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CITY OF MIDLOTHIAN NOTICE OF  
INTENT TO PROVIDE WATER  
SERVICE TO LAND DECERTIFIED  
FROM MOUNTAIN PEAK SPECIAL  
UTILITY DISTRICT §  
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§  
§

PUBLIC UTILITY COMMISSION  
BEFORE THE CLERK

PUBLIC UTILITY COMMISSION  
OF TEXAS

**OBJECTIONS OF CITY OF MIDLOTHIAN TO  
MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S  
FIRST REQUEST FOR INFORMATION**

To: Mountain Peak Special Utility District, by and through its Attorney of Record:  
Leonard Dougal  
Mallory Beck  
JACKSON WALKER, LLP

David A. Miller  
MILLER MENTZER WALKER, PC

Now Comes the City of Midlothian ("Midlothian"), in the above-styled proceeding, and serves its Objections to Mountain Peak Special Utility District's ("Mountain Peak's") First Set of Requests for Information ("RFIs"). Midlothian files these objections pursuant to PUC Procedural Rule 22.144(d). Legal counsel of the parties have conducted negotiations diligently and in good faith and were unable to resolve disputes related to these RFIs.<sup>1</sup> These objections are filed within ten calendar days of Midlothian's receipt of the discovery requests by facsimile on September 23, 2016.

Set forth below are the individual discovery requests to which objections are being filed and the specific grounds relied upon by Midlothian ("Objections").

**I. GENERAL STATEMENT OF OBJECTION ON RELEVANCE**

As a threshold objection, Midlothian objects to several of the requests (RFI Nos. 1-6, 8, 9, 11 & 12) because they are outside the scope of discovery, particularly as it relates to the limited issues presented in this proceeding. The Preliminary Order identified the following issue to be addressed: "What property, if any, has been rendered useless or valueless to Mountain

<sup>1</sup> As a result of the conference between counsel, two RFIs were withdrawn (Nos. 7 and 10) and other RFIs were clarified or narrowed by Mountain Peak (Nos. 8, 11 and 12). The RFIs, as amended, are set forth below, with additions underscored.


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Peak by the decertification granted in Docket No. 44394? TWC, § 13.254(d); 16 TAC § 24.113(h).<sup>2</sup> The focus of the inquiry is *Mountain Peak and its property* as of the date the subject property was decertified, and *not*, for example, the actions, plans or statements of Midlothian or others.

Due to the very narrow scope of issues in this proceeding and the fact that any such determination is based upon the actions and property of Mountain Peak, the information sought is not admissible in this Docket, is not reasonably tailored to include only matters relevant to this Docket, and is not reasonably calculated to lead to the discovery of admissible evidence. The requests will provide no assistance to the Honorable Administrative Law Judge or the Commission in making a determination as whether *any property of Mountain Peak* was rendered useless or valueless *as a result of the decertification* of the park property in Docket No. 44394; nor will it lead to information which would be of assistance.

Respectfully submitted,  
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ATTORNEYS FOR CITY OF MIDLOTHIAN

<sup>2</sup> Preliminary Order at 2 (September 23, 2016). The Preliminary Order also states that the proceeding should consist of two phases: (1) identifying any property (if any) rendered useless or valueless; and (2) the compensation due for any such property. *Id.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document is being served on the following parties on October 3, 2016, via facsimile:

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Paul M. González

**OBJECTIONS OF CITY OF MIDLOTHIAN  
TO MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S  
FIRST SET OF REQUESTS FOR INFORMATION**

**REQUEST FOR INFORMATION NO. 1:**

Please produce the December 16, 2013, Memorandum prepared by Freese and Nichols related to the Midlothian Community Park Water Assessment, including all exhibits and attachments.

**OBJECTION:** Midlothian specifically objects to this request as it is not calculated to lead to the discovery of evidence related to the issues in this case. The General Statement of Objection on Relevance, above, is incorporated herein. The request is not relevant to the PUC's determination of the existence of any real or personal property of Mountain Peak that was rendered useless or valueless by Commission decertification in Docket No. 44394, if any. For the same reasons, the information is equally irrelevant to a determination of the compensation due to Mountain Peak in this proceeding.

Midlothian further objects to this request as the information is equally, if not more, available to requesting party.

