



## Filing Receipt

**Received - 2021-11-19 09:13:46 AM**

**Control Number - 51610**

**ItemNumber - 30**

**DOCKET NO. 51610**

<b>APPLICATION OF MARKOUT</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>WATER SUPPLY CORPORATION AND</b>	<b>§</b>	
<b>THE CITY OF MESQUITE FOR SALE,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>TRANSFER, OR MERGER OF</b>	<b>§</b>	
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN KAUFMAN COUNTY</b>	<b>§</b>	

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

The City of Mesquite (Mesquite), Markout Water Supply Corporation (Markout), and the Staff (Staff) of the Public Utility Commission of Texas (Commission ), representing the public interest (collectively, the Parties), file this Joint Supplemental Motion to Admit Evidence and Proposed Notice of Approval. In support thereof, the Parties would show the following:

**1. BACKGROUND**

On December 10, 2020, Mesquite and Markout (collectively, Applicants) filed an application for the approval of the sale, transfer, or merger of facilities and certificate rights in Kaufman County. Specifically, Markout and Mesquite seek approval of the transfer of all of Markout’s facilities and water service area held under water Certificate of Convenience and Necessity (CCN) number 10846 to Mesquite’s water CCN number 10060. The requested transfer includes 6,279 acres and 1,081 customer connections.

On August 20, 2021, the Applicants filed closing documents reflecting the consummation of the sale of Markout water system to Mesquite and the transfer of service area and customers. On October 18, 2021, the administrative law judge (ALJ) filed Order No. 8 finding the closing documents to be sufficient and requiring Staff and the Applicants to jointly file a Proposed Notice of Approval by November 19, 2021. Therefore, this pleading is timely filed.

**I. JOINT MOTION TO ADMIT EVIDENCE**

The Parties move to admit the following evidence into the record of this proceeding:

- (a) Mesquites' notice of completed transaction filed on August 20, 2021 (Interchange No. 21);
- (b) Staff's recommendation on closing documents filed on September 15, 2021 (Interchange Item No. 22);
- (c) The affidavit of Mark Kerby, the special projects manager for Mesquite attesting that by September 17, 2021, Mesquite had returned the membership fees to the members of Markout filed on September 22, 2021 (Interchange Item Nos. 25 and 26);
- (d) Staff's supplemental recommendation on sufficiency of the closing documents filed on October 15, 2021 (Interchange Item No. 27);
- (e) Mesquite's consent form filed on November 4, 2021 (Interchange Item No. 29);
- (f) Markout's consent form filed on November 4, 2021 (Interchange Item No. 29); and
- (g) The attached map and certificate.

## **II. PROPOSED NOTICE APPROVAL**

The Parties move for the adoption of the attached Proposed Notice of Approval.

## **III. CONCLUSION**

The Parties respectfully request that the Commission grant the joint supplemental motion to admit evidence and issue a Notice of Approval consistent with the Joint Proposed Notice of Approval.

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF  
TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

Rustin Tawater  
Managing Attorney

/s/ Forrest Smith  
Forrest Smith  
State Bar No. 24093643  
1701 N. Congress Ave.  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7277  
(512) 936-7268 (Fax)  
forrest.smith@puc.texas.gov

**CITY OF MESQUITE**

Bickerstaff Heath Delgado Acosta LLP  
3711 S. MoPac Expressway  
Building One, Suite 300  
Austin, TX 78746  
Telephone: (512) 472-8021  
Facsimile: (512) 320-5638

Emily W. Rogers  
State Bar No. 24002863  
[erogers@bickerstaff.com](mailto:erogers@bickerstaff.com)

BY: *Emily W. Rogers*  
Emily W. Rogers

**CERTIFICATE OF SERVICE**

I certify that this Joint Motion was provided to all parties of record via electronic mail or regular mail on November 19, 2021, in accordance with the Order Suspending Rules, issued in Project No 50664.

