



Control Number: 50585



Item Number: 38

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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**

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**JOINT SUPPLEMENTAL MOTION TO ADMIT EVIDENCE AND
PROPOSED NOTICE OF APPROVAL**

On February 24, 2020, Polonia Water Supply Corporation (Polonia WSC) and the City of Lockhart (Lockhart) (collectively, the Applicants) 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 number 10420 to Lockhart. The requested area includes approximately 2,373 acres and 25 connections.

On March 23, 2021, the administrative law judge (ALJ) filed Order No. 13 requiring the Staff of the Public Utility Commission of Texas (Staff) and the Applicants (collectively, the Parties) to file a Proposed Notice of Approval by April 21, 2021. Therefore, this pleading is timely filed.

I. MOTION TO ADMIT EVIDENCE

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

- (a) Applicants' Bill of Sale and supplemental information filed on December 30, 2020 and February 11, 2021 (Interchange Item Nos. 25 and 30);
- (b) Staff's Supplemental Recommendation on the Sufficiency of Closing Documents filed on February 26, 2021 (Interchange Item No. 32);
- (c) Applicants' consent forms filed on April 5, 2021 (Interchange Item No. 37);
and
- (d) the attached map and certificates.

II. PROPOSED NOTICE OF APPROVAL

The attached Proposed Notice of Approval would grant the transfer to Lockhart, under CCN number 10295, of a portion of Polonia WSC's facilities and water service area held under CCN number 10420. The Parties request that the Commission approve the proposed notice of approval.

III. 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: April 21, 2021

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Rachelle Nicolette Robles
Division Director

Heath D. Armstrong
Managing Attorney

/s/ Robert Dakota Parish
Robert Dakota Parish
State Bar No. 24116875
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7442
(512) 936-7268 (facsimile)
Robert.Parish@puc.texas.gov

DOCKET NO. 50585

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 April 21, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Robert Dakota Parish
Robert Dakota Parish

DOCKET NO. 50585

APPLICATION OF POLONIA WATER	§	PUBLIC UTILITY COMMISSION
SUPPLY CORPORATION AND THE	§	
CITY OF LOCKHART FOR SALE,	§	OF TEXAS
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN CALDWELL COUNTY	§	

PROPOSED NOTICE OF APPROVAL

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) approves the sale and transfer of facilities and service area, amends Lockhart's water CCN number 10295 to include the requested service area and removes the requested area from Polonia WSC's CCN number 10420.

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 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 0280007.
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. Applicants 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 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 two miles northwest of downtown Lockhart, Texas, and is generally bounded on the north by Cypress Road and Plum Creek, on the east by North Colorado Street and United States Highway 183, on the south by Silent Valley Road, and on the west by Farm to Market Road 2720.
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 October 2, 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 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).

17. On April 21, 2021 Commission Staff and Applicant filed a supplemental joint motion to admit evidence.
18. In Order No. 14 filed on _____, 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 (Interchange Item Nos. 25 and 30); (b) Staff's Supplemental Recommendation on the Sufficiency of Closing Documents filed on February 26, 2021 (Interchange Item No. 32); (c) Applicants' consent forms filed on April 5, 2021 (Interchange Item No. 37); the map and certificates attached to the joint motion to admit evidence and proposed notice of approval filed on April 21, 2021.

Sale

19. 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.
20. 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.
21. 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) & (4).

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

22. 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.
23. There is no evidence that Lockhart has a history of continuing mismanagement or misuses of revenues as utility service provider.
24. 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), (h)(5)(B)

25. Polonia WSC has a public water system registered with TCEQ under PWS numbers 0280005 and 0280007.
26. 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)

27. There are 25 existing connections in the requested area that are receiving water from Polonia WSC's PWS numbers 0280005 and 0280007.
28. The application is to transfer only existing facilities, customers, and service area.
29. 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)

30. Polonia WSC and Lockhart are the only utilities affected by this transfer.
31. There will be no effect on the landowners as the area is currently certificated.

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

32. Lockhart has a public water system registered with TCEQ under PWS identification number 0280001.
33. Lockhart has no violations listed in the TCEQ database.
34. Lockhart has a TCEQ-licensed operator who will be responsible for the operating of the water utility being transferred.

35. 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), (h)(5)(F)

36. Lockhart meets one of the five leverage tests; (a) Lockhart has a debt to equity ratio that is less than one.
37. There are no projected operations and maintenance shortages in the first five years of operations in which Lockhart would need to cover
38. 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(f)

39. 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)

40. 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(h)(5)(E).

41. 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 and Effect on the Land —TWC § 13.246(c)(7), (c) (9); 16 TAC §§ 24.227(e)(7), (e)(9), 24.239(h)(5)(E)

42. 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(h)(5)(H)

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

Informal Disposition

44. More than 15 days have passed since the completion of notice provided in this docket.
45. One person, Alan Wayne Balser, filed a motion to intervene.
46. Polonia WSC, Lockhart, Alan Wayne Balser and Commission Staff are the only parties to this proceeding.
47. No party requested a hearing and no hearing is needed.
48. Commission Staff recommended approval of the application.
49. 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,¹ and Commission Rules.
5. Lockhart and Polonia WSC have complied with the requirements of 16 TAC § 24.239(k) with respect to customer deposits.
6. Lockhart and Polonia WSC completed the sale within the time frame required by 16 TAC § 24.239(m).
7. Lockhart and Polonia WSC provided notice of the application that complies with TWC §§ 13.246 and 13.301(a)(2) and 16 TAC § 24.239.
8. After consideration of the factors in TWC § 13.246(c), Lockhart has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area as required by TWC § 13.301(b).
9. Lockhart and Polonia WSC have demonstrated that the sale of a portion of Polonia WSC's water facilities and the transfer of a portion water service area held under CCN number

¹ Tex. Gov't Code §§ 2001.001-.903.