**REQUEST FOR INFORMATION NO. 2:**

Please produce all documents related to the December 16, 2013 Memorandum prepared by Freese and Nichols related to the Midlothian Community Park Water Assessment (the "Memorandum"), including, but not limited to, all communications with Freese and Nichols, all drafts or earlier versions of the Memorandum or any part thereof, and all documents reflecting any information supplied to Freese and Nichols in preparing the Memorandum,

**OBJECTION:** Midlothian specifically objects to this request as it is not calculated to lead to the discovery of evidence related to the issues in this case. The General Statement of Objection on Relevance, above, is incorporated herein. The request is not relevant to the PUC's determination of the existence of any real or personal property of Mountain Peak that was rendered useless or valueless by Commission decertification in Docket No. 44394, if any. For the same reasons, the information is equally irrelevant to a determination of the compensation due to Mountain Peak in this proceeding.

**REQUEST FOR INFORMATION NO. 3:**

Please produce all evaluations, assessments, written communications, or reports relating to the provision of water service to the Subject Tract, including, but not limited to; any updates of the December 16, 2013 Memorandum prepared by Freese and Nichols related to the Midlothian Community Park Water Assessment.

**OBJECTION:** Midlothian specifically objects to this request as it is not calculated to lead to the discovery of evidence related to the issues in this case. The General Statement of Objection on Relevance, above, is incorporated

herein. The request is not relevant to the PUC's determination of the existence of any real or personal property of Mountain Peak that was rendered useless or valueless by Commission decertification in Docket No. 44394, if any. For the same reasons, the information is equally irrelevant to a determination of the compensation due to Mountain Peak in this proceeding.

**REQUEST FOR INFORMATION NO. 4:**

Please produce all correspondence, notes and documents of any kind reflecting or relating to communications between You and Mountain Peak relating to the provision of water service to the Subject Tract.

**OBJECTION:** Midlothian specifically objects to this request as it is not calculated to lead to the discovery of evidence related to the issues in this case. The General Statement of Objection on Relevance, above, is incorporated herein. The request is not relevant to the PUC's determination of the existence of any real or personal property of Mountain Peak that was rendered useless or valueless by Commission decertification in Docket No. 44394, if any. For the same reasons, the information is equally irrelevant to a determination of the compensation due to Mountain Peak in this proceeding.

Midlothian further objects to this request as the communications exchanged between the parties is equally, if not more, available to Mountain Peak.

**REQUEST FOR INFORMATION NO. 5:**

Please produce all documents relating to Midlothian's consideration of or decision to not obtain water service from Mountain Peak for Midlothian's proposed development on the Subject Tract.

**OBJECTION:** Midlothian specifically objects to this request as it is not calculated to lead to the discovery of evidence related to the issues in this case. The General Statement of Objection on Relevance, above, is incorporated herein. The request is not relevant to the PUC's determination of the existence of any real or personal property of Mountain Peak that was rendered useless or valueless by Commission decertification in Docket No. 44394, if any. For the same reasons, the information is equally irrelevant to a determination of the compensation due to Mountain Peak in this proceeding.

**REQUEST FOR INFORMATION NO. 6:**

Please provide all documents relating to Midlothian's proposed or actual development of the Subject Tract including, but not limited to, all development plats or plans and construction plans for the Subject Tract, reports or analyses prepared and the minutes of any meetings at which it was discussed.

**OBJECTION:** Midlothian specifically objects to this request as it is not calculated to lead to the discovery of evidence related to the issues in this case. The General Statement of Objection on Relevance, above, is incorporated

herein. The request is not relevant to the PUC's determination of the existence of any real or personal property of Mountain Peak that was rendered useless or valueless by Commission decertification in Docket No. 44394, if any. For the same reasons, the information is equally irrelevant to a determination of the compensation due to Mountain Peak in this proceeding.

Midlothian also objects that this request is unreasonable and unduly burdensome under the circumstances of this case, as contemplated by Tex. R. Civ. P. 192.4(a) & (b).

**REQUEST FOR INFORMATION NO. 8:**

Please describe the number of LUEs to be served as of the date of decertification on the Subject Tract.

**OBJECTION:** Midlothian specifically objects to this request as it is not calculated to lead to the discovery of evidence related to the issues in this case. The General Statement of Objection on Relevance, above, is incorporated herein. The request is not relevant to the PUC's determination of the existence of any real or personal property of Mountain Peak that was rendered useless or valueless by Commission decertification in Docket No. 44394, if any. For the same reasons, the information is equally irrelevant to a determination of the compensation due to Mountain Peak in this proceeding.

**REQUEST FOR INFORMATION NO. 9:**

Please provide all documents relating to your response to RFI No. 8.