*Emily W. Rogers*  
\_\_\_\_\_  
Emily W. Rogers

**DOCKET NO. 51610**

<b>APPLICATION OF MARKOUT</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>WATER SUPPLY CORPORATION AND</b>	<b>§</b>	
<b>THE CITY OF MESQUITE FOR SALE,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>TRANSFER, OR MERGER OF</b>	<b>§</b>	
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN KAUFMAN COUNTY</b>	<b>§</b>	

**JOINT PROPOSED NOTICE OF APPROVAL**

This Notice of Approval addresses the application of the City of Mesquite (Mesquite) and Markout Water Supply Corporation (Markout) for the sale, transfer, or merger of facilities and certificate rights in Kaufman County. The Commission approves the transfer of facilities, customers, and water service area held by Markout under water Certificate of Convenience and Necessity (CCN) number 10846 to Mesquite’s water CCN number 10060, the cancellation of Markout’s water CCN number 10846, and the amendment of Mesquite’s CCN number 10060 to include the area previously include in Markout’s water CCN number 10846.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Markout is a non-profit water supply corporation registered with the Texas secretary of state under filing number 21370901.
2. Markout operates, maintains, and controls facilities that provide water service under CCN number 10846 in Kaufman County.
3. Markout owns and operates a public water supply system that is registered with the Texas Commission on Environmental Quality (TCEQ) under public water supply system identification number 1290019.
4. Mesquite is municipality located in Dallas and Kaufman counties.

5. Mesquite operates, maintains, and controls facilities for providing retail water service under CCN number 10060 in Dallas and Kaufman counties.
6. Mesquite owns and operates a public water system that is registered with the TCEQ under public water system identification number 0570014.

**Application**

7. On December 10, 2020, Mesquite and Markout filed an application at issue in this proceeding.
8. The applicants filed supplemental information on December 17, 2020.
9. The applicants filed updated maps and digital data on January 4, 2021.
10. The applicants seek approval of the following: (1) to sell and transfer all of Markout's water facilities and service area under CCN number 10846 to Mesquite; (2) the cancellation of Markout's CCN number 10846; and (3) amendment of Mesquite's CCN number 10060 to include the water facilities and service area previously included in Markout's CCN number 10846.
11. The requested area to be transferred is located approximately 1.5 miles south of downtown Forney, Texas, and is generally bounded on the north by the intersection of South Bois D'Arc Street and FM 741 (College Avenue), on the east by High Country Lane, on the south by U.S. Highway 175, and on the west by Lawson Road and the Dallas/Kaufman county line.
12. The requested area includes 6,279 total acres and 1,081 customer connections.
13. In Order No. 2 filed on January 13, 2021, the ALJ found the application administratively complete.

**Notice**

14. January 29, 2021, Mesquite filed the affidavit of Mark Kerby, special projects director of the City of Mesquite, attesting that notice was provided to customers, cities, districts, neighboring retail public utilities, county offices, and affected parties on January 27, 2021.
15. In Order No. 3 filed on February 25, 2021, the ALJ found the notice sufficient.

**Evidentiary Record**

16. On May 27, 2021, the parties filed a joint motion to admit evidence.
17. In Corrected Order No. 5 filed on June 23, 2021, the ALJ admitted the following evidence into the record: (1) the application, including all attachments, filed on December 10, 2020; (2) the supplemental information filed on December 17, 2021; (3) the applicants' updated maps and digital data, filed on January 4, 2021; (4) the applicants' proof of notice and supporting documentation, filed on January 29, 2021; (5) Mesquite's response to Commission Staff's first request for information, filed on February 3, 2021; (6) Mesquite's response to Commission Staff's first request for information to Markout, filed on February 3, 2021; and (7) Commission Staff's final recommendation on approval of the sale filed on March 26, 2021.
18. On November 19, 2021, the parties jointly moved to admit additional evidence.
19. In Order No. \_\_\_ filed on \_\_\_\_\_, 2021, the ALJ admitted the following evidence into the record: (1) Mesquites' notice of completed transaction filed on August 20, 2021; (2) Commission Staff's recommendation on closing documents filed on September 15, 2021 (3) the affidavit of Mark Kerby, the special projects manager for Mesquite attesting that by September 17, 2021, Mesquite had returned the membership fees to the members of



Markout filed on September 22, 2021; (4) Commission Staff's supplemental recommendation on sufficiency of the closing documents filed on October 15, 2021; (5) Mesquite's consent form filed on November 4, 2021; (6) Markout's consent form filed on November 4, 2021; and (7) the map and certificate attached to the joint supplemental motion to admit evidence and proposed notice of approval filed on November 19, 2021.

