



Filing Receipt

Received - 2022-02-14 02:36:35 PM
Control Number - 52270
ItemNumber - 23

DOCKET NO. 52270

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

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

COME NOW, Aqua Water Supply Corporation (“Aqua WSC”), Polonia Water Supply Corporation (“Polonia WSC”), and the Staff (“Staff”) of the Public Utility Commission of Texas (the “Commission”) (collectively, the “Parties”), and respectfully show the following:

I. BACKGROUND

On June 24, 2021, Aqua WSC and Polonia WSC (collectively, the “Applicants”) filed an application (the “Application”) for approval of the sale and transfer of certificate of convenience and necessity (“CCN”) rights in Caldwell County and Bastrop County. Aqua WSC seeks approval to acquire facilities and to transfer all of Polonia WSC’s certificated water service area in Polonia WSC’s water CCN Number 10420 to Aqua WSC’s CCN Number 10294, and the cancelation of Polonia WSC’s water CCN number.

On January 7, 2022, the Honorable Administrative Law Judge issued Order No. 7, establishing a deadline of February 14, 2022, for the Parties to file a supplemental joint motion to admit evidence and proposed order approving the sale and allowing the transaction to proceed. Therefore, this pleading is timely filed.

II. JOINT MOTION TO ADMIT EVIDENCE

The Parties move to admit Staff's supplemental recommendation on approval of sale, filed in February 7, 2022, into the record as evidence of this proceeding.

III. JOINT PROPOSED ORDER

The Parties move for adoption of the attached Proposed Order Approving the Sale and Allowing the Transaction to Proceed, which will allow the sale and transfer of the certificated service area from Polonia WSC's CCN No. 10420 to Aqua WSC's CCN No. 10294 to proceed and be consummated.

IV. CONCLUSION AND PRAYER

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

Respectfully submitted,

/s/ Ty H. Embrey

Ty H. Embrey
State Bar No. 24025346
Lloyd, Gosselink, Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800 phone
(512) 472-0532 facsimile
tembrey@lglawfirm.com

**ATTORNEY FOR AQUA WATER SUPPLY
CORPORATION**

Rachelle Nicolette Robles
Division Director

Rustin Tawater
Managing Attorney

/s/ Arnett D. Caviel
Arnett D. Caviel
State Bar No. 24121533
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7245
(512) 936-7268 (facsimile)
Arnett.Caviel@puc.texas.gov

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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 14, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Ty H. Embrey
Ty H. Embrey

DOCKET NO. 52270

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

PROPOSED ORDER APPROVING SALE AND ALLOWING TRANSACTION TO PROCEED

This Order addresses the application of Aqua Water Supply Corporation (Aqua WSC) and Polonia Water Supply Corporation (Polonia WSC)(Collectively, the Applicants), for approval of the sale, transfer, or merger of facilities and certificate rights in Caldwell County and Bastrop County. Aqua WSC and Polonia WSC seek approval of the sale and transfer of all facilities and service area held under Polonia WSC's certificate of convenience and necessity (CCN) number 10420 to Aqua WSC's CCN number 10294, the cancellation of Polonia WSC's CCN number 10420, and the amendment of Aqua WSC's CCN number 10294 to include the area previously included in Polonia WSC's CCN number 10420. The administrative law judge (ALJ) grants that the sale is approved and the transaction between Aqua WSC and Polonia WSC may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact:

Applicants

1. Aqua WSC is a domestic non-profit water supply corporation, organized under Chapter 67 of the Texas Water Code, and registered with the Texas Secretary of State under file number 25894701.
2. Aqua WSC is a retail public utility that operates, maintains, and controls facilities for providing water service in Bastrop, Caldwell, Lee, Travis, and Williamson counties under water CCN number 10294.

3. Aqua WSC owns a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under public water system (PWS) identification number TX0110013.
4. Polonia WSC is a domestic non-profit water supply corporation, organized under Chapter 67 of the Texas Water Code, and registered with the Texas Secretary of State under file number 29577001.
5. Polonia WSC is a retail public utility that operates, maintains, and controls facilities for providing water service in Bastrop and Caldwell Counties under CCN number 10420.
6. Polonia WSC owns three public water systems registered with the TCEQ as (1) Polonia WSC under PWS identification number TX0280005; (2) Polonia WSC North under PWS identification number TX0280007; and (3) Polonia WSC South under PWS identification number TX0280020.

