



Control Number: 46120



Item Number: 19

Addendum StartPage: 0

RECEIVED

P.U.C. DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS

2016 OCT -4 PM 1:37

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

§
§
§
§
§

BEFORE THE STANDING OFFICE
PUBLIC UTILITY COMMISSION

OF

ADMINISTRATIVE HEARINGS

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

To: Mountain Peak Special Utility District ("Mountain Peak"), by and through its Attorney of Record:

Leonard Dougal
Mallory Beck
JACKSON WALKER, LLP
100 Congress, Suite 1100
Austin, Texas 78701

David A. Miller
MILLER MENTZER WALKER, PC
P. O. BOX 130
Palmer, Texas 75152

The City of Midlothian, Texas, ("Midlothian" or "City") propounds the following First Set of Requests for Information ("RFIs") and Requests for Admission ("RFAs") to Mountain Peak. You are hereby requested to answer the following written discovery separately, in writing, and, as for the Requests for Information, under oath, and, for this discovery, within twenty (20) days of the date of service, to the Law Offices of Davidson Troilo Ream & Garza, P.C., Attn: Paul M. Gonzalez, 601 N.W. Loop 410, Suite 100, San Antonio, Texas 78216. The written discovery questions are attached to this document and are incorporated for all purposes.

DEFINITIONS AND INSTRUCTIONS

A. When the word "documents" is used, it means any written, typed, printed, recorded, graphic or photographic matter, or sound reproductions, however produced or reproduced, including copies, or computer or data processing inputs or outputs in whatever form, or any means of electronic storage of information. These include, but are not limited to, all letters, telegrams, cables, wires, notes, studies, memoranda, accounts, invoices, ledgers, books, publications, diagrams, statements, drafts, transcripts, agreements, contracts, minutes, records, diaries, voice recordings, journals, logs, work papers, manuals, calendars, governmental forms, computer or data processing inputs or printouts, microfiche or microfilm recordings, statistical compilations, slides, photographs, negatives, motion pictures or other films, samples or other

19

physical objects of whatever nature, whether originals or reproductions, now or formerly in your possession, custody or control, or in the possession, custody or control of any employee, agent, representative, servant or attorney acting on your behalf. The term "documents" also includes every copy where the copy is not an identical reproduction of the original or where the copy contains any commentary, marginal comment or any notation that may not appear in the original. A document is deemed within your control if you have ownership, possession, custody, or constructive possession of the document, or a superior right to compel the production from a third party (including an agent, authority or representative). The term "documents" also includes electronic and magnetic data which are to be produced in native format, or a format mutually agreed to by the responding party and the requesting party.

B. When "identify", "identity", or "identification" is used in these discovery requests:

(1) When used in reference to a natural person, "identify", "identity", or "identification" means that you should state that person's full name, address and telephone number.

(2) When used with respect to a "document," as defined above, "identify", "identity", or "identification" means that you should state the date, subject and substance, author, type of document, (e.g., letter, telegram, memorandum, computer printout, sound reproduction, chart, photograph, film, etc.), its present location and the identity of each of its present custodians and shall include all documents including those that you may claim are privileged. If any document was, but no longer is, in your possession or subject to your control, state whether it is (a) missing or lost; (b) was destroyed; (c) was transferred voluntarily or involuntarily to others; or (d) otherwise disposed of, and in each such instance explain the circumstances surrounding any authorization for such disposition.

(3) When used in respect to any meeting or conversation, "identify", "identity", or "identification" means that you should state the date and specific location of the meeting or conversation plus the "identification" of all persons present, attending, participating, witnessing or having knowledge of the meeting or conversation.

(4) When used in respect to an occurrence, event or happening, "identify", "identity", or "identification" means that you should describe in detail what occurred or transpired at the occurrence, event or happening; the date, specific location and duration of the occurrence, event or happening and identify all persons present, attending, participating, witnessing or having knowledge of the occurrence, event or happening.

(5) When used in respect to a statement, "identify", "identity", or "identification" means that you should state the substance of the statement; the date and specific location of the statement; and the "identity" of all persons present, witnessing, making or having knowledge of the statement.

C. "Person" or "Persons" includes natural persons, firms, partnerships, associations, joint ventures, corporations and any other form of business organization or arrangement, as well as governmental or quasi-governmental agencies.

D. "You" or "Your" refers to the Mountain Peak Special Utility District, including its predecessor in interest, the Mountain Peak Water Supply Corporation, and either's board of directors, management, staff, agents or contractors.

E. "Park Property" refers to the approximately 97.7 acre property owned by the City of Midlothian, Texas, that was the subject of decertification in PUC Docket No. 44394, which is the subject of the notice to serve in this proceeding.

