

SOAH DOCKET NO. 583-08-1318
TCEQ DOCKET NO. 2007-1956-UCR

APPLICATION OF MUSTANG
SPECIAL UTILITY DISTRICT
TO AMEND SEWER CERTIFICATE
OF CONVENIENCE AND
NECESSITY NO. 20930
IN DENTON COUNTY, TEXAS
TCEQ APPLICATION NO. 35709-C

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

2010 JAN 14 PM 4:39
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

MUSTANG SUD'S REPLY TO EXCEPTIONS

TO THE HONORABLE COMMISSIONERS:

MUSTANG SPECIAL UTILITY DISTRICT, Applicant in these proceedings, submits this Reply to Exceptions raised by the Executive Director and Protestant Aqua Texas in this proceeding as follows:

I. Introduction

This was not a difficult case to decide. Texas Water Code Section 13.246 generally prescribes that an amendment to a certificate of convenience and necessity will be granted if it "is necessary for the service, accommodation, convenience, or safety of the public" and lists nine separate considerations to aid in determining if the CCN applied for meets such criteria. Aside from semantical distinctions raised by the Executive Director and Aqua Texas over such matters as whether existing septic tank usage in the requested area should be considered "adequate

service" for the area's projected development density¹ and the true availability and feasibility of service from other CCN holders in the region who maintain no facilities remotely proximate to the requested area, the only material issue arguably presented in this case is whether a viable need for the CCN requested has been demonstrated.

Both the Executive Director and Aqua Texas have stipulated that such need exists for at least 42% of the requested area represented by express landowner requests for high density residential and commercial development necessitating sanitary sewer service. In doing so, however, they now seek to characterize the remaining immediately adjacent contested area as wholly devoid of retail service needs and evaluate Mustang's application and the hearing held thereon as if Mustang had sought to serve only such contested remainder area without regard for the density of development forecasted for the entire area and the express high density service requests received for immediately adjacent properties. Such argument is extremely shortsighted since the area in question lies immediately adjacent to the high density service requests for 42% of the Application area and is projected to experience the same or similar rapid high density development due to its proximity to highway corridors and Toll Road expansion. (Mustang Ex. 5, p. 2)

This Reply will initially focus on the issue of need raised by both the Executive Director and Aqua Texas and will additionally address the effect of granting the CCN as requested, Mustang's future service capability, the feasibility of securing service to the area from other

¹ Aqua Texas argues that the Creedmoor-Maha WSC order (SOAH Docket No. 582-00-0546, TCEQ Docket No. 2000-0018-UCR) holds that OSSFs qualify as sewer service; however, the OSSF owners in that case protested the CCN sought by the WSC stating that they did not need the retail service proposed. Here, no landowner has objected to the CCN proposed by Mustang.

providers and other miscellaneous concerns raised by the Executive Director and Aqua Texas.

II. Need for CCN

Section 13.246 distinguishes the basis for the granting of a CCN as a consequence of either the need for the "service" proposed, the public "accommodation" to be afforded by the proposed service, the public "convenience" to be realized by the granting of the CCN or the public "safety" which may be achieved by the extension of retail sanitary sewer services to a heretofore unserved area.

A. Service

"Service", as defined by TCEQ Rule 291.3(42), refers to acts performed and facilities extended by retail public utilities in furtherance of their public obligations under Chapter 13 of the Texas Water Code. It does not refer to private on-site septic facilities. The "need for service" within the Application area was demonstrated through evidence of express requests for high density service for at least 42% of the area requested. (Mustang Ex. 8; Mustang Ex. 1, Attachment CB-2; Mustang Ex. 4, Attachment MM-2) Such service needs arising within the contested remainder area can not only be extrapolated from the stipulated need for service within adjacent tracts for which express service requests have been presented, but is evidenced by the changing nature of the entire area occasioned by the growth of development along the major traffic corridors and the extension of the Toll Road to accommodate such growth. (Mustang Ex. 4, p2; Mustang Ex. 4, Attachment MM-6)

