

Control Number: 50271



Item Number: 14

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DOCKET NO. 50271

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**APPLICATION OF THE CITY OF
MIDLAND TO AMEND ITS
CERTIFICATES OF CONVENIENCE
AND NECESSITY IN MARTIN AND
MIDLAND COUNTIES**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF'S FINAL RECOMMENDATION

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Final Recommendation. In support thereof, Staff shows the following:

I. BACKGROUND

On November 21, 2019, the City of Midland filed an application to amend its water Certificate of Convenience and Necessity (CCN) No. 10221 and sewer CCN No. 20083 in Martin and Midland Counties, Texas pursuant to Texas Water Code Ann. (TWC) §§ 13.242 - 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237. The City of Midland is requesting an extension of its single certification for water and sewer service to include the entire area within Midland city limits. This includes approximately 24,076 acres for water and 24,279 acres for sewer and 44,622 existing water customers and 40,282 existing sewer customers.

On May 21, 2020, the Administrative Law Judge (ALJ) issued Order No. 5 requiring Staff to file a final recommendation on the application by July 1, 2020. Therefore, this pleading is timely filed.

II. FINAL RECOMMENDATION

Staff has reviewed City of Midland's application and, as detailed in the memorandum of Jolie Mathis of the Commission's Infrastructure Division, Staff recommends that the application be approved. Staff's review indicates that the City of Midland meets the applicable technical, managerial, and financial requirements of Chapter 13 of the Texas Water Code and Title 16, Chapter 24 of the Texas Administrative Code, and therefore, is capable of providing continuous and adequate service. Additionally, Staff's review suggests that approval of the application is necessary for the service, accommodation, convenience, and safety of the public.

In accordance with this recommendation, the corresponding map and certificates consented to by City of Midland are included with this pleading.

III. CONCLUSION

For the reasons detailed above, Staff respectfully recommends that the Commission approve the City of Midland's application.

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

/s/ Rashmin J. Asher
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DOCKET NO. 50271

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 1, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Rashmin J. Asher
Rashmin J. Asher

PUC Interoffice Memorandum

To: Rashmin Asher, Attorney
Legal Division

From: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

Date: July 1, 2020

Subject: **Docket 50271**, *Application of The City of Midland to Amend its Water and Sewer Certificates of Convenience and Necessity in Martin and Midland Counties*

On November 21, 2019, the City of Midland (Applicant) filed with the Public Utility Commission of Texas (Commission) an application to amend its water Certificate of Convenience and Necessity (CCN) No. 10221 and sewer CCN No. 20083 in Martin and Midland Counties, Texas pursuant to Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237.

Background

The City of Midland (City) is requesting an extension of its single certification for water and service to include the entire area within the Midland city limits. This includes approximately 24,076 acres for water and 24,279 acres for sewer and 44,622 existing water customers and 40,282 existing sewer customers.

Notice

The comment period ended April 26, 2020, and 1 protest was received.

Criteria Considered

TWC Chapter 13 and 16 TAC Chapter 24, require the Commission to consider certain factors 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 Applicant has a Texas Commission on Environmental Quality (TCEQ) approved Public Water System (PWS) Identification No. TX1650001 and Wastewater Discharge Permit No. WQ0010223001. The Applicant does not have any violations listed in the TCEQ database. Additional construction is necessary for the Applicant to serve the requested area.

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

There is a need for service as there are 44,622 existing water customers and 40,282 existing sewer customers and a potential 8,000 new water customers and 7,000 new sewer customers in the requested area(s).

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.

The proposed northeast water system improvements and northeast wastewater system improvements projects will improve the service quality in the rapidly developing northeast area of the City; the improved service quality will benefit the landowners. No other public utilities will be impacted because the expansion of the CCN will not encroach upon any areas which are currently served by other utilities.

TWC § 13.246(c)(4) requires the Commission to consider the ability of the Applicant to provide adequate service.

