



Control Number: 50585



Item Number: 42

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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**

**PUBLIC UTILITY COMMISSION  
OF TEXAS**

2021 MAY 17 PM 3:08

**NOTICE OF APPROVAL**

This Notice of Approval addresses the February 24, 2020 application of Polonia Water Supply Corporation and the City of Lockhart for the sale, transfer, or merger of facilities and certificate rights in Caldwell County. The Commission approves the sale and transfer of a portion of the facilities and service area held by Polonia WSC under water certificate of convenience and necessity (CCN) number 10420 to Lockhart under water CCN number 10295, the amendment of Lockhart's water CCN number 10295 to include the area previously included in Polonia WSC's water CCN number 10420, and the amendment of Polonia WSC's water CCN number 10420 to reflect the removal of the requested area.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Polonia WSC is a water supply corporation registered with the Texas secretary of state under filing number 0029577001.
2. Polonia WSC operates, maintains, and controls facilities for providing retail water service in Caldwell County under CCN number 10420.
3. Polonia WSC owns and operates facilities that are registered with the Texas Commission on Environmental Quality (TCEQ) under public water system identification numbers 0280005 and 0280007.
4. Lockhart is a municipality in the state of Texas.
5. Lockhart operates maintains, and controls facilities for providing retail water service in Caldwell County under CCN number 10295.

6. Lockhart owns and operates facilities that are registered with the TCEQ under public water system identification number 028001.

**Application**

7. On February 24, 2020, Polonia WSC and Lockhart filed the application at issue in this proceeding.
8. The applicants filed supplemental information on April 3 and 9, 2020.
9. In the application, the applicants seek approval of the following transaction: (1) Lockhart's acquisition of a portion of Polonia WSC's facilities and water service area under water CCN number 10420, (2) the amendment of Lockhart's water CCN number 10295 to include the area previously included in Polonia WSC's water CCN number 10420, and (3) the amendment of Polonia WSC's water CCN number 10420 to reflect the removal of the requested area.
10. The requested area to be transferred is located approximately two miles northwest of downtown Lockhart, and is generally bounded on the north by Cypress Road and Plum Creek, on the east by North Colorado Street and U.S. Highway 183, on the south by Silent Valley Road, and on the west by Farm-to-Market Road 2720.
11. The requested area includes approximately 2,373 acres and 25 current customers.
12. In Order No. 4 filed on May 18, 2020, the administrative law judge (ALJ) found the application administratively complete.

**Notice**

13. On June 15, 2020, Lockhart filed the affidavit of Sean Kelley, Lockhart's public works director, attesting that notice was provided to cities, districts, neighboring retail public utilities, county officials, and affected parties on May 29, 2020.
14. On June 15, 2020, Lockhart filed a publisher's affidavit attesting to the publication of notice of the application in the *Lockhart Post-Register*, a newspaper of general circulation in Caldwell County, on June 4 and 11, 2020.
15. In Order No. 5 filed on June 29, 2020, the ALJ found the notice sufficient.

**Intervenors**

16. On June 12, 2020, Pam and Alan Wayne Balser filed a motion to intervene.
17. In Order No. 6 filed on July 13, 2020, the ALJ granted the intervention.

**Evidentiary Record**

18. On September 11, 2020, Commission Staff, Polonia WSC, and Lockhart filed an agreed motion to admit evidence.
19. In Order No. 7 filed on October 2, 2020, the ALJ admitted the following evidence into the record: (a) the 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; (b) the letter of clarification regarding sale, transfer, or merger filed on April 3, 2020; (c) supplemental application information filed on April 9, 2020; (d) Commission Staff's recommendation on administrative completeness filed on May 15, 2020; (e) Commission Staff's corrected notice form filed on June 1, 2020; (f) Alan Wayne Balser and Pam Balser's request to intervene filed on June 12, 2020; (g) proof of notice filed on June 15, 2020; (h) Commission Staff's first request for information to Lockhart filed on June 17, 2020; (i) Commission Staff's recommendation on sufficiency of notice filed on June 25, 2020; (j) Lockhart's response to Commission Staff's first request for information filed on July 1, 2020; and (k) Commission Staff's recommendation on approval of the sale filed on July 29, 2020.
20. On April 21, 2021, Commission Staff, Polonia WSC, and Lockhart filed a joint supplemental motion to admit evidence.
21. In Order No. 15 filed on May 17, 2021, the ALJ admitted the following additional evidence into the record: (a) applicants' bill of sale and supplemental information filed on December 30, 2020, and February 11, 2021; (b) Commission Staff's supplemental recommendation on the sufficiency of closing documents filed on February 26, 2021; (c) applicants' consent forms filed on April 5, 2021; and (d) the map and certificates attached to the joint motion to admit evidence and proposed notice of approval filed on April 21, 2021.

