needed at this time.

***TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area.***

There will be no effect on any retail public utility servicing the proximate area as there are no other water providers in the area. There will be no effect on landowners as the area is currently certificated.

***TWC §§ 13.241(b), 13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service.***

The City of Lockhart has a TCEQ approved PWS No. 0280001. The City of Lockhart does not have any violations listed in the TCEQ database. No additional construction is necessary for the City of Lockhart to serve the requested area.

***TWC § 13.241(d) requires the applicant to demonstrate to the Commission that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area.***

No additional construction is necessary for Purchaser to serve the requested area.

***TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.***

The Purchaser is currently serving customers in the adjacent area and has sufficient capacity to serve customers in the requested area. There are no other water providers in the adjacent area with a similar ability to serve the requested area.

***TWC § 13.246(c)(6) requires the Commission to consider the financial ability of the Applicant to pay for facilities necessary to provide continuous and adequate service.***

16 TAC § 24.11 establishes the criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service area. The financial tests include a leverage test and operations test. The Commission rules identify five leverage tests.<sup>1</sup> The Purchaser must demonstrate that it meets one of the five tests.<sup>2</sup>

The following shows that the Purchaser meets one out of five leverage tests. This analysis is based on the audited financial statements ending September 30, 2018. These audited financial statements also contain an unqualified auditor's opinion from Harrison, Waldrop & Uherek, L.L.P. which stated that the audited financial statements present fairly, in all material respects, the financial position of the Purchaser as of September 30, 2018. The audit and the related opinion indicate the transparency of the Purchaser and indicate sound management capabilities.

The Purchaser meets the first test with a debt to equity ratio less than one, as the Purchaser has a debt to equity ratio calculated as follows: long term debt of \$30,790,271<sup>3</sup> divided by equity/net position of \$44,167,778<sup>4</sup> equals 0.70 which is less than one.

---

<sup>1</sup> See 16 TAC § 24.11(e)(2).

<sup>2</sup> *Id.*

<sup>3</sup> Application at page 52 (02/24/2020).

<sup>4</sup> *Id.*

16 TAC § 24.11(e)(3) refers to the operations test which requires that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. The Purchaser did not submit projected financial statements in its application, which shows there are no shortages to cover; however, based on the financial statements, the Purchaser reported as change in net position of \$2,216,587<sup>5</sup> and \$26,057,575<sup>6</sup> in cash and cash equivalents. The cost to connect the portion of Polonia WSC's system being transferred to the City of Lockhart's water system is \$5,809.03<sup>7</sup>. No other improvements were reported as needed to provide continuous and adequate service to the requested area, however, should they arise in the future they will be paid for through the Purchasers budgeting process. Therefore, the Purchaser meets the operations test.

***TWC § 13.246(d) allows the Commission to require an applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided.***

The Applicant meets the financial tests. Staff does not recommend that the Commission require additional financial assurance.

***TWC §§ 13.246(c)(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificated area.***

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

***TWC § 13.246(c)(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.***

The Purchaser will continue to provide water service to the existing customers in the area.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer water facilities in the requested area, and a portion of the water service area of the water CCN No. 10420 to City of Lockhart and amending water CCN No. 10295 of City of Lockhart is necessary for the service, accommodation, convenience and safety of the public.

### **Recommendation on approval of sale**

Staff recommends that the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction. Staff notes that no deposits are held for the customers being served by Polonia WSC. Staff further recommends that a public hearing is not necessary.

---

<sup>5</sup> *Id.* at page 53.

<sup>6</sup> *Id.* at page 58.

<sup>7</sup> Response to Commission Staff's First Request at page 2 (7/1/2020).

**DOCKET NO. 50585**

<b>APPLICATION OF POLONIA WATER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SUPPLY CORPORATION AND THE</b>	<b>§</b>	
<b>CITY OF LOCKHART FOR SALE,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>TRANSFER, OR MERGER OF</b>	<b>§</b>	
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN CALDWELL COUNTY</b>	<b>§</b>	

**COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Recommendation on the Transaction. Staff recommends that sale be approved. In support thereof, Staff shows the following:

**I. BACKGROUND**

On February 24, 2020, Polonia Water Supply Corporation (Polonia WSC) and the City of Lockhart (Lockhart, together Applicants) filed an application for sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Caldwell County. Polonia WSC seeks to transfer a portion of its water service area held under CCN No. 10420 to Lockhart. The Applicants filed supplemental information on April 3, 2020 and April 9, 2020. The Applicants filed proof of notice on June 15, 2020. The requested area includes approximately 2,373 acres and 25 connections.

On June 29, 2020, Order No. 5 was issued establishing a deadline of July 29, 2020, for Staff to file a recommendation on approval of the sale. Therefore, this pleading is timely filed.

**II. RECOMMENDATION ON THE TRANSACTION**

Staff has reviewed the application and supplemental information and, as supported by the attached memorandum of Jolie Mathis, Infrastructure Division, and Fred Bednarski, Rate Regulation Division, recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors pursuant to Texas Water Code § 13.246(c). Additionally, Lockhart has demonstrated the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction. As a result, Staff recommends that the proposed transaction be permitted to proceed.

In addition, Staff recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated and that the disposition of any remaining

deposits have been addressed as required pursuant to 16 Texas Administrative Code (TAC) §§ 24.109(m)-(n).

If the Commission enters an order permitting the transaction to proceed, such approval expires six months from the date of the Commission's written approval of the sale. If the sale is not effectuated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void and the Applicants must re-apply for approval of the sale.

### **III. CONCLUSION**

For the reasons discussed above, Staff respectfully recommends that the sale be approved.

Dated: July 29, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

Heath D. Armstrong  
Managing Attorney

/s/ Robert Dakota Parish  
Robert Dakota Parish  
State Bar No. 24116875  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7442  
(512) 936-7268 (facsimile)  
Robert.Parish@puc.texas.gov

**DOCKET NO. 50585**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on July 29, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Robert Dakota Parish  
Robert Dakota Parish