The Applicant has a Texas Commission on Environmental Quality (TCEQ) approved Public Water System (PWS) Identification No. TX1650001 and Wastewater Discharge Permit No. WQ0010223001. The Applicant does not have any violations listed in the TCEQ database. Additional construction is necessary for the Applicant to serve the requested area. Construction of the proposed northeast water system improvements project and the proposed northeast wastewater system improvements project are anticipated to begin on January 1, 2020 and be completed by January 1, 2023. The Summary Transmittal Letter of the Northeast Water System Improvements to TCEQ was included in the application. Construction at the City's Water Pollution Control Plant (WPCP) is underway and is anticipated to be completed in 2020.

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

Much of the proposed additional areas are already served by the City of Midland.

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.¹ The Applicant must demonstrate that it meets one of the five tests.

The following shows that the Applicant meets one out of five leverage tests. This analysis is based on financial statements ending September 30, 2018. These financial statements contain an unqualified auditor's opinion from BKD, LLP, certified public accountants, which states that the that the financial statements present fairly, in all material respects, the financial position of the Applicant as of September 30, 2018. The Applicant also received a Certificate of Achievement for Excellence in Financial Reporting presented by the Government Finance Officers Association for the fiscal year ended September 30, 2017. The certificate, audit and the related opinion indicate the transparency of the Applicant and sound management capabilities.

¹ See 16 TAC § 24.11(e)(2).

The Applicant meets the first test with a debt to equity ratio less than one. The Applicant's debt to equity ratio is calculated as follows: long term debt of \$314,016,963² divided by total net position of \$344,753,745³ equals 0.91 which is less than one.

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 Applicant did not submit projected financial statements in its application, which shows there are no shortages to cover; however, based on the financial statements, the Applicant had a positive \$34,134,730⁴ change in net position and \$213,759,195⁵ in cash and cash equivalents as of September 30, 2018. Any improvements needed will be paid for with the Applicant's reserves and ability to issue obligations that are normally approved through the Applicants budgeting process.⁶ Therefore, the Applicant 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.

Staff does not recommend that the Applicant be required to provide a bond or other financial assurance to ensure continuous and adequate service.

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

The City is already serving a number of connections within the requested CCN area, so the new CCN area will not have a negative impact on the environmental integrity of the land.

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

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

The Applicant consented to the attached maps and certificate on June 17, 2020.

Staff recommends that the Applicant meets all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations, is capable of providing continuous and adequate service and approving this application to amend a water CCN No. 10221 and Sewer CCN No. 20083 is necessary for the service, accommodation, convenience and safety of the public.

Based on the above information, Staff recommends the Commission approve the application, issue an order and provide the attached maps and certificates to the City of Midland. Staff further recommends

² Application at 284 (Nov. 21, 2019).

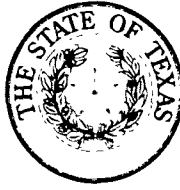
³ *Id.*

⁴ *Id.* at 288.

⁵ *Id.* at 282.

⁶<http://www.midlandtexas.gov/231/Finance-Budget>, accessed on 5/8/2020; FY20 Proposed Budget, at 27 of 338.

that the Applicant file certified copies of the CCN maps along with a written description of the CCN service area in the county clerk's office pursuant to TWC §§ 13.257 (r)-(s).



Public Utility Commission of Texas

By These Presents Be It Known To All That

City of Midland

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 Midland is entitled to this

Certificate of Convenience and Necessity No. 10221

to provide continuous and adequate water utility service to that service area or those service areas in Martin and Midland Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 50271 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 Midland 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.

Issued at Austin, Texas, this _____ day of _____ 20__.