**Sale**

22. In Order No. 8 filed on October 2, 2020, the ALJ approved the sale and transaction to proceed and required the applicants to file proof that the transaction had closed, and that customer deposits had been addressed.
23. On December 30, 2020 and February 11, 2021, the applicants filed notices that the sale had closed with an effective date of December 7, 2020, and that Polina WSC had returned all refundable membership fees to customers affected by the transaction.
24. In Order No. 12 filed on March 17, 2021, the ALJ found the closing documents sufficient and found good cause to waive the requirements of 16 Texas Administrative Code (TAC) §§ 24.239(k)(2) and (4).

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

25. Lockhart 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.
26. Lockhart does not have any violations listed in the TCEQ database.
27. There is no evidence that Lockhart has a history of continuing mismanagement or misuses of revenues as utility service provider.
28. Lockhart 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(h)(5)(A)**

29. The requested area subject to the transaction is currently served by Polonia WSC through public water systems registered with TCEQ under identification numbers 0280005 and 0280007.
30. 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(h)(5)(B)**

31. There are currently 25 existing connections in the requested area that are receiving water service from Polonia WSC's public water systems numbers 028005 and 028007 and have an ongoing need for service.

- 32. The application is to transfer only existing facilities, customers, and service area.
- 33. 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(h)(5)(C)**

- 34. Polonia WSC and Lockhart are the only utilities affected by this transfer.
- 35. Approving the transaction and granting the CCN amendment will obligate Lockhart to provide service to current and future customers in the requested area. Any landowners in the requested area that do not currently receive service from Polonia WSC will need to request service from Lockhart if they require service after the transaction has been completed.
- 36. There will be no effect on any other retail public utility servicing the proximate area because this transaction does not include any uncertificated area.
- 37. There will be no effect on the landowners as the area is currently certificated.

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

- 38. Lockhart has a public water system registered with TCEQ under public water system identification number 0280001 and does not have violations listed in the TCEQ database.
- 39. Lockhart has a demonstrated history of successfully providing continuous and adequate retail water service.
- 40. Lockhart employs a TCEQ-licensed operator who is responsible for the operations of its public water system.
- 41. Lockhart has access to an adequate supply of water and is capable of providing water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and the TCEQ's rules.
- 42. Lockhart 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), (e)(6), 24.239(e), (h)(5)(F)**

- 43. Lockhart has a debt-to-equity ratio of less than one, satisfying the leverage test.

44. Lockhart 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, satisfying the operations test.
45. Lockhart demonstrated the financial ability 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(f)**

46. 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)**

47. Lockhart will not need to construct a physically separate water system to continue serving the existing 25 connections in the requested 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(h)(5)(E).**

48. The proposed transaction involves existing retail public utilities and infrastructure; therefore, the feasibility of obtaining service from an adjacent retail public utility was not considered.

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

49. The requested area will be served with existing infrastructure, with planned construction for one connection between Polonia WSC and Lockhart's water mains; the proposed transaction should have minimal effect on the land and on the environmental integrity of the requested area.

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

50. Lockhart will continue to provide water service to the existing customers in the requested area and does not anticipate any changes to the quality of water service.
51. No lowering of cost to consumers in the requested area is expected and the rates charged will change. Specifically, Lockhart will charge the same rates in the requested area that it charges to its existing customers.

**Map and Certificates**

52. On March 30, 2021, Commission Staff emailed the applicants the final proposed map and certificates related to this docket.
53. On April 5, 2021, Lockhart and Polonia WSC filed their consent forms concurring with the proposed final map and certificates.
54. The final map and certificates were attached to the joint supplemental motion to admit evidence filed on April 21, 2021.

