



Control Number: 50585



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**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**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING  
SALE AND ALLOWING TRANSACTION TO PROCEED**

**COMES NOW** the Staff (Staff) of the Public Utility Commission of Texas (Commission), Polonia Water Supply Corporation (Polonia WSC), and the City of Lockhart (Lockhart) (collectively, Parties), and hereby submit this Joint Motion to Admit Evidence and Proposed Order Approving Sale and Allowing Transaction to Proceed. Staff reached out to intervenors Alan Wayne Balser and Pam Balser but did not receive a response as of the time of this filing. In support of Joint Motion to Admit Evidence and Proposed Order Approving Sale and Allowing Transaction to Proceed, the Parties show the following:

**I. BACKGROUND**

On February 24, 2020, Polonia WSC and the Lockhart 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 September 11, 2020, for the Parties to file a joint motion to admit evidence and proposed order approving sale and transaction to proceed. Therefore, this pleading is timely filed.

**II. MOTION TO ADMIT EVIDENCE**

The Parties request the entry of the following items into the record of this proceeding:

- (a) Application of Polonia WSC and Lockhart for Sale, Transfer, or Merger of Facilities and Certificate Rights in Caldwell County including all attachments, filed on February 24, 2020 (Interchange Item No. 1);

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- (b) Letter of Clarification regarding Sale, Transfer, or Merger filed on April 3, 2020 (Interchange Item No. 5);
- (c) Supplemental Application Information, filed on April 9, 2020 (Interchange Item No. 6);
- (d) Commission Staff's Recommendation on Administrative Completeness, filed on May 15, 2020 (Interchange Item No. 9);
- (e) Commission Staff's Corrected Notice Form, filed on June 1, 2020 (Interchange Item No. 11);
- (f) Request of Alan Wayne Balser to Intervene, filed on June 12, 2020 (Interchange Item No. 12);
- (g) Proof of Notice, filed on June 15, 2020 (Interchange Item No. 13);
- (h) Commission Staff's First Request for Information to Lockhart, filed on June 17, 2020 (Interchange Item No. 14);
- (i) Commission Staff's Recommendation on Sufficiency of Notice, filed on June 25, 2020 (Interchange Item No. 15);
- (j) Lockhart's Response to Staff's First Request for Information, filed on July 1, 2020 (Interchange Item No. 17);
- (k) Commission Staff's Recommendation on Approval of the Sale, filed on July 29, 2020 (Interchange Item No. 19).

### **III. PROPOSED ORDER APPROVING SALE AND ALLOWING PROPOSED TRANSACTION TO PROCEED**

The attached Agreed Proposed Order Approving Sale and Allowing Proposed Transaction to Proceed would authorize the transfer a portion of Polonia WSC's facilities and water service area held under CCN number 10420 to Lockhart under CCN number 10295. The Parties request that the Commission approve the proposed order.

### **IV. CONCLUSION**

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the Commission adopt the attached Proposed Notice of Approval.

Dated: September 11, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**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 September 11, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Robert Dakota Parish  
Robert Dakota Parish

**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>	

**AGREED PROPOSED ORDER APPROVING SALE AND ALLOWING  
TRANSACTION TO PROCEED**

This Order addresses the February 24, 2020 application of Polonia Water Supply Corporation (Polonia WSC) and City of Lockhart (Lockhart) (collectively, Applicants) for sale, transfer, or merger of certificate rights in Caldwell County. Specifically, in the transaction: (1) Lockhart will acquire a portion of Polonia WSC's facilities and water service area from Polonia WSC's water certificate of convenience and necessity (CCN) number 10420; and (2) that portion of facilities and water service area will be transferred to Lockhart's CCN number 10295. The area being transferred includes 2,373 acres and 25 connections. The administrative law judge (ALJ) grants that the transaction proposed in this application may proceed and be consummated.

**I. Findings of Fact**

The Commission makes the following finding of fact.

**Applicants**

1. Polonia WSC is a Water Supply Corporation registered with the Texas secretary of state on September 17, 1971, under filing number 0029577001.
2. Polonia Water owns a public water system (PWS) with the Texas Commission on Environmental Quality (TCEQ) under PWS numbers 0280005 and 028007.
3. Polonia WSC operates, maintains, and controls facilities that provide water service in Caldwell County under CCN number 10420.
4. Lockhart is a municipality in the State of Texas.
5. Lockhart owns a PWS with the TCEQ under PWS number 0280001.
6. Lockhart operates maintains, and controls facilities that provide water service in Caldwell County under CCN number 10295.

### **Application**

7. On February 24, 2020, Polonia WSC and Lockhart filed the application at issue in this proceeding.
8. Applicant's filed supplemental information on April 3, 2020, and April 9, 2020.
9. In the application, the applicants seek approval of the following transactions: (a) Lockhart will acquire a portion of Polonia WSC's facilities and water service area from Polonia WSC's water certificate of convenience and necessity (CCN) number 10420; and (b) that portion of the facilities and water service area will be transferred to Lockhart's CCN number 10295.
10. The requested area is located approximately three miles south of Lockhart, Texas, and is generally bounded on the north by Cypress Road and Plum Creek, on the east by Lockhart City limits, on the south by Silent Valley Road, and on the west by Boggy Creek and Clearfork/Plum Creek.
11. The requested area comprises approximately 2,373 acres and 25 current customers.
12. In Order No. 4 filed on May 18, 2020, the ALJ found the application administratively complete.