B. Accommodation

"Accommodation" means an adjustment made to fit the circumstances or to make

something more suitable. See, Webster's Third New International Dictionary (1976). In this instance, the granting of the requested CCN will afford an "accommodation" to the public by making retail service and facilities not only available to those tracts which have expressly requested service, but the remaining acreage as well. This "accommodation" will be afforded by the oversizing of trunk main facilities needed to serve those tracts which have requested service without the added expense of constructing parallel lines to meet future demand. (Mustang Ex. 1, p. 6-8) While it could be argued that such trunk mains could be oversized without the granting of a CCN to Mustang for the remainder area, such argument assumes that Mustang will bear the front end cost of such oversizing without the certainty that it will ever recoup such cost through service to the remainder area, since such area will be open to certification to others. Certainly, without a CCN providing such certainty, Mustang would have no basis for requiring Land Advisors or its affiliates to bear such oversizing costs with the promise of future reimbursement when future developments are connected to the system, since without the certainty provided by the CCN, such promise is mostly ethereal.

C. Convenience

"Convenience" means the suitability or fitness for the efficient fulfillment of requirements without difficulty, discomfort or trouble. See, Webster's Third New International Dictionary (1976). In this instance, the granting of the CCN requested by Mustang will realize a public "convenience" by avoiding the future cost, delay and environmental consequences associated with the construction of parallel trunk lines to serve those tracts within the Application area which have not yet requested wastewater service. Such "convenience" will also be afforded by the avoidance of cost and delays associated with the piecemeal certification of

adjacent tracts in order to realize their development potential. In an analogous case involving the approval of a CCN Application of the City of Shenandoah, this Commission tacitly recognized the impracticality associated with an incremental tract-by-tract piecemeal certification of adjoining properties as advocated by the Executive Director in this proceeding:

...the City would be faced with undertaking a new line extension, a few hundred feet at a time, as each new adjacent property is annexed. This is not only inefficient, it is financially impractical and creates a logistical nightmare. Application of the City of Shenandoah, SOAH Docket No. 582-06-0968, TCEQ Docket No. 2005-1833-UCR, Proposal for Decision, p. 32.

While the *Shenandoah* decision addressed the impracticality of incrementally employing Water Code Section 13.255 for the extension of lines and service to customers along a highway corridor, the same impracticality is presented by the Executive Director's contention that Mustang's certification to the remainder area tracts in this case should await specific landowner requests for service to such tracts and separate incremental CCN certifications for same. As stated by Mustang's General Manager in responding to the contention raised by staff witness Brian Dickey that the remainder of Mustang's Application area not be certificated until specific requests for service to each tract are presented:

In order to achieve effective and efficient regionalization a utility must plan and commit to future capital investments in anticipation of area growth and needs and, once such growth and need materializes, be able to timely and responsibly commence service to such area. Mr. Dickey's approach appears to be the antithesis of such State goal in that under his view an area's service need can only be measured by express service requests specific to each tract in that area, and that need must arise before the requested area may be reliably secured for service through the granting of a CCN. Such a piecemeal after-the-fact certification concept defies responsible planning needs for the deployment of either utility or residential development resources, requires a continuous and expensive sequence of CCN amendment filings for neighboring and adjacent properties, delays both the funding and physical extension of necessary infrastructure and undermines the timing of the development effort to be served by the utility to the point where changing economic conditions may effect the viability of the development project for which the

service request was originally presented. Mustang's Application was filed in June of 2007 and the administrative resolution process will not likely be finalized until 2010. If Mr. Dickey's approach were to be followed in this case and applied to the remaining adjacent tracts which he proposes to exclude from Mustang's CCN, the planning, funding and commencement of service to these immediately neighboring tracts could be delayed for many years.