10420 from Polonia WSC to Lockhart will serve the public interest and is necessary for the for the service, accommodation, convenience, and safety of the public as required by TWC § 13.301(d) and (e).

10. Lockhart meets the requirements of TWC §§ 13.24(b) and 13.301(b) to provide water utility service.
11. It is not necessary for Lockhart to provide bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
12. 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).
13. 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 to be held under water CCN number 10295, to the extent provided in this Notice of Approval.
2. The Commission amends Lockhart's water CCN number 10295 to include the requested area.
3. The Commission amends Polonia WSC's water CCN number 10420 to remove the requested area,
4. The Commission approves the map and certificate attached to the Notice of Approval.
5. Lockhart must serve 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.
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. Within ten days of the date of the Notice of Approval, Commission Staff must provide a clean copy of the tariff approved by this Notice of Approval to central records to be marked *Approved* and filed in the Commission's tariff books.
8. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the ____ day of _____ 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

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

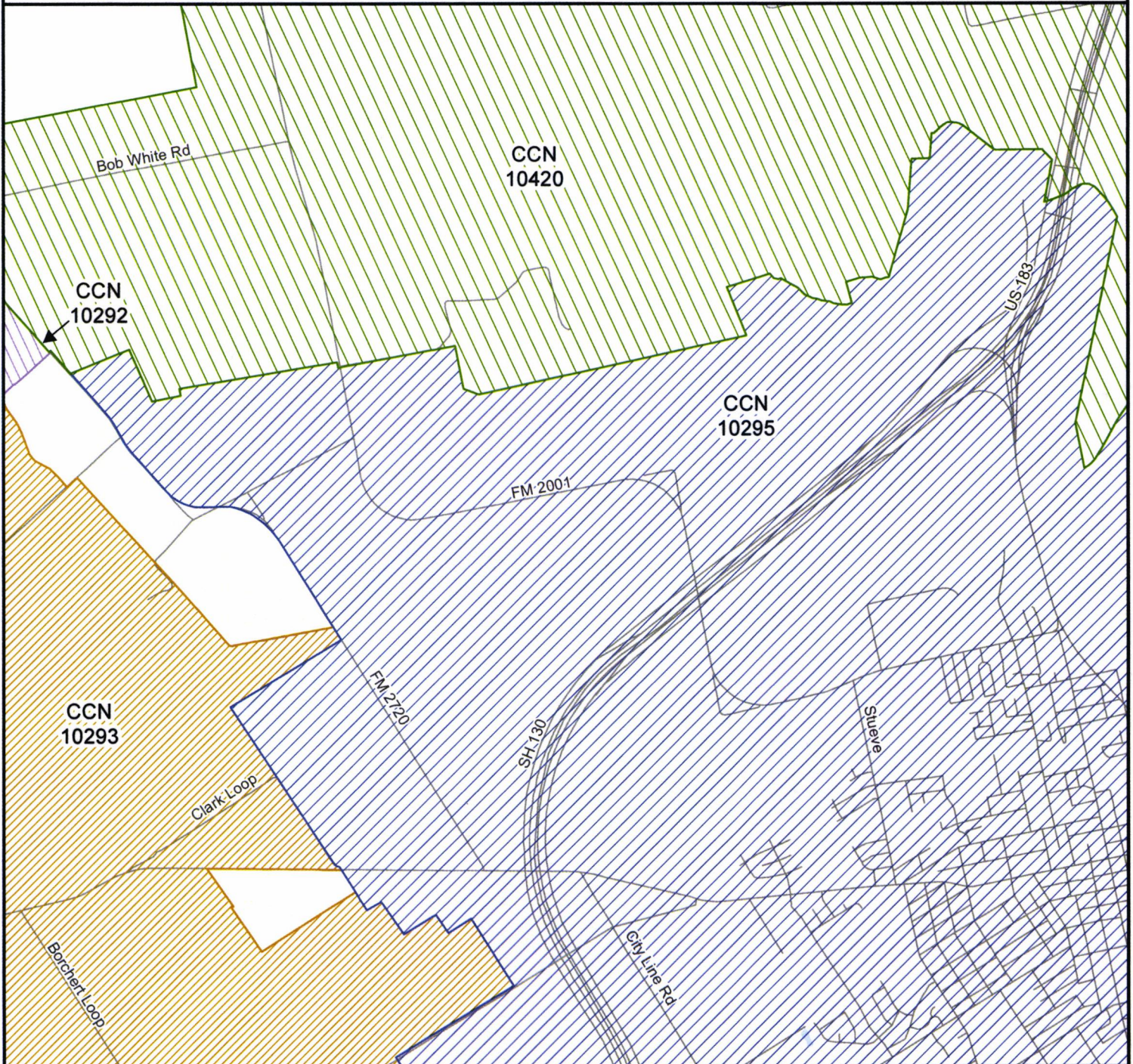
Polonia Water Supply Corporation

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

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Feet



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