F. "Mountain Peak" refers to You, as defined herein.

G. "City" or "Midlothian" refers to the City of Midlothian, Texas.

H. Unless the context clearly provides otherwise, "decertification" refers to the action taken by the Public Utility Commission of Texas in Docket No. 44394 to remove the Park Property from the certificated water service area of Mountain Peak.

I. "Facilities" means all the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility. Texas Water Code § 13.002(9).

J. With specific regard to the request for production of any documents or tangible things for inspection, copying or photographing, the following additional instructions apply:

(1) If the document(s) requested cannot be fully and completely produced even with the help of your attorney or any expert that you may hire, then please state the reasons why you cannot produce the requested documents and also state what effort was made by you to try to obtain the requested document(s).

(2) If any document or tangible thing requested to be identified was, but no longer is, in your possession or control, or if it is no longer even in existence, please state whether the document is missing or lost, destroyed, in the possession or control of others (and, if so, whom), or otherwise disposed of.

(3) THE ORIGINAL OF EACH ITEM REQUESTED IS TO BE PRODUCED IF POSSIBLE, FOR INSPECTION AND COPYING BY THIS PARTY. IF YOU DO NOT HAVE THE ORIGINAL, STATE THE LOCATION OF THE ORIGINAL.

(remainder of page intentionally left blank)

Respectfully submitted,

DAVIDSON, TROILO, REAM & GARZA, P.C.
601 NW Loop 410, Suite 100
San Antonio, Texas 78216
Telephone: (210) 349-6484
Facsimile: (210) 349-0041

By:


Patrick W. Lindner

plindner@dtgrlaw.com

State Bar No. 12367850

Paul M. González

pgonzalez@dtgrlaw.com

State Bar No. 00796652

Richard Lindner

State Bar No. 24065626

rlindner@dtgrlaw.com

ATTORNEYS FOR CITY OF MIDLOTHIAN

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was served on all parties of record in this proceeding on October 4, 2016, in the following manner: by facsimile.


Paul M. González

P.U.C. DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS

CITY OF MIDLOTHIAN NOTICE OF § BEFORE THE STATE OFFICE
INTENT TO PROVIDE WATER §
SERVICE TO LAND DECERTIFIED § OF
FROM MOUNTAIN PEAK SPECIAL §
UTILITY DISTRICT § ADMINISTRATIVE HEARINGS

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

Request for Admission No. 1-1.

Admit that no real property was rendered useless or valueless to Mountain Peak as a result of the decertification of the Park Property.

Request for Information No. 1-1.

If you cannot unequivocally admit the foregoing request (RFA No. 1-1), identify the real property rendered useless or valueless to Mountain Peak, in whole or part, as a result of the decertification in Docket No. 44394, including, for each parcel, the date and purchase price of the property, any current or planned uses for the property, any appraisals related to the property, and information on remaining debt service for loans or bonds to acquire the same.

Request for Admission No. 1-2.

Admit that the Park Property decertified by the Commission in Docket No. 44394 was approximately 97.7 acres.

Request for Information No. 1-2.

Excluding the acreage of the Park Property, what was the approximate total area (in square miles or acres) of Mountain Peak's service area under CCN No. 10908 as of May 1, 2016.

Request for Admission No. 1-3.

Admit that Mountain Peak's financial ratings have been unaffected by the decertification of the Park Property.

Request for Information No. 1-3.

If you cannot unequivocally admit the foregoing request (RFA No. 1-3), identify each financial rating allegedly affected by decertification of the Park Property, including the date of such change, and provide documents evidencing such changes.

Request for Information No. 1-4.

Identify any water service facilities of Mountain Peak located *within* the Park Property, including for each facility:

- a. A description and the location;
- b. Any service requests, studies, reports or other documents establishing the need for the facility;
- c. The dates of Mountain Peak's decision to build, of construction, and of placement into service;
- d. The costs of design and of construction;
- e. The date(s), purpose(s) and design/construction costs of any expansion(s);
- f. The facility's use and available capacity as of May 1, 2016; and
- g. Identification of any remaining debt service for loans/bonds to finance design and/or construction as of May 1, 2016.

Request for Admission No. 1-4.

Admit that none of the facilities identified in response to RFI No. 1-4 has been used to provide water service to the Park Property.

Request for Information No. 1-5.

If you cannot unequivocally admit the foregoing request (RFA No. 1-4), identify each facility that has been used to provide service to the Park Property, including the name of any person requesting service, the date and type of service provided, the location of the facility, and the date service was terminated.

Request for Admission No. 1-5.

Admit that the usefulness or value of the facilities to Mountain Peak identified in response to RFI No. 1-4 has not decreased as a result of decertification of the Park Property.

Request for Information No. 1-6.