**Informal Disposition**

55. More than 15 days have passed since the completion of notice provided in this docket.
56. Polonia WSC, Lockhart, Alan Wayne Balser, Pam Balser, and Commission Staff are the only parties to this proceeding.
57. No party requested a hearing and no hearing is needed.
58. Commission Staff recommended approval of the application.
59. The 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 TWC §§ 13.041, 13.241, 13.244, 13.246, 13.251, and 13.301.
2. Lockhart and Polonia WSC are retail public utilities as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Notice of the application was provided in compliance with TWC § 13.301(a) and 16 TAC § 24.239(a) through (c).
4. The Commission processed the application as required by the TWC, the Administrative Procedure Act,<sup>1</sup> and Commission Rules.
5. Good cause exists to waive the requirements of 16 TAC § 24.239(k)(2) and (4).

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

6. Lockhart and Polonia WSC completed the sale within the time frame required by 16 TAC § 24.239(m).
7. After consideration of the factors in TWC § 13.246(c) and 16 TAC §§ 24.227(e) and 24.239(h)(5), Lockhart demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area as required by TWC § 13.301(b) and 16 TAC § 24.239(e).
8. It is not necessary for Lockhart to provide bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
9. Lockhart and Polonia WSC demonstrated that the sale and transfer of a portion of Polonia WSC's water facilities and water service area under water CCN number 10420 from Polonia WSC to Lockhart will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.301(d) and (e).
10. Lockhart must record a certified copy of its certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Caldwell County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording. TWC § 13.257(r) and (s).
11. Polonia WSC must record a certified copy of its certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Caldwell County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording. TWC § 13.257(r) and (s).
12. The requirements 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 facilities and requested area from Polonia WSC's water CCN number 10420 to Lockhart's water CCN number 10295, the amendment of Lockhart's water CCN number 10295 to include the area previously

included in Polonia WSC's water CCN number 10420, and the amendment of Polonia WSC's water CCN number 10420 to reflect the removal of the requested area, to the extent provided in this Notice of Approval.

2. The Commission approves the map attached to this Notice of Approval.
3. The Commission issues the certificates attached to this Notice of Approval.
4. Lockhart must provide service to every customer and applicant for service within the approved area under water CCN number 10295 that requests service and meets the terms of Lockhart's water service, and such service must be continuous and adequate.
5. Polonia WSC must provide service to every customer and applicant for service within the approved area under water CCN number 10420 that requests service and meets the terms of Lockhart's water service, and such service must be continuous and adequate.
6. Lockhart must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Caldwell County affected by the application and must submit to the Commission evidence of the recording no later than 45 days after receipt of the Notice of Approval.
7. Polonia WSC must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Caldwell County affected by the application and must submit to the Commission evidence of the recording no later than 45 days after receipt of the Notice of Approval.
8. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

**Signed at Austin, Texas on the 17th day of May 2021**

**PUBLIC UTILITY COMMISSION OF TEXAS**



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**ISAAC TA  
ADMINISTRATIVE LAW JUDGE**



# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**

## **City of Lockhart**

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, City of Lockhart is entitled to this

### **Certificate of Convenience and Necessity No. 10295**

to provide continuous and adequate water utility service to that service area or those service areas in Caldwell County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 50585 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Lockhart to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.



# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**

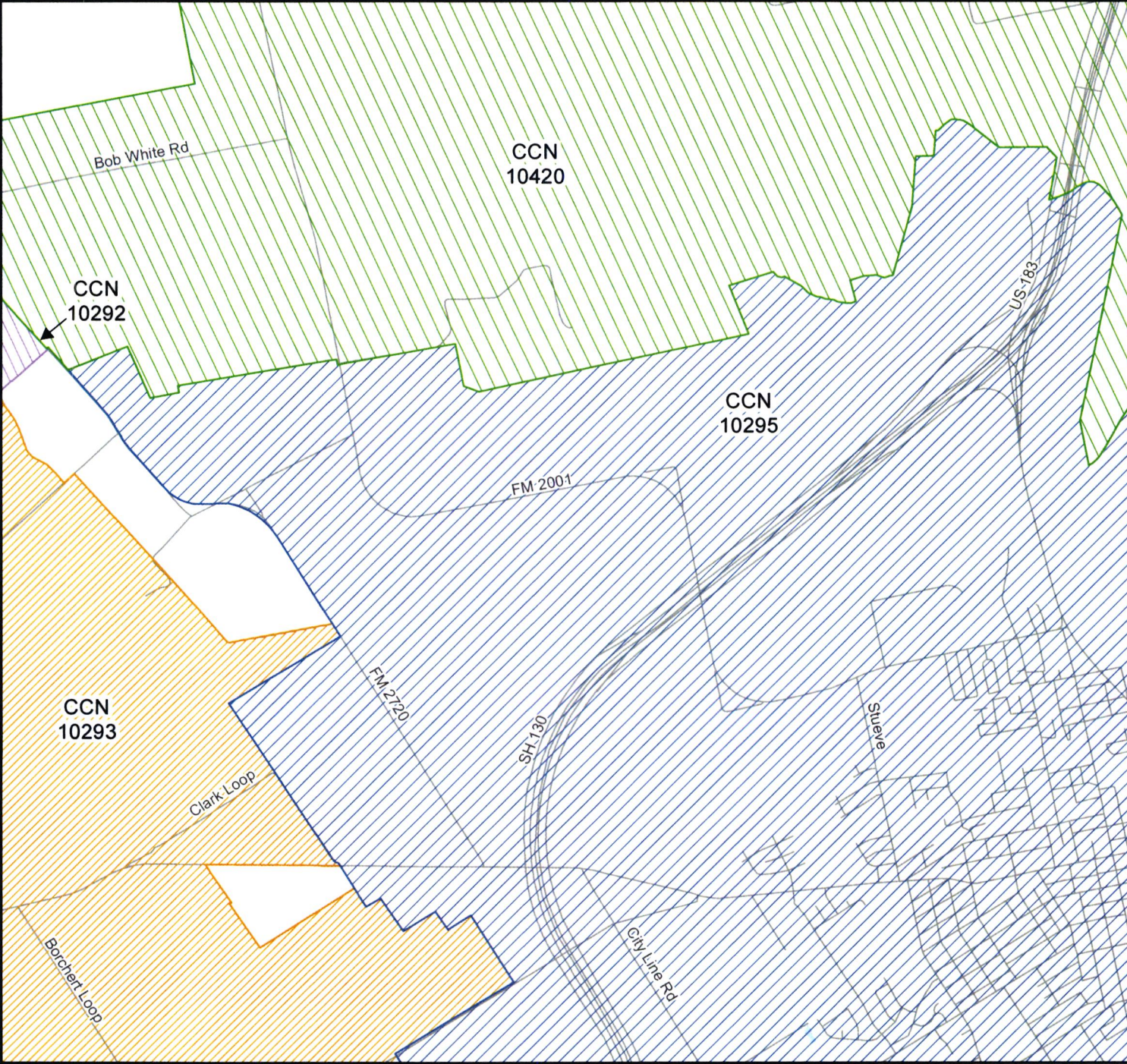
## **Polonia Water Supply Corporation**

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Polonia Water Supply Corporation is entitled to this

### **Certificate of Convenience and Necessity No. 10420**





to provide continuous and adequate sewer utility service to that service area or those service areas in Bastrop and Caldwell Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 50585 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Polonia Water Supply Corporation to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

City of Lockhart  
Portion of Water CCN No. 10295  
PUC Docket No. 50585  
13.248 Agreement Amended CCN No. 10295 and  
Decertified a Portion of Polonia WSC, CCN No. 10420 in Caldwell County



Public Utility Commission of Texas  
1701 N. Congress Ave  
Austin, TX 78701

**Water CCN**

-  10295 - City of Lockhart
-  10420 - Polonia WSC
-  10293 - Maxwell WSC
-  10292 - County Line SUD

0 1,500 3,000  
Feet



Map by: Komal Patel  
Date created: March 23, 2021  
Project Name: 50585CityofLockhart.mxd