### **Sale**

20. In Order No. 6 filed on June 23, 2021, the ALJ approved the sale and transaction to proceed and required the applicants to file proof that the transaction had closed.
21. On August 20, 2021, the applicants filed notice that the sale and transfer had been executed on August 16, 2021 and confirmed there were no outstanding customer deposits that needed to be addressed.
22. On September 22, 2021, Mesquite confirmed that the membership fees of the Markout members had been returned.
23. In Order No. 8 filed on October 18, 2021, the ALJ found the closing documents sufficient.

### **System Compliance**

24. Mesquite has not been subject to any enforcement action by the Commission, the TCEQ, the Texas Department of Health Services, the Office of the Attorney General of Texas, or the United States Environmental Protection Agency in the past five years for non-compliance with rules, orders, or state statutes.
25. Mesquite does not have any outstanding violations listed in the TCEQ database.
26. There is no evidence that Mesquite has a history of continuing mismanagement or misuse of revenues as a utility service provider.
27. Mesquite demonstrated a compliance status that is adequate for approval of the application.

**Adequacy of Existing Service**

28. Markout's public water system is registered with the TCEQ and is currently operating in compliance with the TCEQ requirements.
29. Markout is providing service in its certificated area and such service has been continuous and adequate.
30. No additional construction is necessary for Mesquite to serve the requested area.
31. Mesquite will be interconnecting its public water system to Markout's facilities to fully integrate the requested area into Mesquite's public water system.

**Need for Additional Service**

32. There is a continuing need for service because Markout is currently providing service to 1,081 existing customers in the requested area.
33. There is no evidence in the record indicating a need for additional service.

**Effect of Approving the Transaction and Granting the Amendment**

34. The City and Markout are the only retail public utilities affected by this transfer.
35. After completing the transaction, Mesquite will continue serving the existing customers and to provide continuous and adequate service to future customers in the requested area.
36. There will be no effect on landowners in the requested area because the area is currently certificated.
37. All retail public utilities in the proximate area were provided with notice of the transaction and none of them filed protests or moved to intervene.
38. There will be no effect on any retail public utility serving in the proximate area.

**Ability to Serve: Managerial and Technical**

39. Mesquite provides service to over 55,000 existing customers in its certificated area.

40. Mesquite's public water system is registered with the TCEQ under identification number 0570014.
41. Mesquite does not have any outstanding violations listed in the TCEQ database.
42. Mesquite has 19 water utility operators and maintains a staff of 11 customer service representatives to assist customers with any water service and billing issues.
43. Mesquite receives treated water from the North Texas Municipal Water District in accordance with Mesquite's wholesale water supply contract with the district.
44. Mesquite owns and operates over 600 miles of water transmission and distribution lines, three pump stations, and 34 million gallons of ground and elevated storage.
45. Mesquite has a superior water system rating and compliance history.
46. Mesquite has access to an adequate supply of water and its public water system is capable of providing drinking water that meets the requirements of chapter 341 of the Texas Health and Safety Code, the Texas Water Code (TWC), and the TCEQ's rules.
47. Mesquite has the managerial and technical ability to provide continuous and adequate service to the requested area.

**Ability to Service: Financial Ability and Stability**

48. Mesquite's debt-to-equity ratio is less than one, satisfying the leverage test.
49. Mesquite has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operation following the completion of the transaction, satisfying the operations test.
50. Mesquite has the financial ability and stability to provide continuous and adequate service to the requested area.

**Financial Assurance**

51. There is no need to require Mesquite to provide a bond or other financial assurance to ensure continuous and adequate service.

**Feasibility of Obtaining Service from Adjacent Retail Public Utility**

52. Notice was provided to neighboring retail public utilities and no protests or adverse comments were received.
53. It is not feasible for another adjacent retail public utility to provide service to the requested area because Markout already provides service to the requested area through existing facilities, which will be interconnected with Mesquite's.

