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DOCKET NO. 52270

APPLICATION OF AQUA WATER	§	PUBLIC UTILITY COMMISSION
SUPPLY CORPORATION AND	§	
POLONIA WATER SUPPLY	§	OF TEXAS
CORPORATION FOR SALE,	§	
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN BASTROP AND	§	
CALDWELL COUNTIES		

**COMMISSION STAFF’S SUPPLEMENTAL RECOMMENDATION ON APPROVAL
OF SALE**

On June 24, 2021, Aqua Water Supply Corporation (Aqua WSC) and Polonia Water Supply Corporation (Polonia WSC) (collectively, the Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Bastrop and Caldwell Counties. The Applicants seek approval to sell and transfer all of Polonia WSC’s facilities and certificated service area under water certificate of convenience and necessity (CCN) No. 10420 to Aqua WSC’s water CCN No. 10294, and the cancellation of Polonia WSC’s water CCN. The requested area consists of a total of 38,623 acres and 3,189 customer connections. On July 13, 2021, July 21, 2021, and January 6, 2022, the Applicants filed supplemental information.

On November 12, 2021, Staff (Staff) of the Public Utility Commission of Texas (Commission) filed its recommendation on the approval of sale. Subsequently, Staff discovered an issue with the mapping data, which has since been resolved. On January 7, 2022, the administrative law judge (ALJ) filed Order No. 7, requiring Staff to file a request for a hearing or a supplemental recommendation on the approval of the sale by February 7, 2022. Therefore, this pleading is timely filed.

I. SUPPLEMENTAL RECOMMENDATION ON APPROVAL OF SALE

Staff has reviewed the application and supplemental mapping data filed on January 6, 2022 and, as supported by the attached memoranda of Jolie Mathis of the Infrastructure Division and Fred Bednarski III of the Rate Regulation Division recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed. Under 16 TAC § 24.239(i) and TWC §§ 13.246 and 13.301, Staff recommends that this transaction will serve the public

interest and should be allowed to proceed without a public hearing. If the transaction is permitted to proceed, Staff further requests that the Applicants be required to file evidence that all assets have been transferred to the acquiring entity, and that the disposition of any remaining deposits have been addressed as soon as possible, as required by 16 TAC § 24.239(1).

Staff notes that the approval of the sale expires 180 days from the date of the Commission' s written approval of the sale. If the sale is not consummated 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 the approval of the sale, as required by 16 TAC § 24.239(m).

II. CONCLUSION

Staff respectfully requests the entry of an order permitting the proposed transaction to proceed.

Dated: February 7, 2022

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 February 7, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Arnett D. Caviel
Arnett D. Caviel

Public Utility Commission of Texas

Memorandum

TO: Arnett Caviel, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: February 7, 2022

RE: Docket No. 52270 – *Application of Aqua Water Supply Corporation and Polonia Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bastrop and Caldwell County*

1. Application

On June 24, 2021, Aqua Water Supply Corporation (Aqua WSC) and Polonia Water Supply Corporation (Polonia WSC) (collectively, the Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Bastrop and Caldwell Counties, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Aqua WSC, Certificate of Convenience and Necessity (CCN) No. 10294, seeks approval to acquire facilities and to transfer all of the water service area from Polonia WSC under water CCN No. 10420.

A portion of Polonia WSC (CCN No. 10420) was decertified as a result of the streamlined expedited release approved in Docket No. 52474¹ on November 9, 2021. Therefore, on January 6, 2022, the Applicant filed revised mapping that reduced the requested area from 38,892 acres to 38,623 acres. Based on the mapping review by Tracy Montes, of the Infrastructure Division, the revised maps and digital data submitted with Item 17 on January 6, 2022, are sufficient to reduce the requested area to include approximately 38,623 acres.

The total requested area to be transferred from Polonia WSC (CCN No. 10420) to Aqua WSC (CCN No. 10294) includes 3,189 customer connections and approximately 38,623 acres.

¹ Petition of Neimann Farm Partners, LP to Amend Polonia Water Supply Corporation's Certificate of Convenience and Necessity in Caldwell County by Streamlined Expedited Release, Docket No. 52474, Aug. 25, 2021.

The revised application proposes the subtraction of approximately 38,623 acres from Polonia WSC (CCN No. 10420) and the addition of approximately 38,623 acres to Aqua WSC (CCN No. 10294).

