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Addendum StartPage: 0

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# OPEN MEETING COVER SHEET

**MEETING DATE:** September 22, 2016

**DATE DELIVERED:** September 15, 2016

**AGENDA ITEM NO.:** #1

**CAPTION:** *Docket No. 46120; SOAH Docket No. 473-16-5823.WS -  
City of Midlothian's Notice of Intent to Serve Area  
Decertified from Mountain Peak Special Utility  
District in Ellis County*

**ACTION REQUESTED:** Discussion and possible action with respect  
to Draft Preliminary Order.

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## *Public Utility Commission of Texas*

TO: Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.  
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: Mark Hovenkamp   
Commission Advising

RE: September 22, 2016 open meeting agenda item no. 1  
*City of Midlothian Notice of Intent to Provide Water Service to Land Decertified  
From Mountain Peak Special Utility District in Ellis County, Docket No. 46120,  
SOAH Docket No. 473-16-5823.WS, Draft Preliminary Order*

DATE: September 15, 2016

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the September 22, 2016 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the September 22, 2016 open meeting.

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**PUC DOCKET NO. 46120  
SOAH DOCKET NO. 473-16-5823.WS**

<b>CITY OF MIDLOTHIAN NOTICE OF INTENT TO PROVIDE WATER SERVICE TO LAND DECERTIFIED FROM MOUNTAIN PEAK SPECIAL UTILITY DISTRICT</b>	§ § § § §	<b>PUBLIC UTILITY COMMISSION     OF TEXAS</b>
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**DRAFT PRELIMINARY ORDER**

On July 1, 2016, the City of Midlothian filed notice of its intent to provide retail water service to an approximately 97.7-acre tract of land that was decertified from Mountain Peak Special Utility District's water certificate of convenience and necessity (CCN) 10908 in Docket No. 44394.<sup>1</sup> Mountain Peak's notice filing automatically initiated this proceeding for a determination of what compensation, if any, is owed to Mountain Peak for property rendered useless or valueless.<sup>2</sup>

On July 19, 2016, Mountain Peak moved to intervene in the case.<sup>3</sup> On August 22, 2016, the Commission referred this case to the State Office of Administrative Hearings (SOAH). Commission Staff, Midlothian, and Mountain Peak timely filed requested issues.

There have been only a few cases of this type referred by the Commission to SOAH.<sup>4</sup> While the Commission requests that the case be expedited to the extent possible, the Commission recognizes it is unlikely that SOAH can complete a hearing and issue a proposal for decision (PFD) within the directory 90-day timeframe provided by Texas Water Code (TWC) § 13.254(e). In its

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<sup>1</sup> *Petition of City of Midlothian to Amend Mountain Peak Special Utility District's Certificate of Convenience and Necessity by Expedited Release in Ellis County*, Docket No. 44394, Order (May 1, 2015).

<sup>2</sup> TWC § 13.254(d); 16 TAC § 24.113(i).

<sup>3</sup> Mountain Peak's Motion to Intervene (Jul. 19, 2016).

<sup>4</sup> See *Zipp Road Utility Company, LLC's Notice of Intent to Provide Sewer Service to Area Decertified from Guadalupe-Blanco River Authority in Guadalupe County*, Docket No. 45679, Notice of Intent (Mar. 1, 2016); *City of Celina's Notice of Intent to Provide Water and Sewer Service to Area Decertified from Aqua Texas, Inc. in Denton County*, Docket No. 45848, Notice of Intent (Apr. 12, 2016); and *City of Midlothian's Notice of Intent to Provide Water Service to Land Decertified from Mountain Peak Special Utility District*, Docket No. 46120, Notice of Intent (Jul. 1, 2016).

preliminary order in Docket No. 45679, the Commission established the process below that is intended to satisfy the substantive requirements of TWC § 13.254 and 16 TAC § 24.113.<sup>5</sup>

After appropriate discovery, the SOAH ALJ should hold a hearing on the first phase of this docket and determine what property has been rendered useless or valueless. The ALJ should issue a PFD on that issue to allow the Commission to make the determination that is required under TWC § 13.254(d): what property has been rendered useless or valueless as a result of the decertification. The Commission will then issue an interim order to memorialize that determination.

After the Commission issues the interim order, there will be a determination of compensation based on the value of the property the Commission has determined to have been rendered useless or valueless. If appraisals are necessary and if the Commission appoints a third-party appraiser under TWC § 13.254(g-1) because the parties are unable agree on a single appraiser, then the case may be returned to SOAH for a hearing on the second phase of this matter, particularly if the compensation determination is contested and becomes a fact-intensive inquiry. If the case is returned to SOAH for a second phase, the Commission will issue a supplemental preliminary order addressing that phase.

After conclusion of the second phase, whether or not the second phase is referred to SOAH, the Commission will issue a final order regarding compensation for property rendered useless or valueless as a result of the decertification.

#### **I. Issue to be Addressed**

After reviewing the pleadings submitted by the parties, the Commission identifies the following issue that must be addressed in this docket:

1. What property, if any, has been rendered useless or valueless to Mountain Peak by the decertification granted in Docket No. 44394<sup>6</sup>? TWC § 13.254(d); 16 TAC § 24.113(h).

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<sup>5</sup> *Zipp Road Utility Company, LLC's Notice of Intent to Provide Sewer Service to Area Decertified from Guadalupe-Blanco River Authority in Guadalupe County*, Docket No. 45679, Preliminary Order (Jul. 20, 2016).

<sup>6</sup> Docket No. 44394, Order (May 1, 2016).

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed.

## II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of September 2016.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**