Application

7. On June 24, 2021, Aqua WSC and Polonia WSC jointly filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Bastrop and Caldwell Counties.
8. In the application, the Applicants seek approval for the following transaction: (a) Aqua WSC will acquire all of Polonia WSC's facilities and water service area held under Polonia WSC's CCN number 10420; (b) Polonia WSC's CCN number 10420 will be cancelled; and (c) Aqua WSC's CCN number 10294 will be amended to add the area previously included in Polonia WSC's CCN number 10420.
9. The total requested area includes approximately 38,623 acres and 3,189 connections.
10. Requested Area 1 is located approximately 1.5 miles north of downtown Lockhart, Texas, and is generally bounded on the north by West State Highway 21 (Camino Real) and Farm to Market 812; on the east by intersection of Farm to Market 812 and Farm to Market 20 East; on the south by Farm to Market Road 20 East; and on the west by intersection of Farm to Market 2720 and State Highway 21 (Camino Real).
11. Requested Area 2 is located approximately 1.6 miles southeast of downtown Lockhart, Texas, and is generally bounded on the north by State Park Road and Black Jack Road (Farm

to Market Road 20 East); on the east by Harwood Road; on the south by Ivy Switch Road and Mule Creek Road; and on the west by State Park Road (Farm to Market Road 20).

12. On July 13, 2021, July 21, 2021, and January 6, 2022 the Applicants filed supplements to the application.
13. In Order No. 3 filed on August 23, 2021, the ALJ deemed the application, as supplemented, administratively complete.

Notice

14. On September 14, 2021, Aqua WSC filed the affidavit of Dave McMurry, General Manager of Aqua WSC, attesting that notice was provided to all neighboring utilities and affected parties on August 26, 2021.
15. On September 14, 2021, Aqua WSC also filed the affidavit of Paul L. Pittman, General Manager of Polonia WSC, attesting that notice was provided to all current customers and affected parties on September 10, 2021.
16. In Order No. 4 filed on October 1, 2021, the ALJ deemed the notice sufficient.

Evidentiary Record

17. On December 10, 2021, the Applicants and Commission Staff filed a joint motion to admit evidence.
18. In Order No. 5 filed on December 20, 2021, the ALJ admitted the following evidence into the record:
 - a. The application and all attachments filed on June 24, 2021;
 - b. The applicants' first application supplement filed on July 13, 2021;
 - c. The applicants' second application supplement filed on July 21, 2021;
 - d. Commission Staff's recommendation on administrative completeness and notice, proposed procedural schedule, and request to restyle docket filed on August 20, 2021;
 - e. The applicant's proof of notice and supporting documentation filed on September 14, 2021;

- f. Commission Staff's recommendation on sufficiency of notice filed on September 30, 2021; and
 - g. Commission Staff's recommendation on approval of sale filed on November 12, 2021.
- 19. On January 6, 2022, the Applicants filed their third application supplement and motion to admit evidence.
- 20. In Order No. 6 filed on January 7, 2022, the ALJ admitted the Applicant's third application supplement and supplemental mapping documents and digital mapping files as evidence into the record of this proceeding.
- 21. In Order No. ___ filed on February __, 2022, the ALJ admitted Commission Staff's supplemental recommendation on approval of sale as evidence into the record of this proceeding.

System Compliance

- 22. Polonia WSC has three public water systems registered with the TCEQ as (1) Polonia WSC under PWS identification number TX0280005; (2) Polonia WSC North under PWS identification number TX0280007; and (3) Polonia WSC South under PWS identification number TX0280020.
- 23. 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 the investigation.
- 24. The Commission's complaint records, which date back to 2018, show one complaint against Polonia WSC.
- 25. Aqua WSC's public water system is registered with the TCEQ under identification number TX0110013.
- 26. Aqua WSC's public water system has five violations listed in the TCEQ database, which have all been resolved.
- 27. The Commission's complaint records, which date back to 2017, show eleven complaints against Aqua WSC.
- 28. Aqua WSC has not been under enforcement action by the Commission, TCEQ, Texas Department of State Health Services, the Texas Office of the Attorney General, or the

United States Environmental Protection Agency in the past five years for non-compliance with rules, orders, or state statutes.