### **Notice**

13. On June 15, 2020, Lockhart filed Affidavits of Notice to Current Customers, Neighboring Utilities and Affected Parties indicating that notice of the application was mailed to the entities listed on the affidavits on May 29, 2020.
14. In Order No. 5, issued on June 29, 2020, the ALJ deemed the notice sufficient.

### **Evidentiary Record**

15. On September 11, 2020, the parties filed an agreed motion to admit evidence.
16. In Order No. 7, issued on September \_\_, 2020, the ALJ admitted the following evidence into the record: (a) Application of Polonia WSC and Lockhart for Sale, Transfer, or Merger of Facilities and Certificate Rights in Caldwell County including all attachments, filed on February 24, 2020 (Interchange Item No. 1); (b) Letter of Clarification regarding Sale, Transfer, or Merger filed on April 3, 2020 (Interchange Item No. 5); (c) Supplemental Application Information, filed on April 9, 2020 (Interchange Item No. 6); (d) Commission Staff's Recommendation on Administrative

Completeness, filed on May 15, 2020 (Interchange Item No. 9); (e) Commission Staff's Corrected Notice Form, filed on June 1, 2020 (Interchange Item No. 11); (f) Request to of Alan Wayne Balser to Intervene, filed on June 12, 2020 (Interchange Item No. 12); (g) Proof of Notice, filed on June 15, 2020 (Interchange Item No. 13); (h) Commission Staff's First Request for Information to Lockhart, filed on June 17, 2020 (Interchange Item No. 14); (i) Commission Staff's Recommendation on Sufficiency of Notice, filed on June 25, 2020 (Interchange Item No. 15); (j) Lockhart's Response to Staff's First Request for Information, filed on July 1, 2020 (Interchange Item No. 17); (k) Commission Staff's Recommendation on Approval of the Sale, filed on July 29, 2020 (Interchange Item No. 19).

**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)**

17. Lockhart has not been subject to any enforcement action by the Commission, TCEQ, the Texas Department of State Health Service, 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.
18. There is no evidence that Lockhart has a history of continuing mismanagement or misuses of revenues as utility service provider.
19. The applicants have demonstrated a compliance status that is adequate for approval of the application.

**Adequacy of Existing Service—TWC § 13.301(c)(1); 16 TAC §§ 24.227(e)(1), (j)(5)(B)**

20. Polonia WSC has a public water system registered with TCEQ under PWS numbers 0280005 and 0280007.
21. Polonia WSC does not have any unresolved violations listed in the TCEQ database.

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

22. There are 25 existing connections in the requested area that are receiving water from Polonia WSC's PWS numbers 0280005 and 0280007.
23. The application is to transfer only existing facilities, customers, and service area.
24. 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)**

25. Polonia WSC and Lockhart are the only utilities affected by this transfer.

26. There will be no effect on the landowners as the area is currently certificated.

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

27. Lockhart has a public water system registered with TCEQ under PWS identification number 0280001.

28. Lockhart has no violations listed in the TCEQ database.

29. Lockhart has a TCEQ-licensed operator who will be responsible for the operating of the water utility being transferred.

30. Applicants have sufficient capability to serve the customers and no additional construction is necessary.

**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), (d)(6), 24.239(2), (j)(5)(G)**

31. Lockhart meets one of the five leverage tests; (a) Lockhart has a debt to equity ratio that is less than one.

32. There are no projected operations and maintenance shortages in the first five years of operations in which Lockhart would need to cover

33. Lockhart has demonstrated the financial capability and stability to provide continuous and adequate service to the area being transferred.

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

34. There is no need to require Lockhart 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)**

35. Lockhart does not need to construct a physically separate system to serve the area; therefore, concerns of regionalization or consolidation are not applicable.



**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)26.**

36. The area being transferred is currently being served by Polonia WSC and therefore the feasibility of obtaining service from another adjacent retail public utility was not considered.

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

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

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

38. Lockhart will continue to provide water service to the existing customers in the requested area.

**Informal Disposition**

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

40. One person, Alan Wayne Balser, filed a motion to intervene.

41. Polonia WSC, Lockhart, Alan Wayne Balser and Commission Staff are the only parties to this proceeding.

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

43. Commission Staff recommended approval of the application.

44. The decision is not adverse to any party.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. Notice was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239.
2. After consideration of the factors in TWC § 13.246(c), Lockhart has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC § 13.301(b).

3. Polonia WSC and Lockhart have demonstrated that the sale of a portion of Polonia WSC's water facilities and the transfer of a portion of the water service area held under CCN number 10420 from Polonia WSC to Lockhart will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public. TWC §§ 13.301(d) and (e).

### **III. Ordering Paragraphs**

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

1. The sale is approved and the transaction between applicants may proceed and be consummated.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that the transaction has been consummated and customer deposits have been addressed.
3. The applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(o), if the transaction is not consummated within this period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
5. The applicants are advised that CCN number 10420 will not be amended until the transaction is complete in accordance with the Commission's rules.
6. In an effort to finalize this case as soon as possible, the applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
7. Within 15 days following the filing of the applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff shall file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

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

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**ADMINISTRATIVE LAW JUDGE**