**Environmental Integrity and Effect on Land**

54. Environmental integrity and the land will be minimally affected when the interconnection is installed.

**Improvement of Service or Lowering of Cost to Customers**

55. Mesquite will continue to provide water service to the existing customers in the requested area with no change in quality of service to customers.
56. Mesquite expects the Markout customers to be paying lower rates after the Markout customers are fully integrated into Mesquite's water system.

**Regionalization and Consolidation**

57. Because Mesquite will not need to construct a physically separate water system to serve the requested area, it is not necessary to consider issues of regionalization or consolidation.

**Map and Certificate**

58. On October 29, 2021, the Commission Staff emailed Mesquite and Markout the final proposed map and certificate related to this docket.

59. On November 4, 2021, Mesquite and Markout filed their consent forms concurring with the final proposed map and certificate.
60. On November 4, 2021, the final map and certificate were filed as attachments to the joint supplemental motion to admit evidence and proposed notice of approval.

**Informal Disposition**

61. More than 15 days have passed since the completion of the notice provided in this docket.
62. Mesquite, Markout, and the Commission Staff are the only parties to this proceeding.
63. No party requested a hearing and no hearing is needed.
64. Commission Staff recommended approval of Mesquite and Markout's application.
65. 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, 13.242, 13.244, 13.246, 13.251, 13.254, and 13.301.
2. Mesquite and Markout are retail public utilities as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Mesquite's and Markout's application meets the requirements of TWC § 13.244 and 16 TAC § 24.233.
4. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 Texas Administrative Code (TAC) § 24.239.
5. The Commission processed this application as required by the TWC, the Administrative Procedures Act,<sup>1</sup> and the Commission rules.

---

<sup>1</sup> Tex. Gov't Code §§ 2001.001-.903.

6. Mesquite and Markout completed the sale and transfer within the time required by 16 TAC § 24.239(m).
7. The applicants complied with the requirements of 16 TAC § 24.239(k) with respect to customer deposits.
8. After consideration of the factors in TWC § 13.246(c), Mesquite demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested area as required by TWC § 13.301(b) and 16 TAC § 24.239.
9. It is not necessary for Mesquite to provide bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
10. Markout and Mesquite demonstrated that the sale and transfer of the water facilities and service area held under CCN number 10846 from Markout to Mesquite, the cancellation of Markout's CCN number 10846 and the amendment of Mesquite's water CCN number 10060 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).
11. Mequite must record a certified copy of the 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 Kaufman County within 31 days after receiving this Notice of Approval and submit to the Commission evidence of the recording as required by TWC § 13.257(r) and (s).
12. 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 all of Markout's facilities, customers, and service area under CCN number 10846 to Mesquite, the cancellation of Markout's water CCN number 10846, and the amendment of Mesquite's water CCN number 10060 to include the area previously included in Markout's CCN number 10846.
2. The Commission approves the map attached to this Notice of Approval.
3. The Commission issues the certificate attached to this Notice of Approval.
4. Mesquite must provide service to every customer or qualified service applicant for service within the approved areas under CCN number 10060 that requests service and meets the terms of Mesquite's water service, and such service must be continuous and adequate.
5. Mesquite must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Kaufman County affected by the application and file in this docket proof of the recording no later than 45 days after receipt of the Notice of Approval.
6. 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**

---


**ISSAC TA  
ADMINISTRATIVE LAW JUDGE**

City of Mesquite  
 Portion of Water CCN No. 10060  
 PUC Docket No. 51610  
 Transferred all of  
 Markout Water Supply Corporation, CCN No. 10846  
 in Kaufman County


