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**DOCKET NO. 43114**

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**APPLICATION OF CITY OF  
MIDLOTHIAN AND MOUNTAIN PEAK  
SUD FOR SALE, TRANSFER, OR  
MERGER OF CERTIFICATE RIGHTS  
IN ELLIS COUNTY (36233-C)**

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**PUBLIC UTILITY COMMISSION**  
FILING CLERK  
**OF**  
**TEXAS**

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 1**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Response to Order No. 1. In support thereof, Staff would show the following:

**I. BACKGROUND**

On October 30, 2008, the City of Midlothian (City of Midlothian) and Mountain Peak Special Utility District (Mountain Peak) (collectively Applicants) filed an application for the sale, transfer, or merger (STM or Application) of facilities and certificates of convenience and necessity (CCN) in Ellis County with the Texas Commission on Environmental Quality (TCEQ). Effective September 1, 2014, the Public Utility Commission of Texas (PUC or Commission) began the economic regulation of water and sewer utilities. This case was transferred to the Commission on September 1, 2014.

By letter dated August 4, 2009, the TCEQ sought clarification from the Applicants regarding whether they wanted the Application to be processed as an STM or as a Tex. Water. Code § 13.248 (TWC) contract (AIS Item No. 9). By letter dated August 29, 2009, David Miller, representing Mountain Peak, stated that the Application was to be processed pursuant to TWC § 13.248 (AIS Item No. 10). Patrick Linder, attorney for Midlothian, stated the same intent in a letter recently filed with the Commission (AIS Item No. 15). The intent of the Application or contract, as described in TCEQ's STM form, is that "The City of Midlothian is transferring a portion of its existing water CCN to Mountain Peak SUD in exchange for a portion of Mountain Peak SUD's existing water CCN that is being transferred to the City of Midlothian" (AIS Item No. 1). Letters

from the TCEQ describe the intent of the Application as a transfer and decertification of CCNs (AIS Item No. 12).

On December 18, 2008, TCEQ staff issued an interoffice memorandum explaining that Mountain Peak had demonstrated financial, managerial, and technical capability to operate the transferred CCN portion from Midlothian (AIS Item No. 11). TCEQ also received mapping consent forms from the Applicants as late as April 22, 2011. However, Staff can find no final order in the docket approving the Application or contract. Staff is unaware as to what may have caused delay of approval by TCEQ, and Staff also has no explanation for why the Application was not processed more quickly in the transfer of water utilities.

Order No. 1, filed on August 21, 2015, instructed Staff to file a recommendation and/or procedural schedule if appropriate by September 10, 2015. Therefore, this pleading is timely filed.

## **II. RECOMMENDATION**

Staff is concerned that the Application, if granted, would result in CCN amendments and CCN decertification, and “TWC § 13.248 does not contain the standards for revocation or amendment of a CCN.”<sup>1</sup> Therefore, Staff recommends that, unless the Applicants can show the intent of the Application is otherwise, the Application should be processed under TWC §§ 13.241, 13.246, and 13.254. One issue that could result from processing pursuant to those provisions is the need for more evidence of, or issuance of, notice, including publication of notice. Consequently, Staff recommends that the Commission provide the Applicants an opportunity to provide proof of publication of notice.

## **III. PROPOSED PROCEDURAL SCHEDULE**

Staff proposes the following procedural schedule:

Deadline for the Applicants to clarify the intent of the Application and to provide proof of notice issued (including affidavits, evidence of publication of notice, a sample of the notice issued and accompanying map).	September 29, 2015
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<sup>1</sup> Preliminary Order for PUC Docket No. 42861 at 7 (May 1, 2015).

Deadline for Staff to file a recommendation or an additional procedural schedule.	October 14, 2015
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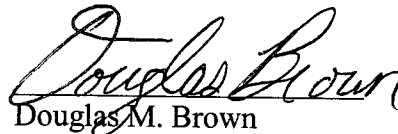
#### IV. CONCLUSION

Staff respectfully requests the entry of an order consistent with the above recommendation.

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Stephen Mack  
Managing Attorney  
Legal Division

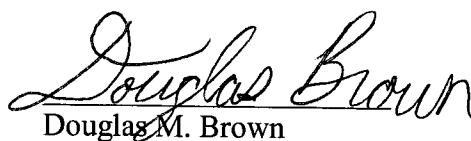


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#### **CERTIFICATE OF SERVICE**

I certify that a copy of this document was served on all parties of record on September 10, 2015 in accordance with 16 Tex. Admin. Code § 22.74.



Douglas M. Brown