Public Utility Commission of Texas

By These Presents Be It Known To All That

City of Midland

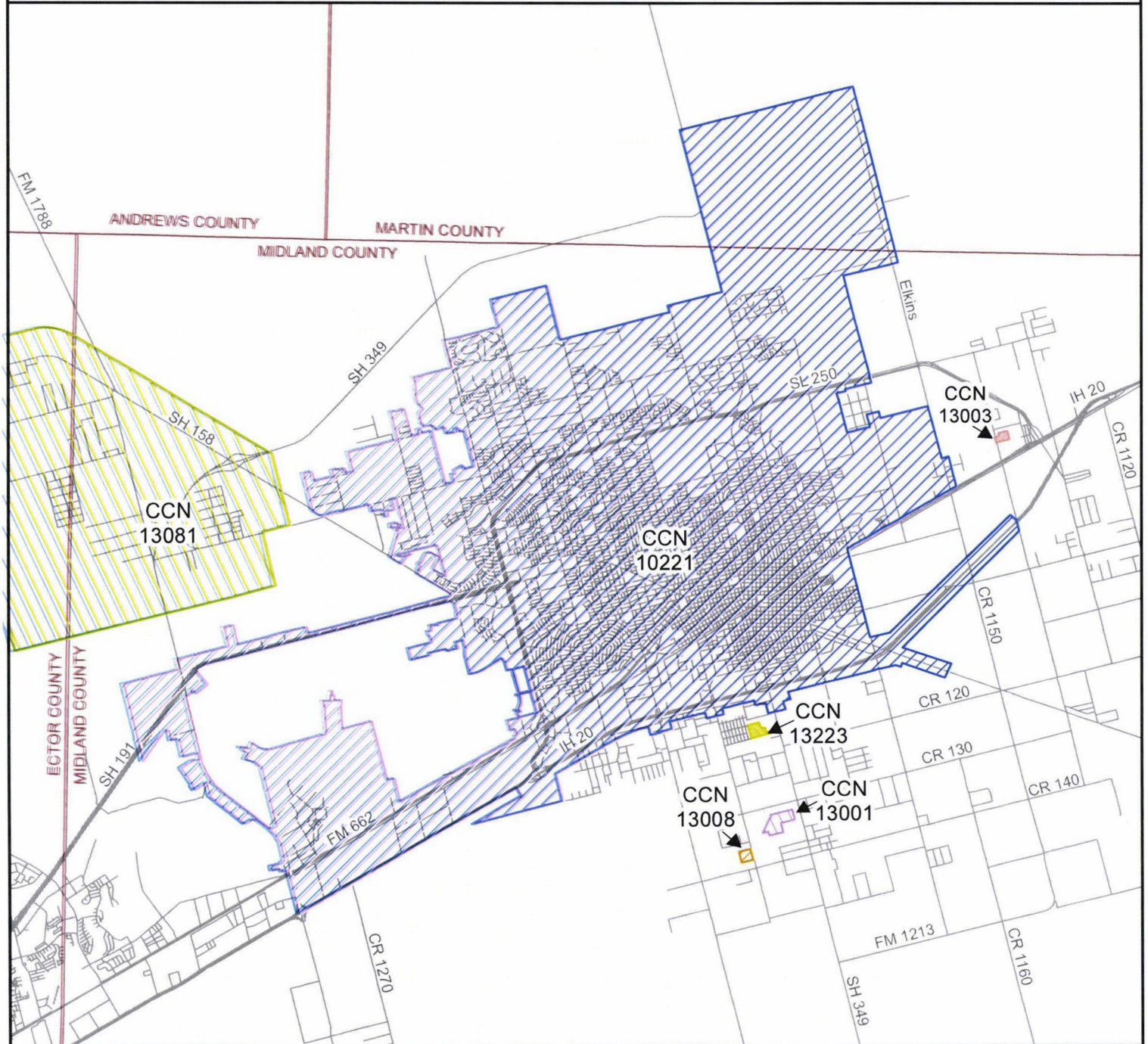
having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, City of Midland is entitled to this

Certificate of Convenience and Necessity No. 20083

to provide continuous and adequate sewer utility service to that service area or those service areas in Martin and Midland Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 50271 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 Midland 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.

Issued at Austin, Texas, this _____ day of _____ 20__.