Mr. Dickey's approach might be more understandable where a utility is seeking a substantial expansion of its service area in a slow growth area based simply upon a limited service request to a very small portion of such area. Here, however, the service requests represent 42% of the land area requested by Mustang's Application and the remaining undeveloped tracts lie adjacent to the service requesting tracts and can be readily served by Mustang if the facilities extended to the requesting tract developments are oversized to accommodate the anticipated adjacent area growth.

However, without the security and reliability of a CCN covering these adjacent tracts, investment in the required oversizing would not be prudent and the utility would have little justification for requiring a developer to oversize facilities in anticipation of subsequent reimbursement once such adjacent tracts are connected to the system since there can be no reasonable assurance can be provided that the future development of such tracts will ultimately require connection to Mustang's system. Mr. Dickey's approach applied to the facts presented here clearly undermines the reliability and certainty of service availability to the excluded tracts, obstructs and delays regional infrastructure planning, funding and construction, disregards the economies of scale afforded by oversizing facilities to serve neighboring tracts, represents a financial and time consuming waste of utility resources in the sequential filing of potentially contested CCN amendment applications to include small adjacent tracts, and, in the end, is fundamentally unfair to the ultimate consumer whose home and utility costs can only increase as a consequence of such institutional delays. Mustang Ex. 2, p 6-8

The Executive Director's recommended approach in this docket is inapposite to the public "convenience" articulated by Water Code Section 13.246(b) and in direct conflict with the State's regionalization policy.

D. Safety

The public "safety" associated with the availability of a centralized sanitary sewer system to serve an area, compared to reliance upon private septic systems or OSSFs, particularly for an

area projected for dense development, should not be in dispute. Landowners in the remainder area will continue to have the option of using their OSSFs, if that is what they desire; however, the availability of sanitary sewer service from Mustang will certainly constitute a healthier choice and a more cost effective utilization property for residential land development opportunities in this area.

Section 13.246(b)'s requirements for the granting of a CCN are stated in the disjunctive. Hence, satisfaction of any one of the "service", "accommodation", "convenience" or "safety" needs of the area is all that is required under the statute. In this case, Mustang's Application has satisfied all four criteria by a preponderance of the evidence and should be granted without limitation to the area requested.

E. Specific Exceptions raised by the Executive Director related to Need

1. Finding of Fact Nos. 27-30

The ED argues that these findings are not relevant because on-site sewage facilities do not fall under the definition of "service" in the Commission's Rules. The findings are relevant, however, since they demonstrate that the current character of wastewater disposal in the area is inadequate to serve the type of dense residential and commercial development projected. The ED's specific objection to the term "commercial development" in Finding No. 30 is semantically premised upon an assumed and exceptionally broad construction of the term to include a small single commercial structure. Rather, Finding No. 30 employs the term in its customary usage — multiple commercial units to be used for offices and retail outlets.

2. Finding of Fact Nos. 35-38

The ED challenges these findings based on its argument, without any factual foundation,

that the extension of the North Texas Tollway to the proposed service area is uncertain, even though its access roads are presently in place and the testimony at the hearing indicated that such Tollway is scheduled to be completed in 2010. In essence, the ED argues that an area's growth and utility service needs to meet that growth should not be projected based upon regional traffic corridor extension plans for such area or any other planning documents developed in anticipation of such growth. The ED's argument flies in the face of sound regional planning and the reliance that may be placed thereon in anticipation of future service demands.

3. Finding of Fact Nos. 40-42 and 45

The ED contends that these findings do not evidence a need for additional service in the contested area. Yet they do evidence the nature of growth occurring throughout Mustang's existing service area which bounds the contested area on three sides. It is irresponsible for the ED to assume that the stipulated residential and commercial development in the uncontested portion of the requested area will not spur similar development in the immediately adjacent contested area. Common sense and historic growth patterns tell us otherwise.