**Water CCN**

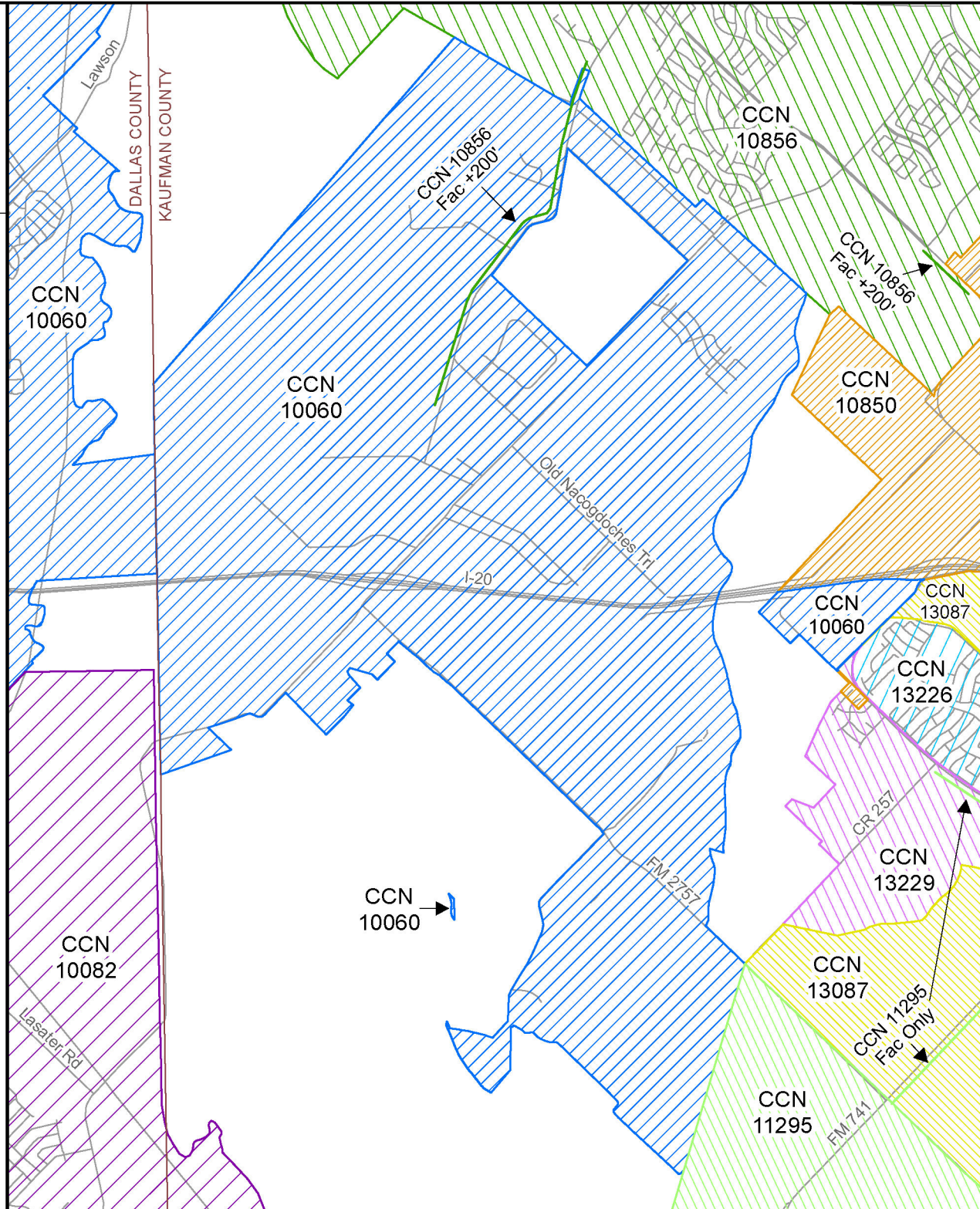
-  10060 - City of Mesquite
-  10856 - City of Forney
-  10850 - Talty SUD
-  13087 - Kaufman Co MUD 12
-  13226 - Kaufman Co MUD 11
-  13229 - Kaufman Co MUD 14
-  11295 - City of Crandall
-  10082 - City of Seagoville

**Water CCN Facilities +200'**

-  10856 - City of Forney

**Water CCN Facility Only**

-  11295 - City of Crandall



Map by: Komal Patel  
 Date: October 4, 2021  
 Project: 51610CityofMesquite.mxd







# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**

## **City of Mesquite**

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 Mesquite is entitled to this

### **Certificate of Convenience and Necessity No. 10060**

to provide continuous and adequate water utility service to that service area or those service areas in Dallas and Kaufman Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51610 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 Mesquite 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.