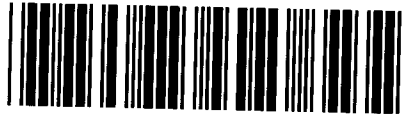


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DOCKET NO. 43114

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**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
PUBLIC UTILITY COMMISSION
FILING CLERK
OF
TEXAS

JOINT PROPOSED NOTICE OF APPROVAL AND MOTION TO ADMIT EVIDENCE

COMES NOW the Staff of the Public Utility Commission (Staff), representing the public interest, and files this Joint Proposed Notice of Approval and Motion to Admit Evidence. In support thereof, Staff shows the following:

I. BACKGROUND

On On October 30, 2008, the City of Midlothian and Mountain Peak Special Utility District filed an application for the sale, transfer, or merger (STM or Application) of facilities and certificate rights in Ellis County with the Texas Commission on Environmental Quality (TCEQ). Although filed as a STM, after discussions with TCEQ, the applicants agreed that this application should proceed under Tex. Water Code § 13.248 (TWC). The economic regulation of water utilities was transferred to the Public Utility Commission of Texas (Commission) on September 1, 2014. This application, once pending at the TCEQ is now before the Commission for consideration. The applicants provided clarifying information to the Commission on September 29, 2015, confirming that this application should proceed under TWC § 13.248.

II. MOTION TO ADMIT EVIDENCE

Staff moves to admit the following evidence into the record of this proceeding: (a) the October 30, 2008 Application (Commission automated interchange system [AIS] Item No. 1, filed September 24, 2014); (b) the Applicants' consent forms (AIS Item No. 29, filed January 19, 2016 and AIS Item No. 30, filed January 25, 2016); and (c) Commission Staff's recommendation regarding final disposition and attachments thereto (AIS Item No. 33, filed February 12, 2016).

III. JOINT PROPOSED NOTICE OF APPROVAL

The Applicants and Staff conferred and worked jointly to draft the attached proposed notice of approval.

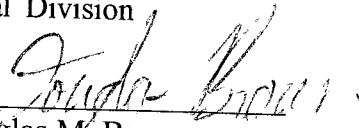
IV. CONCLUSION

Staff respectfully requests that the Commission grant this motion.

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
Legal Division

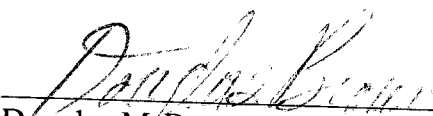


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Public Utility Commission of Texas
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DOCKET NO. 43114

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on April 6, 2016 in accordance with 16TAC § 22.74.



Douglas M. Brown

PUC DOCKET NO. 43114

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

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

JOINT PROPOSED NOTICE OF APPROVAL

This Joint Notice of Approval addresses the application (“Application”) for approval of an agreement between the Mountain Peak Special Utility District (“Mountain Peak”) and the City of Midlothian (“Midlothian” or the “City”) (collectively, the “Applicants”) in Ellis County pursuant to Tex. Water Code (“TWC”) §13.248. The Application seeks to exchange portions of retail service area pursuant to the Applicants’ agreement transferring approximately 119 acres to the exclusive service area of Mountain Peak and converting a 43-acre area to the exclusive service area of Midlothian. The Public Utility Commission of Texas (the “Commission”) Staff recommended approval of the application under TWC § 13.248. The Application is approved.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History and Background

1. On October 30, 2008, Midlothian and Mountain Peak, as Applicants, filed an application on the Texas Commission on Environmental Quality (TCEQ) form used for the sale, transfer, or merger of certificate of convenience and necessity rights in Ellis County with the TCEQ.
2. The Application sought to effectuate the Applicants’ *Retail Water Service Area Agreement Among the City of Midlothian and Mountain Peak Special Utility District* (the “Agreement”), which provided that the City transfer 119 acres of land in its CCN to Mountain Peak in exchange for Mountain Peak granting the City the exclusive right to provide water service to 43 acres within an area that is dually certificated to both.
3. On December 18, 2008, TCEQ staff issued an interoffice memorandum explaining that Mountain Peak had demonstrated financial, managerial, and technical capability to operate the portion of Midlothian’s CCN to be transferred to Mountain Peak.

