



Control Number: 43114



Item Number: 39

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DOCKET NO. 43114

RECEIVED

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

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PUBLIC UTILITY COMMISSION

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PUBLIC UTILITY COMMISSION
OF TEXAS FILING CLERK

NOTICE OF APPROVAL

This Notice addresses the application of the City of Midlothian and Mountain Peak Special Utility District for approval to transfer certain certificate rights and to singly certificate an area that has been dually certificated in Ellis County. Commission Staff recommended approval of the application. 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 filed with the Texas Commission on Environmental Quality (TCEQ) an application for the sale, transfer, or merger (STM) of certificate of convenience and necessity (CCN) rights in Ellis County.
2. Midlothian holds CCN NO. 11706.
3. Mountain Peak holds CCN No. 10908.
4. On August 4, 2009, the TCEQ sought clarifications from the applicants regarding whether they actually wanted the application to be processed as STM, or as a Tex. Water Code § 13.248 (TWC) contract.
5. On August 29, 2009, Mountain peak stated that the application should be processed pursuant to TWC § 13.248; Midlothian concurred on September 30, 2009.
6. Proposed amended certificates, maps and consents were provided by TCEQ to applicants, however, no final approval of the application was issued by TCEQ.

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7. Effective September 1, 2014, the economic regulation of water and sewer utilities was transferred from the TCEQ to the Commission. This application was part of the transfer and is now under Commission jurisdiction.
8. On August 21, 2015, Order No. 1 was issued, 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.
9. On September 14, 2015, Order No. 2 was issued, requiring clarification from the applicants regarding the intent of the application and requiring applicants to provide proof of the notice that was issued in this application, including a sample and accompanying map.
10. On October 19, 2015, Order No. 3 was issued, requiring applicants to provide proposed notice and a proposed list of recipients for Commission Staff to review and requiring Commission Staff to provide a recommendation or additional procedural schedule 20 days after the issuance of a Notice in Docket Nos. 42928 and 44030, both of which involved applications under TWC § 13.248, and therefore would provide clarification regarding the requirements for processing this application.
11. On January 19, 2016 and January 25, 2016, the City and Mountain Peak respectively, consented to the portion of the map prepared by Commission Staff that shows the areas affected by this application, but not the remainder of the map.
12. On February 12, 2016, Commission Staff recommended approval of the application and further recommended that based on the number of affected customers, the length of time those customers have been being served by the applicants and the age of this application notice be waived, for good cause. Commission Staff provided proposed revised certificates and a map of the amended service areas for CCN Nos. 11706 and 10908.
13. The revised map and certificates discussed in Findings of Fact No. 11 and 12 are attached to this Notice.
14. On February 25, 2016, Order No. 7 was issued, clarifying and confirming that the application has been and is being treated as an application under TWC § 13.248, but that it will not be restyled, and waiving notice, for good cause.

15. Commission Staff determined that Midlothian and Mountain Peak have the financial capability to provide continuous and adequate service to their respective proposed service areas.
16. Commission Staff recommended that approval of this application is necessary for the service, accommodation, convenience and safety of the public.
17. On April 6, 2016, a joint proposed notice of approval and request to evidence were filed in this proceeding.

Evidentiary Record

18. On June 13, 2016, Order No. 9 was issued, admitting evidence into the record of this proceeding.

Description of the Transaction

19. The purpose of the application is to effectuate an agreement between the applicants that would result in the transfer of approximately 119-acres, that had 3 existing customers when this application was filed in 2008, and immediately adjoining lands from Midlothian's certificated service area to Mountain Peak; and to decertify from Mountain Peak and singly-certificate to Midlothian an approximately 43-acre area that had no existing customers when this application was filed in 2008 and that is currently dually-certificated.¹

Informal Disposition

20. More than 15 days have passed since notice was waived in this application.
21. The City, Mountain Peak, and Commission Staff are the only parties to this proceeding.
22. No complaints, motions to intervene, or requests for hearing were filed that have not been dealt with.
23. No issues of fact or law are disputed by any party; therefore, no hearing is necessary.