**OBJECTION:** Midlothian specifically objects to this request as it is not calculated to lead to the discovery of evidence related to the issues in this case. The General Statement of Objection on Relevance, above, is incorporated herein. The request is not relevant to the PUC's determination of the existence of any real or personal property of Mountain Peak that was rendered useless or valueless by Commission decertification in Docket No. 44394, if any. For the same reasons, the information is equally irrelevant to a determination of the compensation due to Mountain Peak in this proceeding.

**REQUEST FOR INFORMATION NO. 10:**

Please provide all documents relating to plans for the provision of water service to the Subject Tract or any property within Mountain Peak's CCN, other than for an industrial customer within the Dual Certificated Area.

**OBJECTION:** Midlothian specifically objects to this request as it is not calculated to lead to the discovery of evidence related to the issues in this case. The General Statement of Objection on Relevance, above, is incorporated herein. The request is not relevant to the PUC's determination of the existence of any real or personal property of Mountain Peak that was rendered useless.

or valueless by Commission decertification in Docket No. 44394, if any. For the same reasons, the information is equally irrelevant to a determination of the compensation due to Mountain Peak in this proceeding.

Midlothian also objects that this request is overbroad and unduly burdensome, providing no boundaries of time or property against which the completeness of a response might be tested, and is unreasonable and unduly burdensome under the circumstances of this case, as contemplated by Tex. R. Civ. P. 192.4(a) & (b).

**REQUEST FOR INFORMATION NO. 11:**

Please provide all documents related to the conveyance of the Subject Tract to Midlothian, including any and all communications related to water service between Midlothian and the seller of the Subject Tract.

**OBJECTION:** Midlothian specifically objects to this request as it is not calculated to lead to the discovery of evidence related to the issues in this case. The General Statement of Objection on Relevance, above, is incorporated herein. The request is not relevant to the PUC's determination of the existence of any real or personal property of Mountain Peak that was rendered useless or valueless by Commission decertification in Docket No. 44394, if any. For the same reasons, the information is equally irrelevant to a determination of the compensation due to Mountain Peak in this proceeding.

Midlothian also objects that this request is unreasonable and unduly burdensome under the circumstances of this case, as contemplated by Tex. R. Civ. P. 192.4(a) & (b).

**REQUEST FOR INFORMATION NO. 12:**

Please produce any development plans approved by Midlothian for the Subject Tract or for property of which the Subject Tract was a portion in the last 10 years.

**OBJECTION:** Midlothian specifically objects to this request as it is not calculated to lead to the discovery of evidence related to the issues in this case. The General Statement of Objection on Relevance, above, is incorporated herein. The request is not relevant to the PUC's determination of the existence of any real or personal property of Mountain Peak that was rendered useless or valueless by Commission decertification in Docket No. 44394, if any. For the same reasons, the information is equally irrelevant to a determination of the compensation due to Mountain Peak in this proceeding.

**REQUEST FOR INFORMATION NO. 13:**

Please provide all documents supporting or relating to any assertion that any of Mountain Peak's property has or will be rendered useless or valueless to Mountain Peak as a result of the decertification of the Subject Tract.



**OBJECTION:** This request fails to specifically identify the document(s) sought to be produced, and thus, constitutes a "fishing expedition." See *Loftin v. Martin*, 776 S.W.2d 145, 148 (Tex. 1989). A request for production must be specific, must establish materiality, and must recite precisely what documents are sought. This request also seeks attorney work-product as defined by TEX. R. CIV. P. 192.5. No documents are currently withheld, but the creation of documents that would fall within the scope of this request is anticipated, and this objection is not made prophylactically, but in anticipation of the creation of those documents. Further, this request improperly requires defendant to marshal the evidence in violation of TEX. R. CIV. P. 197.

**REQUEST FOR INFORMATION NO. 14:**

Please provide all documents supporting or relating to any assertion that none of Mountain Peak's property has or will be rendered useless or valueless to Mountain Peak as a result of the decertification of the Subject Tract.

**OBJECTION:** This request fails to specifically identify the document(s) sought to be produced, and thus, constitutes a "fishing expedition." See *Loftin v. Martin*, 776 S.W.2d 145, 148 (Tex. 1989). A request for production must be specific, must establish materiality, and must recite precisely what documents are sought. This request also seeks attorney work-product as defined by TEX. R. CIV. P. 192.5. No documents are currently withheld, but the creation of documents that would fall within the scope of this request is anticipated, and this objection is not made prophylactically, but in anticipation of the creation of those documents. Further, this request improperly requires defendant to marshal the evidence in violation of TEX. R. CIV. P. 197.