4. Finding of Fact No. 43, 47 and 55-57

The ED challenges and recommends striking these findings premised upon his unproven assumption that the existence of farming and other rural structures in the contested area decrease the likelihood that such area will be developed in a manner similar to that proposed for the adjacent uncontested area. There is nothing in the record to support such assumption. Indeed, a review of the aerial map in evidence as Mustang Exhibit No. 8 shows that the adjacent Land Advisor development holdings for which it has requested high density utility service within Mustang's CCN and in the uncontested portion of the requested area presently have similar

fanning structures. The ED's assertions are unsupported and contradicted by the record evidence.

III. Effect of Granting the CCN

The ED has challenged a number of Findings proposed under this heading in the ALJ's proposed Order. They will be addressed in sequence.

1. Finding of Fact No. 61

The ED argues that since, under his view of the evidence, it is uncertain as to what type of development may be reasonably anticipated for the contested area, it is unknown whether Aqua Texas' wastewater treatment permit could sufficiently serve this contested area. Aqua Texas' permit is specifically for the Prosper Point subdivision only, a small unbuilt subdivision outside of the requested area, with no wastewater treatment facility in place. It is specious for the ED to suggest that a 0.225 MGD permit for a 128 acre subdivision could be used to provide service to the contested area which is over ten times the size of Prosper Point. As noted by Mustang's General Manager:

The Prosper Point development to be served by Aqua Texas will not be impacted because the package plant wastewater facility planned for such 128 acre development will be insufficient to handle the projected wastewater flows generated outside of that development. Mustang Exh. 1.

Aqua Texas has not applied for a CCN to serve the contested area and the ED's exception is wholly without merit.

2. Finding of Fact No. 66

The ED's challenge to Finding No. 66 evidences a material lack of understanding of how

a gravity collection system works. Due to household elevation differences individual service lines may or may not be gravity flow and often may rely upon a low pressure system to transmit wastewater through the household service lines to the centralized collection main, which is a gravity flow line. The fact that individual service lines may be low pressure lines is not indicative of the character of the collection mains or that of the overall collection system.

3. Finding of Fact No. 71.

This finding, as written, does not assume anyone's exclusive access to unallocated capacity. The UTRWD treatment facilities are readily expandible and this finding should be read in conjunction with finding nos. 72-76 to which no exception has been taken.

IV. Applicant's Service Capability

The Executive Director's Exceptions to Findings of Fact Nos. 85 and 86 express the concern that Mustang may not be able to adequately serve the contested area because it did not submit a capital improvement plan with a budget and construction time line for all facilities necessary to provide full service to the entire proposed service area, citing 30 TAC 291.105(a)(6). This appears purely argumentative since 1) the application was certified by the Executive Director as administratively complete; 2) the application was certified by the Executive Director as technically complete; 3) Mustang's submittal included the wastewater interceptor line having a design capacity to serve the entire drainage basin for the next 20 years extending right up to the requested area as seen graphically on Mustang Exhibit 8; and 4) the requested area is in the process of being developed and the exact manner of its full development and ultimate collection system design cannot be precisely pre-determined.

What the Executive Director's argument envisions is the equivalent of placing the cart before the horse. Detailed facility plans required for an itemized budget should not be required before Mustang's authority to serve the area requested is secured. The TCEQ's submittal requirements for wastewater systems are set forth in 30 TAC 217.6 and Mustang fully intends to comply with such requirements as it has done in the past. For budgetary purposes, the Executive Director has already determined that Mustang maintains the financial capability of providing full service to the entirety of the requested area. ED Closing Argument p. 14-15. Mustang's financial capabilities to serve the area are not in dispute.

The Executive Director's concerns regarding wastewater treatment facility capacity are similarly misplaced, apparently contending that wastewater treatment capacity required for full development be in place before an area may be certificated. As established in the testimony of Mustang's General Manager (Mustang Ex.1, p10; Mustang Ex.2, p. 8) and Engineer (Mustang Ex. 5, p.3-4) the regional wastewater treatment permits are already in place. The River Bend plant has a rated capacity of 1.5 MGD and operates at only 50% of capacity. This plant has recently been re-rated to accommodate an additional 0.5 MGD capacity. Its present permitted capacity is 3.0 MGD with an option to expand to 7.0 MGD. The Doe Branch Plant is permitted for 5.225 MGD. Mustang continuously updates its agreements with the UTRWD to that ensure adequate capacity will be available to satisfy all of Mustang's wastewater treatment needs. The Executive Director relies exclusively upon its own witness , Mr. Dickey, to characterize Mustang's capacity reservations as "limited", while wholly disregarding the express testimony of Mustang's General Manager and UTRWD Board Member, Mr. Chris Boyd, to the contrary:

I also must take issue with Mr. Dickey's estimation of the amount of sewage treatment capacity which Mustang has and will, in the future, have available to serve the area requested by its Application. His testimony states that UTRWD's Riverbend Water Reclamation Plant is rated at 1.5 MGD. On January 8, 2009 this plant's capacity was re-rated by the TCEQ for 2.0 MGD, providing an additional 0.5 MGD which will be available for Mustang's use. I have attached UTRWD's official memorandum to its Board of Directors announcing this re-rating as Exhibit CB Rebuttal No. 2. Mr. Dickey also reasons that since 134,000 gallons per day of the 200,000 gallons of capacity which Mustang has reserved at the Doe Branch Water Reclamation Plant has been reserved for the Glenbrook Estates development, until the Doe Branch facility is built, Mustang will only have 6,000 gallons per day available at Riverbend because it has only 140,000 gallons per day of capacity reserved within Riverbend. Mr. Dickey assumes that these developments are fully built out and using all of the capacity reserved when they are not. A reservation of capacity is not the equivalent of use. Unutilized but reserved capacity can be and is used by others in order to optimize the operation and use of the facility and defer the cost of expansions and new facilities until the time when they are needed. Riverbend's re-rated capacity allows for even more capacity utilization pending the construction of the Doe Branch Plant and its operation going on-line. Mr. Dickey appears to be implying that a utility should have in place 100% of the capacity required to serve a requested service area before such area may be certificated for service. That is literally putting the cart before the horse. Mustang has reserved sufficient capacity in the UTRWD water reclamation system to commence service to the requested area and will continue to expand these contractual commitments as growth and service demand dictate. Mustang Ex. 2, @.8-9

The Executive Director argues that he "cannot conclude with certainty that Mustang SUD has the ability to serve the entire requested area." (ED Closing Argument at 12) This erroneously elevates an applicant's burden of proof in a contested proceeding to a level unknown in judicial annals - one of absolutely certain. Mustang relies upon the preponderance of evidence to urge that the Commission find that Mustang has the ability to provide continuous and adequate service to the entirety of the requested area.

V. Feasibility of Service from Other Utilities

The ED proposes to amend Finding No. 96 and add additional findings. The amendment proposed by the ED assumes that "Aqua Texas has a wholesale sewer service contract with

UTRWD under which it may be able to obtain the necessary capacity to serve the Contested Service Area". The contract in question is in evidence as Schedule B of Aqua Texas Exhibit 2. This agreement not only presents no guarantee of wholesale service, it is expressly specific to the 128 acre Prosper Point subdivision and cannot be used for service to any other area. Service to any other area would require an additional separate agreement with UTRWD. It is unreasonable for the ED to infer otherwise. The additional findings proposed by the ED are not relevant to the final order. The information set out therein is adequately addressed by the ALJ in his proposal for Decision.

VI. Miscellaneous Findings

1. Finding of Fact No. 99

The ED takes issue with this finding because of his stance on the issue of need discussed above. Finding No. 99 should be read in the context of Finding No. 100 and addresses the entirety of the requested service area, not just the contested area as assumed by the ED.

2. Finding of Fact Nos. 101, 106 and 111

The ED argues that these findings are unnecessary because Mustang could plan to serve the area and require developer pro rata agreements for the oversizing of lines to serve uncertificated areas without a CCN. The ED's contentions are contrary to the evidence presented in the record. While it is true that a governmental entity may serve an uncertificated area without its own CCN, the certainty afforded by a CCN enables the utility to more effectively plan for such service and serves as the sole justifiable basis for requiring developers to contribute to the oversizing of trunk lines to serve not only their own development but adjacent areas as well.

Again, as stated by Mustang's General Manager:

In order to achieve effective and efficient regionalization a utility must plan and commit to future capital investments in anticipation of area growth and needs and, once such growth and need materializes, be able to timely and responsibly commence service to such area... Without the security and reliability of a CCN covering these adjacent tracts, investment in the required oversizing would not be prudent and the utility would have little justification for requiring a developer to oversize facilities in anticipation of subsequent reimbursement once such adjacent tracts are connected to the system since there can be no reasonable assurance can be provided that the future development of such tracts will ultimately require connection to Mustang's system. Mustang Exh. 2 @ 6-7

3. Finding of Fact Nos. 102-104 and 108

The ED proposes that these findings be revised to reflect what proper utility planning can do as opposed to what it will do. The testimony in this case, however, was not presented in such conditional manner as proposed. The ED's proposed revisions are not only unnecessary, they are contrary to what the record in this case established.

4. Finding of Fact No. 105

Contrary to the ED's assertion this finding does not assume that Land Advisor's easement will extend through properties not owned by such developer. The trunk lines to be installed within such easement will be oversized to accommodate outlying area development. The finding correctly follows the testimony in the record and should not be disturbed or stricken.

5. Finding No. 112 and 113

The issues of rate comparability and improvement of service and lowering of cost to consumers was necessitated by the Commission's own Rules and ED staff witness Stacy Foster's testimony on this issue. As again stated by Mustang's General Manager:

I must also take issue with Ms. Foster's inability to determine if there would be a definite improvement in service or lowering in costs to consumers if Mustang were to be granted the sewer CCN Amendment sought by its Application. Currently there is no centralized sewer service in the requested area; hence, the provision of any service would be an improvement. As to the issue of rates, future sewer rates will be established by the District's Board of Directors in a manner consistent with District policy and specialized costs that may be incurred in local situations. Each of the various rate schedules provided by Mustang and attached to Ms. Foster's testimony reflect a constant base rate of \$30.00 for sewer service for residences not exceeding conservation water consumption levels and a sewer rate no higher than \$33.75 for water consumption in excess of such conservation levels. This is in contrast to a monthly residential rate of \$73.30 plus a surcharge of \$12.46 for Aqua Texas' North Region per the tariff attached to Mr. Laughman's testimony. Since these are the only service providers in the proximate area, Mustang's proposed service to the entirety of the requested area constitutes a discernable improvement in service availability and at a lower cost than can be feasibly provided by other retail utilities. Mustang Exh. 2 @ 5

Finding No 112 simply reflects that there are not competing applications in this docket by which to precisely judge rate comparability. However, Finding No. 113 does suggest that Mustang's rates are comparably lower than that which is available from other providers and such fact is relevant to the certification process under the Commission's Rules.

VI. Conclusions of Law 11-15

The ED recites at length from his Closing Argument to the ALJ to support conclusions of law predicated upon a piecemeal certification of only that portion of the requested service area governed by the Parties' Stipulations. Such piecemeal approach would grant 42% of the area requested on account of existing development service requests. Throughout the course of the hearing in this docket, the ED contended that an area should be certificated only if it has documented service requests. Such a stance is wholly inconsistent with the State's

regionalization goals which can only be effectively and efficiently advanced through an economy of scale approach to the provision of services and their certification and the recognition that properties adjacent to dense residential and commercial developments in high growth areas will likely develop in a similar sustainable manner. Can such development ever be absolutely certain? It certainly won't be without the assurance of adequate utilities available with which to provide service. Nonetheless, the ED argues that such approach be followed in this case because that was the position taken by staff witness Brian Dickey.

In direct response to the Staff's presentation, Mustang offered the following testimony from its General Manager:

In order to achieve effective and efficient regionalization a utility must plan and commit to future capital investments in anticipation of area growth and needs and, once such growth and need materializes, be able to timely and responsibly commence service to such area. Mr. Dickey's approach appears to be the antithesis of such State goal in that under his view an area's service need can only be measured by express service requests specific to each tract in that area, and that need must arise before the requested area may be reliably secured for service through the granting of a CCN. Such a piecemeal after-the fact certification concept defies responsible planning needs for the deployment of either utility or residential development resources, requires a continuous and expensive sequence of CCN amendment filings for neighboring and adjacent properties, delays both the funding and physical extension of necessary infrastructure and undermines the timing of the development effort to be served by the utility to the point where changing economic conditions may effect the viability of the development project for which the service request was originally presented. Mustang's Application was filed in June of 2007 and the administrative resolution process will not likely be finalized until 2010. If Mr. Dickey's approach were to be followed in this case and applied to the remaining adjacent tracts which he proposes to exclude from Mustang's CCN, the planning, funding and commencement of service to these immediately neighboring tracts could be delayed for many years. Mr. Dickey's approach might be more understandable where a utility is seeking a substantial expansion of its service area in a slow growth area based simply upon a limited service request to a very small portion of such area. Here, however, the service requests represent 42% of the land area requested by Mustang's Application and the remaining undeveloped tracts lie adjacent to the service

requesting tracts and can be readily served by Mustang if the facilities extended to the requesting tract developments are oversized to accommodate the anticipated adjacent area growth.

However, without the security and reliability of a CCN covering these adjacent tracts, investment in the required oversizing would not be prudent and the utility would have little justification for requiring a developer to oversize facilities in anticipation of subsequent reimbursement once such adjacent tracts are connected to the system since there can be no reasonable assurance can be provided that the future development of such tracts will ultimately require connection to Mustang's system. Mr. Dickey's approach applied to the facts presented here clearly undermines the reliability and certainty of service availability to the excluded tracts, obstructs and delays regional infrastructure planning, funding and construction, disregards the economies of scale afforded by oversizing facilities to serve neighboring tracts, represents a financial and time consuming waste of utility resources in the sequential filing of potentially contested CCN amendment applications to include small adjacent tracts, and, in the end, is fundamentally unfair to the ultimate consumer whose home and utility costs can only increase as a consequence of such institutional delays. Mustang Exh2 @ 6-8

The ALJ carefully and respectfully considered all of the ED's arguments for limited certification in this proceeding, but found them unsupportable under the facts of this case. The application of the facts presented, sound public policy principles and common sense all support the ALJ's proposed Order, as should this Commission.

VII. Additional Executive Director Recommendations

The additional findings proposed by the ED are unnecessary as they are redundant and operate as general conclusions of law applicable to the granting of any CCN.

The Order proposed by the ED is neither supported by the facts in this case nor the application of reasoned public policy considerations. The Order proposed by the ALJ's Proposal for Decision reasonably addresses and rationally resolves all of the issues presented in this proceeding and should be adopted.

Wherefore Premises Considered, Mustang SUD, the Applicant in these proceedings, respectfully prays that the Commission adopt the ALJ's Proposed Order and grant the Application in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2010, a true and correct copy of the above and foregoing instrument was delivered electronically to each of the party representatives in this docket.

Skip Newsom

CHIEF CLERKS OFFICE

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SUBJECT: TCEQ Docket No. 2007-1956-UGR Application of Mustang SUD to Amend
Sewer CCN No. 20930 in Denton County

Number of pages, including this cover sheet: 20

IF PROBLEMS ARE ENCOUNTERED IN RECEIVING THIS TRANSMISSION, PLEASE CALL (512) 477-4121 AS SOON AS POSSIBLE.

Comments/Special Instructions: Please see attached filing of Mustang's Reply to Exceptions

Skip Newsom

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