2. Notice

Aqua WSC provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was October 13, 2021; there were no motions to intervene, protests, or opt-out requests received.

3. Factors Considered

Under TWC §§ 13.241 and 13.246 and 16 TAC §§ 24.11(e), 24.227 and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(I)).*

Polonia WSC has several Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) registered as Polonia WSC, PWS ID No. 0280005, Polonia WSC North, PWS ID No. 0280007, and Polonia WSC South, PWS ID No. 0280020. The last TCEQ compliance investigation of the Polonia WSC system was on April 29, 2020. No violations or concerns were noted as a result of that investigation. In addition, the Commission's complaint records, which date back to 2018, show 1 complaint against Polonia WSC.

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

3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).*

There are currently 3,189 existing customers in the requested area, therefore, there is a need for service. No additional service is needed at this time.

3.3. *Consideration of 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 (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).*

Aqua WSC will be the certificated entity for the requested area and be required to provide adequate and continuous service to the requested area.

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

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and did not request to intervene.

- 3.4. ***Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).***

Aqua WSC has the ability to provide adequate service in the requested area. Aqua WSC has a Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) registered as Aqua WSC, PWS ID No. 0110013. Aqua WSC has 5 violations listed in the TCEQ database that have all been resolved. In addition, the Commission's complaint records, which date back to 2017, show 11 complaints against Aqua WSC. No additional construction is necessary for Aqua WSC to serve the requested area.

- 3.5. ***The applicants' demonstration 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. (TWC § 13.241(d); 16 TAC § 24.227(b)).***

The construction of a physically separate system is not necessary for Aqua WSC to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

- 3.6. ***Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).***

Polonia WSC is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

- 3.7. ***Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).***

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.8. ***Requirement of the 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 (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).***

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.9. ***Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).***

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

3.10. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)).*

Aqua WSC will continue to provide water service to the existing customers in the area. There will be no change in the quality or cost of service to customers.

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 all of the water service area of water CCN No. 10420 to Aqua WSC and amending water CCN No. 10294 of Aqua WSC is necessary for the service, accommodation, convenience and safety of the public.

4. Recommendation

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are no deposits held by Polonia WSC for the customers being served by Polonia WSC System. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: Arnett Caviel, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: February 7, 2022

RE: Docket No. 52270 - *Application of Aqua Water Supply Corporation and Polonia Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bastrop and Caldwell Counties*

On June 24, 2021, Aqua Water Supply Corporation (Aqua WSC) and Polonia Water Supply Corporation (Polonia WSC) filed an application for the sale, transfer, or merger of facilities and certificate rights in Bastrop and Caldwell Counties.

I recommend that Aqua WSC demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application. My conclusions are based on information provided by Aqua WSC before the date of this memorandum and may not reflect any changes in Aqua WSC's status after this review.

Ability to serve: financial ability and stability (Texas Water Code (TWC) §§ 13.241(a) and 13.246(c)(6))

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 Texas Administrative Code (TAC) § 24.11. Aqua WSC must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

Leverage test

My analysis is based on financial statements ending December 31, 2020. These financial statements contain an unqualified auditor's opinion from Montemayor Britton Bender PC stating that the financial statements present fairly, in all material respects, the financial position of Aqua WSC as of December 31, 2020 and 2019.

Aqua WSC's 2020 financial statements report long-term debt of \$13,377.467 and equity of \$109,080,822. The debt-to-equity ratio is 0.12. Because the ratio is less than 1.0, Aqua WSC meets the leverage test specified in 16 TAC § 24.11(e)(2)(A).

Operations test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations, as required by 16 TAC § 24.11(e)(3).

Aqua WSC's financial statements include net operating income of \$13,223,546 excluding depreciation expense and \$16,908,900 cash and cash equivalents that indicate Aqua WSC will have sufficient cash to cover projected shortages.

No capital improvements are needed to provide continuous and adequate service to the requested area. Sufficient cash and net operating income available to cover possible future shortages provide an indication of financial stability and financial and managerial capability. Therefore, Aqua WSC meets the operations test specified in 16 TAC § 24.11(e)(3).

Financial assurance (TWC § 13.246(d))

Because Aqua WSC meets the financial tests, I do not recommend that the Commission require additional financial assurance.