29. Aqua WSC demonstrated a compliance status that is adequate for approval of the transaction.

Adequacy of Existing Service

30. Aqua WSC will continue to use Polonia WSC's existing facilities to serve the requested area. No additional construction is necessary for Aqua WSC to serve the requested area.
31. Polonia WSC does not have any unresolved violations listed in the TCEQ database.

Need for Additional Service

32. There are currently 3,189 existing customers in the requested area; therefore, there is a need for service.

Effect of Approving the Transaction

33. Approving the proposed transaction will result in Aqua WSC being the sole certificated entity for the requested area and will obligate Aqua WSC to provide continuous and adequate water service to existing and future customers in the requested area.
34. There will be no effect on current customers, as the portion of the requested area where the current customers are located is currently certificated.
35. There will be no effect on any retail public utility servicing the proximate area. All retail public utilities within a two-mile radius of the requested area were provided notice of the transaction proposed in this application. No adjacent retail public utility filed a protest, adverse comment, or motion to intervene.
36. There will be no adverse effect on any landowner in the requested area or retail public utility providing service in the proximate area.

Ability to Serve: Managerial and Technical

37. Aqua WSC's existing certificated service area and water system infrastructure is in close proximity to Polonia WSC's public water systems.

38. Aqua WSC employs TCEQ-licensed operators who will be responsible for the operation of the public water system being transferred.
39. Aqua WSC has access to an adequate supply of water and is capable of providing drinking 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.
40. No additional construction is necessary for Aqua WSC to serve the requested area.
41. Aqua WSC has the managerial and technical ability to provide continuous and adequate service to the requested area.

Ability to Serve; Financial Ability; and Stability

42. Aqua WSC has a debt-to-equity ratio of less than one, satisfying the leverage test.
43. Aqua WSC has sufficient cash and net operating income 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.
44. Aqua WSC has demonstrated the financial ability and stability to provide continuous and adequate service to the requested area.

Financial Assurance

45. There is no need to require Aqua WSC to provide a bond or other financial assurance to ensure continuous and adequate service to the requested area.

Regionalization or Consolidation

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

Feasibility of Obtaining Service from an Adjacent Retail Public Utility

47. Polonia WSC is currently serving customers in the requested area with existing facilities that have sufficient capacity.
48. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At a minimum, an

interconnect would need to be installed in order to connect a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

Environmental Integrity and Effect on the Land

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

Improvement in Service or Lowering of Cost to Consumers

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

II. Conclusions of Law

The Commission makes the following conclusions of law:

1. The Applicants provided notice of the application that complies with Texas Water Code (TWC) §§ 13.246 and 13.301(a)(2) and 16 Texas Administrative Code (TAC) § 24.239.
2. After consideration of the factors in TWC § 13.246(c) and 16 TAC §§ 24.227(e) and 24.239(h)(5), Aqua WSC has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate water service to the requested area as required by TWC § 13.301(b) and 16 TAC § 24.239(e).
3. The Applicants have demonstrated that the sale of Polonia WSC's water facilities and the transfer of the water service area held under CCN number 10420 from Polonia WSC to Aqua WSC under CCN number 10294 will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public as required by TWC § 13.301(d) and (e).

III. Ordering Paragraphs

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

1. The sale and transfer proposed in the application are approved and the transaction between Aqua WSC and Polonia WSC 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, if any, have been addressed.
3. The Applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not consummated within this 180-day period, or an extension is not granted, the approval is void and the Applicants will have to reapply for approval.
5. The Applicants are advised that the Polonia WSC Water System and corresponding service area will remain under CCN number 10420 and be held by Polonia WSC until the sale and transfer transaction is complete in accordance with Commission 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 must file a recommendation regarding the sufficiency of the documents and propose a procedural schedule for continued processing of this docket.

Signed at Austin, Texas the _____ day of February, 2022.

**CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE**