Commissioner Miller's Proposed Changes to the ALJs' Proposed Order

- **District annexation is a type of special condition recognized by the Commission's 2023 Guidance document and prior Commission precedent as a justification for granting a permit for a stand-alone facility and not requiring connection to an existing system. Furthermore, the record reflects that the cost to connect to the District's system outweigh the cost for a stand-alone treatment facility sufficient for the Commission to not require regionalization in this case. Therefore, the Commission adopts the Administrative Law Judges' proposed order without denying the Application and with the following changes, consistent with this policy:**

- **Amend Finding of Fact (FOF) 64 to remove the opening clause about the Applicant's reasonings for filing the Application because it is not germane to the remainder of the finding, as follows:**

  FOF 64 ~~After learning that it would be required to pay the impact fees to cover its allocated share of the costs of the Forest Creek plant expansion,~~ Applicant abandoned its plans to connect to the District's wastewater system and, instead, applied for a TCEQ permit to construct a small standalone package plant located on and dedicated to the proposed development.

- **Amend FOF 73 to clarify that it is an ED practice—and not a Commission policy—to not request additional regionalization information, as follows:**

  FOF 73. ~~It is TCEQ policy~~ It is the ED's practice to not request additional information to verify the truthfulness of an applicant's response to the question regarding existing wastewater treatment facilities within a three-mile radius.

- **Required annexation into the District is a "special condition" justifying issuing the permit despite the state policy preference for regionalization, and multiple previous Commission decisions in past regionalization cases make clear that some requirements of annexation amount to a de facto denial of service. Applicant's testimony more accurately reflects the Commission's policy on regionalization. Therefore, the Commission deletes Finding of Fact 85 and amends Finding of Fact 86, as follows:**

  FOF 85. ~~The third condition does not apply: there are no special conditions here.~~

  FOF 86. The requirement of annexation into the District for wastewater service is ~~not onerous nor~~ a "special condition" that justifies filing the permit application under TCEQ guidance. ~~Paying a portion of the upfront costs of expanding the system to accommodate the requested demand is a reasonable condition for providing service.~~

- **The record does not support that the costs of connecting to the existing system**

**and building a stand-alone treatment facility are about the same. Because the costs are different, a per apartment unit comparison is unnecessary. Therefore, the Commission deletes Finding of Fact 93:**

~~FOF 93. The estimated wastewater costs of connecting versus building are about the same per apartment unit.~~

- **The annexation special condition justified filing the permit application, and the costs of connecting is not sufficiently similar to justify denying the Draft Permit based on the policy preference for regionalization. Therefore, the Commission amends Findings of Fact 96-98, and Conclusions of Law No. 19 and 20, as follows:**

FOF 96. Connecting to the District's wastewater system supports the state policy of Regionalization, but is not required.

FOF 97. Applicant ~~did not meet~~ met its burden to show that the permit should be granted.

FOF 98. Applicant ~~should~~ is not required to connect to the District's system.

COL 19. Based on the Findings of Fact and Conclusions of Law, service is available to Applicant's property from the District's collection and treatment systems, but conditioned on annexation and not justified by costs.

COL 20. The Commission should not deny the Draft Permit based on consideration of need and the general policy to promote regional or area-wide systems. Tex. Water Code §§ 26.003, .081(a)-(b), (d), .0282.

- **Delete Findings of Fact 91 and 94 as not being a relevant policy consideration of the regionalization analysis, as follows:**

~~FOF 91, Decreased units would reduce revenue from the Development.~~

~~FOF 94. Connecting to the District's system allows Applicant to make better use of the property by bringing an additional sixty apartments to market at an equivalent wastewater cost, and by avoiding the downsides of a small plant.~~

- **Amend Ordering Provision No. 1 to grant the application based on the above changes, as follows:**

OP 1. Application for Texas Pollutant Discharge Elimination System Permit No. WQ0016145001 is ~~denied~~ granted, and the Draft Permit is issued as recommended by the Executive Director.

Commissioner Gonzales' Proposed Changes to the ALJs' Proposed Order

- **District annexation is a type of special condition recognized by the Commission's 2023 Guidance document and prior Commission precedent as a justification for granting a permit for a stand-alone facility and not requiring connection to an existing system. Furthermore, the record reflects that the cost to connect to the District's system outweigh the cost for a stand-alone treatment facility sufficient for the Commission to not require regionalization in this case. Therefore, the Commission adopts the Administrative Law Judges' proposed order without denying the Application and with the following changes, consistent with this policy:**

- **Amend Finding of Fact (FOF) 64 to remove the opening clause about the Applicant's reasonings for filing the Application because it is not germane to the remainder of the finding, as follows:**

  FOF 64 ~~After learning that it would be required to pay the impact fees to cover its allocated share of the costs of the Forest Creek plant expansion~~, Applicant abandoned its plans to connect to the District's wastewater system and, instead, applied for a TCEQ permit to construct a small standalone package plant located on and dedicated to the proposed development.

- **Amend FOF 73 to clarify that it is an ED practice—and not a Commission policy—to not request additional regionalization information, as follows:**

  FOF 73. ~~It is TCEQ policy~~ It is the ED's practice to not request additional information to verify the truthfulness of an applicant's response to the question regarding existing wastewater treatment facilities within a three-mile radius.

- **Required annexation into the District is a "special condition" justifying issuing the permit despite the state policy preference for regionalization, and multiple previous Commission decisions in past regionalization cases make clear that some requirements of annexation amount to a de facto denial of service. Applicant's testimony more accurately reflects the Commission's policy on regionalization. Therefore, the Commission deletes Finding of Fact 85 and amends Finding of Fact 86, as follows:**

  FOF 85. ~~The third condition does not apply: there are no special conditions here.~~

  FOF 86. The requirement of annexation into the District for wastewater service is ~~not onerous nor~~ a "special condition" that justifies filing the permit application under TCEQ guidance. ~~Paying a portion of the upfront costs of expanding the system to accommodate the requested demand is a reasonable condition for providing service.~~

- **The record does not support that the costs of connecting to the existing system**

**and building a stand-alone treatment facility are about the same. Because the costs are different, a per apartment unit comparison is unnecessary. Therefore, the Commission deletes Finding of Fact 93:**

~~FOF 93. The estimated wastewater costs of connecting versus building are about the same per apartment unit.~~

- **The annexation special condition justified filing the permit application, and the costs of connecting is not sufficiently similar to justify denying the Draft Permit based on the policy preference for regionalization. Therefore, the Commission amends Findings of Fact 96-98, and Conclusions of Law No. 19 and 20, as follows:**

FOF 96. Connecting to the District's wastewater system supports the state policy of Regionalization, but is not required.

FOF 97. Applicant ~~did not meet~~ met its burden to show that the permit should be granted.

FOF 98. Applicant ~~should~~ is not required to connect to the District's system.

COL 19. Based on the Findings of Fact and Conclusions of Law, service is available to Applicant's property from the District's collection and treatment systems, but conditioned on annexation and not justified by costs.

COL 20. The Commission should not deny the Draft Permit based on consideration of need and the general policy to promote regional or area-wide systems. Tex. Water Code §§ 26.003, .081(a)-(b), (d), .0282.

- **Delete Findings of Fact 91 and 94 as not being a relevant policy consideration of the regionalization analysis, as follows:**

~~FOF 91, Decreased units would reduce revenue from the Development.~~

~~FOF 94. Connecting to the District's system allows Applicant to make better use of the property by bringing an additional sixty apartments to market at an equivalent wastewater cost, and by avoiding the downsides of a small plant.~~

- **Amend Ordering Provision No. 1 to grant the application based on the above changes, as follows:**

OP 1. Application for Texas Pollutant Discharge Elimination System Permit No. WQ0016145001 is ~~denied~~ granted, and the Draft Permit is issued as recommended by the Executive Director.