City of Midland
Water CCN No. 10221
PUC Docket No. 50271
Amended CCN No. 10221 in Martin and Medina Counties



Water CCN

-  10221 - City of Midland
-  13081 - Greater Gardendale WSC
-  13003 - Greenwood Terrace MHP LLC
-  13223 - South Midland Co Water System
-  13001 - Montfort Corporation
-  13008 - Twin Oaks Mobile Home Park



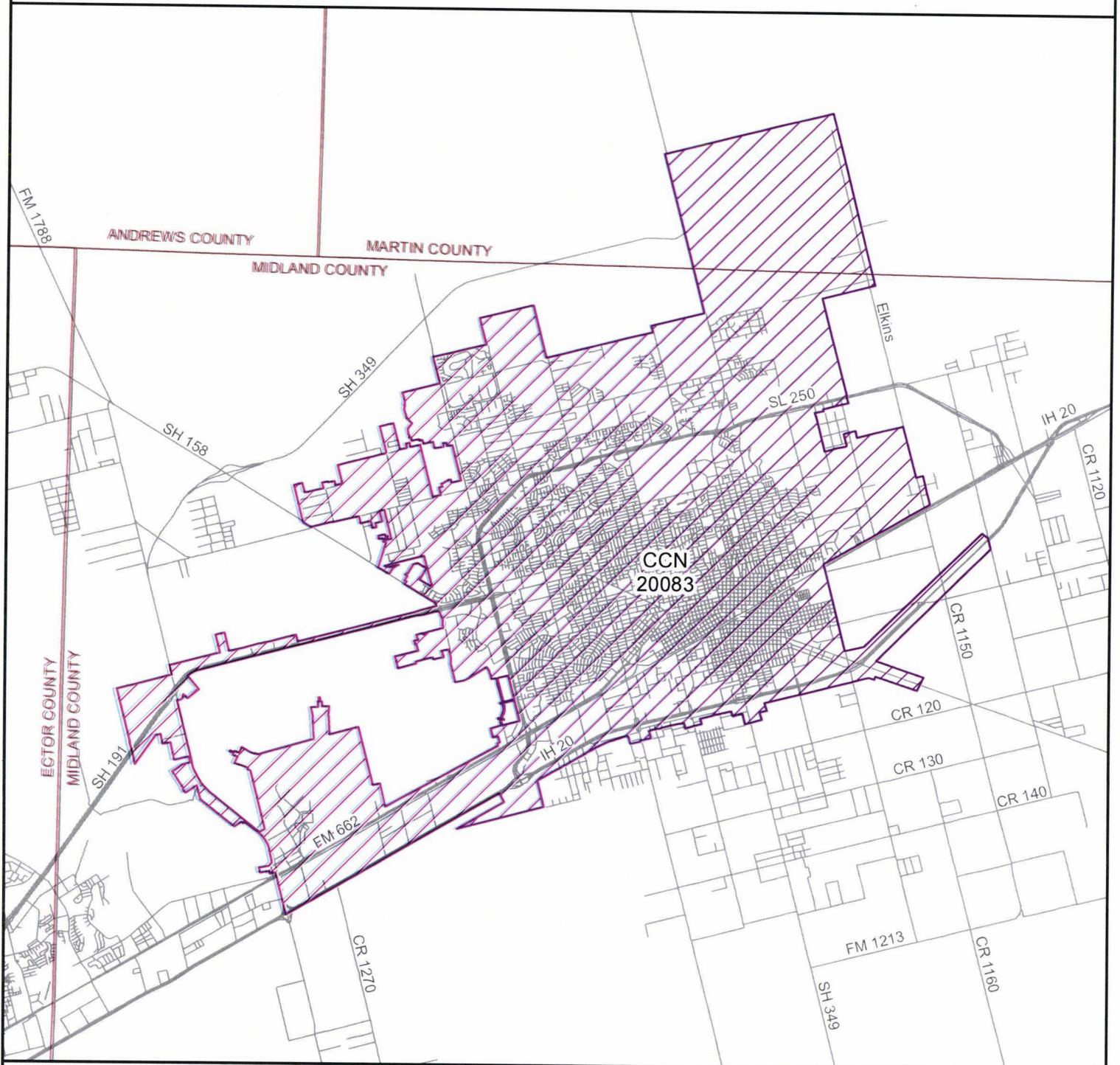
Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

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Map by: Komal Patel
Date created: June 9, 2020
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50271CityofMidlandWater.mxd

City of Midland
Sewer CCN No. 20083
PUC Docket No. 50271
Amended CCN No. 20083 in Martin and Medina Counties



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

Sewer CCN

 20083 - City of Midland

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Map by: Komal Patel
Date created: June 9, 2020
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