¹ Joint Response to Order No. 3 at 1 (Nov. 13, 2015).

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II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TWC § 13.248.
2. Midlothian and Mountain Peak are retail public utilities as defined in TWC § 13.002(19) and 16 Tex. Admin. Code § 24.3(58).
3. Notice of this application was waived, for good cause.
4. Midlothian has demonstrated that it has adequate financial, managerial, and technical capability to provide continuous and adequate service to its customers in the proposed service area in Ellis County.
5. Mountain Peak has demonstrated that it has adequate financial, managerial, and technical capability to provide continuous and adequate service to its customers in the proposed service area in Ellis County.
6. Midlothian and Mountain Peak have demonstrated that the transfer of certificated service area and decertification/single certification requested in this application are necessary for the service, accommodation, convenience, and safety of the public.
7. Under TWC § 13.257(r) and 16 TAC § 24.106(f), Midlothian and Mountain Peak are both required to record a certified copy of their approved CCN and map, along with a boundary description of the service area, in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording.
8. The requirements for informal disposition pursuant to 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

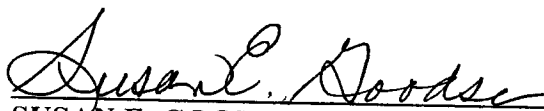
In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. The application is approved.

2. Midlothian's CCN No. 11706 is amended consistent with this notice, to reflect (1) removal and transfer to Mountain Peak of an approximately 119-acre portion of its certificated service and (2) single certification of an approximately 43-acre portion of its certificated service area that was previously dually certificated with Mountain Peak.
3. Midlothian shall serve every customer and applicant for service within water CCN No. 11706, and such service shall be continuous and adequate.
4. Midlothian shall comply with the recording requirements in TWC § 13.257(r) for the area in Ellis County affected by the petition and submit to the Commission evidence of the recording no later than 31 days after receipt of this Notice.
5. Mountain Peak's CCN No. 10908 is amended consistent with this notice, to reflect (1) addition and transfer from Midlothian of approximately 119 acres of certificated service area and (2) decertification of an approximately 43-acre portion of its certificated service area that was dually certificated to Mountain Peak and the City and is now singly certificated to the City.
6. Mountain Peak shall serve every customer and applicant for service within water CCN No. 10908, and such service shall be continuous and adequate.
7. Mountain Peak shall comply with the recording requirements in TWC § 13.257(r) for the area in Ellis County affected by the petition and submit to the Commission evidence of the recording no later than 31 days after receipt of this Notice.
8. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

SIGNED AT AUSTIN, TEXAS on this the 13th day of June 2016.

PUBLIC UTILITY COMMISSION OF TEXAS



SUSAN E. GOODSON
ADMINISTRATIVE LAW JUDGE



Public Utility Commission Of Texas

By These Presents Be It Known To All That

City of Midlothian

having duly applied for 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 by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 11706

to provide continuous and adequate water utility service to that service area or those service areas in Ellis County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 43114 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 Midlothian, 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.

Issued at Austin, Texas, this 13th day of June 2016.



Public Utility Commission Of Texas

By These Presents Be It Known To All That

Mountain Peak Special Utility District

having duly applied for 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 by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 10908

to provide continuous and adequate water utility service to that service area or those service areas in Ellis County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 43114 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 Mountain Peak Special Utility District, 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.

Issued at Austin, Texas, this 13th day of June 2016.