4. On August 4, 2009, the TCEQ sought clarifications from the Applicants regarding whether they actually wanted the Application to be processed as a sale, transfer or merger, or as a TWC §13.248 contract.
5. On August 29, 2009 counsel for Mountain Peak stated that the Application was to be processed pursuant to TWC §13.248; Midlothian concurred in a September 30, 2009 letter to the TCEQ.
6. On November 16, 2009, a TCEQ Administrative Reviewer memo from the Cartographer-Utilities & Districts Section shows that the "Overlap & Notice Check" was "Ok."
7. On September 29, 2010, the TCEQ sent to the Applicants a map created for the Application along with a consent form.
8. On October 14, 2010, Mountain Peak responded stating that it *"does not consent to the map as included, at this time. The areas involved in the Application appear to be accurate, but the balance of the map, showing the portion of the CCN that is dual certificated does not appear to be accurate when compared with the District's records. The General Manager of the District is coming to the TCEQ offices next week to examine the records . . . please hold this matter for another week . . ."*
9. On March 17, 2011, Midlothian representative Mike Adams emailed the TCEQ to say, *"On October 14, 2010, I faxed you a copy of the [consent] form in which the City of Midlothian Concurred with the map . . . David Miller [counsel for Mountain Peak] . . . faxed you a letter and consent form in which Mountain Peak SUD did not concur with the over all map but, per Mr. Miller's letter, they seemed to concur with the map as it also related to the CCN area transfer and decertification. In an effort to get this issue resolved and finalize the application, I'm requesting that the attached map be revised so as not to show any area blow/south of the red line . . . I believe both parties would be in agreement and concur with [the map]."*
10. On April 15, 2011, the TCEQ sent a letter to Mountain Peak stating, "Enclosed is the revised map" along with a consent form. Mike Adams of the City signed the consent, and on June 11, 2011, counsel for Mountain Peak signed the consent with the following condition: *"provided that this concurrence does not ratify or affect any portion of the respective CCNs which are not directly depicted on the portion of the map shown."*
11. The TCEQ appears to have taken no further official action on the Application though the Applicants had submitted all necessary information for the Application to be approved.

12. On September 1, 2014, the Commission began the economic regulation of water and sewer utilities.
13. On August 21, 2015, the Commission's Administrative Law Judge ("ALJ") issued Order No. 1, requiring Commission Staff to file an update on the status of the Application, a recommendation on the need for a hearing or on final disposition of the Application, or propose a procedural schedule. The Applicants were also ordered to provide current contact information.
14. On September 10, 2015, Commission Staff recommended that the Applicants be provided with an opportunity to clarify the intent of the Application and provide proof of publication of notice.
15. On September 14, 2015, the Commission's ALJ issued Order No. 2, providing a deadline by which the Applicants were to clarify the intent of the Application and provide proof of publication of notice.
16. On September 29, 2015, Mountain Peak filed its Response to Order No. 2 clarifying the Applicants' intent in filing the Application, the availability of TWC §13.248, and noting that the Application was filed with proposed forms of notice, but that the issue of notice was not raised again by the TCEQ once the Applicants agreed to proceed under TWC §13.248.
17. On September 29, 2015, Midlothian also filed its Response to Order No. 2, noting that the TCEQ did not direct issuance of notice and requesting that the Commission promptly effectuate the Agreement underlying the Application. Midlothian also noted the cooperation between itself and Mountain Peak in this docket.
18. On October 19, 2015, the Commission's ALJ issued Order No. 3, establishing deadlines for Applicants to file a proposed notice and list of recipients and for the Commission Staff to file a recommendation or additional procedural schedule.
19. On November 13, 2015, Applicants filed a Joint Response to Order No. 3, showing that the Commission's Water and Sewer CCN Viewer depicts the respective Applicant's CCNs as if the Agreement (and the Application) had been fully implemented by order of the TCEQ and noting that the Applicants had been servicing the areas as if they had been transferred. Applicants also suggested that providing notice now to customers after having received service as if the switch had been effectuated, may be confusing. To the extent the Commission determined that notice was necessary, the Applicants submitted a proposed Notice to Current Customers, Neighboring Systems, and Cities as well as a list of proposed recipients.

