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DOCKET NO. 43114

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PUBLIC UTILITY COMMISSION

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

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PUBLIC UTILITY COMMISSION

OF

TEXAS

COMMISSION STAFF'S RESPONSE TO ORDER NO. 2

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Response to Order No. 2. In support thereof, Staff would show the following:

I. BACKGROUND

On October 30, 2008, the City of Midlothian (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 formerly pending at the TCEQ 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 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

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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 a 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. 2, filed on September 14, 2015, instructed the Applicants to file a clarification of intent and proof of notice by September 29, 2015 and allowed Staff until October 14, 2015 to file a recommendation and/or procedural schedule if appropriate. Therefore, this pleading is timely filed. The Applicants filed timely responses on September 14, 2015 and September 29, 2015.

II. RECOMMENDATION

Both Mountain Peak and Midlothian filed helpful responses and expressed that they continue to work together and still wish to prosecute the Application. Both Applicants stated the Application should be processed pursuant only to TWC § 13.248. Staff notes that Docket Nos. 42898 and 44030, which are currently pending, could help clarify Commission policy regarding applications filed pursuant to TWC § 13.248. Therefore, Staff recommends that it be permitted to file its recommendation after the final determinations have been made in those dockets. Additionally, Staff still has concerns regarding the need for notice. Therefore, Staff recommends in the interim that the Applicants file a proposed notice and list of the recipients for Staff's review, as Mountain Peak suggested as an option in its response.¹

¹ *Mountain Peak SUD's Response to Order No. 2 at 6 (Sep. 6, 2015).*

III. PROPOSED PROCEDURAL SCHEDULE

Staff proposes the following procedural schedule:

Deadline for the Applicants to file proposed notice and list of recipients.	November 14, 2015
Deadline for Staff to file a recommendation, or an additional procedural schedule.	December 14, 2015

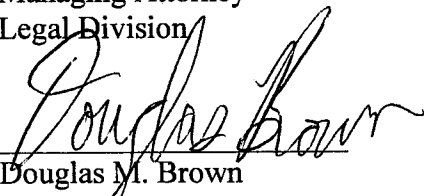
IV. CONCLUSION

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

Respectfully Submitted,

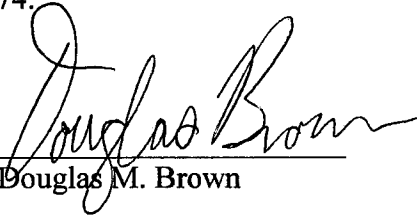
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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on October 14, 2015 in accordance with 16 Tex. Admin. Code § 22.74.



Douglas M. Brown