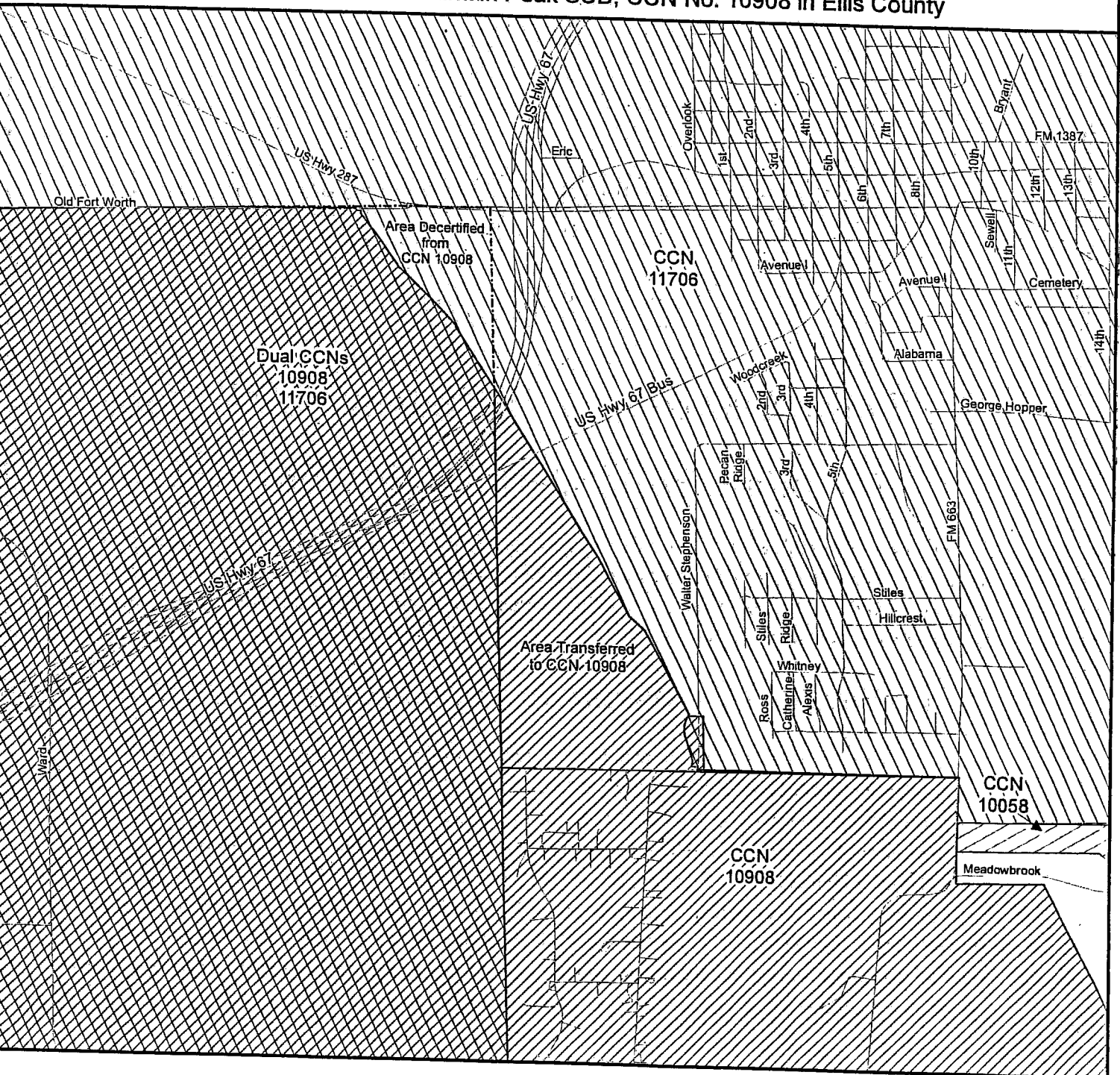
Mountain Peak Special Utility District

Portion of Water Service Area

CCN No. 10908




PUC Docket No.43114

Transferred a Portion of City of Midlothian, CCN No. 11706 and
Decertified a Portion of Mountain Peak SUD, CCN No. 10908 in Ellis County



Public Utility Commission of Texas
701 N. Congress Ave
Austin, TX 78701

Water CCN Service Areas

-  10908 - Mountain Peak SUD
-  11706 - City of Midlothian
-  10058 - Sardis-Lone Elm WSC

-  Area Decertified
-  Area Transferred

0 825 1,650
Feet



Map by: Koral Patel
Date created: January 12, 2016
Project Path: n:\finalmapping\43114MountainPeakSUD.mxd

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