20. On December 2, 2015, Commission Staff filed a response to Order No. 3 requesting a deadline of December 18, 2015 for Commission Staff to file a recommendation and/or additional procedural schedule.
21. On December 8, 2015, the Commission's ALJ issued Order No. 4, directing Commission Staff to file a final recommendation and/or additional procedural schedule by December 18, 2015.
22. On December 18, 2015, Commission Staff requested an extension of the deadline set in Order No. 4.
23. On December 22, 2015, the Commission's ALJ issued Order No. 5 directing Commission Staff to file a final recommendation and/or additional procedural schedule by January 31, 2016.
24. On January 12, 2016, Commission Staff emailed proposed CCN maps and consent forms to Applicants for their review and consent.
25. On January 25, 2016, despite a concern regarding how an area on the proposed final map not related to the Application was depicted, Mountain Peak submitted a signed Consent Form stating that it concurred, *"with the proposed final map dated January 12, 2016, provided this consent does not ratify or affect any portion of the respective CCNs other than the two areas which are the subject of this Docket No. 43114, i.e. the areas labeled on the proposed final map as 'Area Decertified from CCN 10908' and 'Area Transferred to CCN 10908.'"*
26. On January 25, 2016, Midlothian submitted a signed Consent Form along with a letter stating in part:

The City understands the consent is only intended to capture the proposed changes addressed directly in this proceeding, i.e., those in the application, irrespective of disagreement that any person may have as to the depiction of areas outside the scope of the application brought for Commission approval in this docket. For purposes of clarity and to expedite approval, the City would continue to consent to the accuracy of the map if the Commission Staff prepared a map that was cropped to depict the areas directly addressed in this proceeding, to the exclusion of any other areas. The City's willingness to accommodate any concerns with the Commission's maps is not intended to be, and should not be construed as, any indication by the City that the official CCN map is in error.

27. On February 1, 2016, Commission Staff requested an extension of time to consider the consent forms.
28. On February 2, 2016, the Commission's ALJ issued Order No. 6, granting Commission Staff's request for an extension and order Commission Staff to file a recommendation by February 12, 2016.

29. On February 12, 2016, Commission Staff recommended that, based upon a financial, managerial and technical analysis of the Application and the Agreement, it was best to process the Application under TWC §13.248. Due to the limited numbers of affected customers, the length of time the customers have been served by Applicants, the age of the Application, the TCEQ's apparent treatment of the Application as a proceeding under TWC § 13.248, and the lack of any prior TCEQ requirement for notice, Commission Staff recommended approval of the Application and that good cause existed to not require notice.
30. On February 25, 2016, the Commission's ALJ issued Order No. 7, clarifying and confirming that the Application has been and shall be treated as an application under TWC §13.248 and that good cause existed to waive notice existed. This Order gave the Applicants until March 30, 2016 to file a joint proposed notice of approval.

Description of the Transaction

31. The purpose of the Application is to approve the Agreement which would transfer a 119-acre portion of certificated service area from Midlothian's CCN No. 11706 to Mountain Peak, thereby incorporating the area into Mountain Peak's CCN No. 10908; and to decertify a 43-acre portion of the area dually certificated to Mountain Peak and Midlothian into a singly-certificated service area of Midlothian's CCN No. 11706.

Informal Disposition

32. As discussed in further detail in Commission Staff's February 12, 2016 recommendation, the Application was and should be treated as a TWC §13.248 application. There is good cause to waive any notice and hearing requirements which may otherwise exists. Therefore, no notice or hearing is necessary.
33. Consistent with Commission Staff's recommendation, the Application should be approved.

II. Conclusions of Law

34. Midlothian and Mountain Peak are retail public utilities as defined in TWC §13.002.
35. The Commission has jurisdiction and authority over this docket pursuant to TWC §13.248 and 16 TAC § 24.117.
36. Good cause exists to waive any notice or hearing requirements.
37. The Applicants have demonstrated that they have adequate financial, managerial, and technical capabilities to provide continuous and adequate service to the customers in the proposed service areas located in Ellis County.

38. Applicants have demonstrated that the Application meets the requirements set forth in TWC §13.248 and 16 TAC § 24.117 for approval of contracts between retail public utilities.
39. The criteria for informal disposition pursuant to 16 TAC § 22.35 has been satisfied or has otherwise been waived by the Commission for good cause.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. Consistent with the Commission Staff's recommendation and this Notice, the Applicant's Application is approved.
2. The CCN service area map and certificates attached to this Order are approved. However, neither this Order nor the map attached thereto adopts or affects any portions of the CCNs depicted on the maps, other than the two areas which are the subject of this Docket No. 43114, *i.e.* those which are discussed in paragraph 32 above.
3. Midlothian shall serve every customer and applicant for service within the areas certified under its CCN No. 11706 and such service shall be continuous and adequate.
4. Mountain Peak shall serve every customer and applicant for service within the areas certified under its CCN No. 10908 and such service shall be continuous and adequate.
5. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief related to the Application, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS THE ____ DAY OF _____ 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

SUSAN E. GOODSON
ADMINISTRATIVE LAW JUDGE