If you cannot unequivocally admit the foregoing request (RFA No. 1-5), explain the factual basis for your belief that the usefulness or value of the facilities has decreased as a result of the decertification, identifying specifically which facilities were affected and the amount of any decrease in usefulness or value.

Request for Admission No. 1-6.

Admit that Mountain Peak has never provided water service to the City at the Park Property.

Request for Information No. 1-7.

Identify any water service facilities of Mountain Peak located *within 1000 feet* of (but not on or within) the Park Property, including for each facility:

- a. A description and the location;
- b. Any service requests, studies, reports or other documents establishing the need for the facility;
- c. The dates of Mountain Peak's decision to build, of construction, and of placement into service;
- d. The costs of design and of construction;
- e. The date(s), purpose(s) and design/construction costs of any expansion(s);
- f. The facility's use and available capacity as of May 1, 2016; and

- g. Identification of any remaining debt service for loans/bonds to finance design and/or construction as of May 1, 2016.

Request for Admission No. 1-7.

Admit that Mountain Peak's water customers have not experienced any impairment of service as a result of decertification of the Park Property.

Request for Information No. 1-8.

If you cannot unequivocally admit the foregoing request (RFA No. 1-7), identify and describe each impairment of service a Mountain Peak water customer has experienced as a result of the decertification, including the identity and service location of each customer, reports or documents relied upon by Mountain Peak in asserting this belief, and any actions under taken by Mountain Peak to resolve the impairment of service.

Request for Admission No. 1-8.

Admit that Mountain Peak's water customers have not experienced an increase of cost as a result of decertification of the Park Property.

Request for Information No. 1-9.

If you cannot unequivocally admit the foregoing request (RFA No. 1-8), describe the amount and types of increased costs you contend that Mountain Peak's water customers experienced, including the date such costs were incurred, the basis for determining the costs, reports/documents related to the calculation of such costs.

Request for Admission No. 1-9.

Admit that Mountain Peak lost no existing customer(s) as a result of decertification of the Park Property.

Request for Information No. 1-10.

If you cannot unequivocally admit the foregoing request (RFA No. 1-9), identify each customer so lost and the date of such loss.

Request for Admission No. 1-10.

Admit that a developer is required to pay costs of any improvements to Mountain Peak's system necessary for Mountain Peak to provide service to a proposed subdivision.

Request for Information No. 1-11.

If you cannot unequivocally admit the foregoing request (RFA No. 1-10), identify each instance since 1995 when a developer has not been required to pay all costs of any improvements to Mountain Peak's system necessary for Mountain Peak to provide service to a proposed subdivision and produce the documents waiving or reducing requirement for the developer.

Request for Admission No. 1-11.

Admit Mountain Peak has provided notices as contemplated under Water Code § 13.2502(b) or (c) since 2000 to 2016.

Request for Information No. 1-12.

If you cannot unequivocally admit the foregoing request (RFA No. 1-11), identify each instance when Mountain Peak has not provided such notice, identifying any developer that was not provided specifically notice under § 13.250(c) and dates any person was not or may not have been provided with notice.

Request for Admission No. 1-12.

Admit that the date of decertification of the Park Property is May 1, 2015.

Request for Information No. 1-13.

If you cannot unequivocally admit the foregoing request (RFA No. 1-12), identify the date of decertification you contend applies and explain the legal and factual basis of your contention.

Request for Admission No. 1-13.

Admit that none of Mountain Peak's contractual obligations were rendered useless or valueless as a result of the decertification of the Park Property.

Request for Information No. 1-14.

If you cannot unequivocally admit the foregoing request (RFA No. 1-13), identify Mountain Peak's contractual obligations related to the Park Property, including, as to each such contractual obligation, a description of the obligation, identification of each counter-party involved, the date such obligation was incurred, Mountain Peak's rationale for incurring same, when such obligation ends, the legal and/or factual basis for your belief that such obligation was rendered useless or valueless, and provide a copy of the documents memorializing such obligation.

Request for Information No. 1-15.

Provide any maps showing the location and nature of the facilities that make up Mountain Peak's water system, indicating transmission and distribution lines, pumping facilities, water wells, and storage facilities as they existed on or about January 2016.

Request for Information No. 1-16.

Identify and Produce any document that includes Mountain Peak's long range plans to construct or acquire facilities that would specifically and directly provide water service to the Park Property.

Request for Information No. 1-17.

Identify and Provide any document that reflects whether, and, if so, when, Mountain Peak projected water demand for Mountain Peak customers in the Park Property.

Request for Information No. 1-18.

Provide documents reflecting expenditures for the planning, design, and/or construction of Mountain Peak facilities that would specifically and directly provide water service to the Park Property.

Request for Information No. 1-19.

Identify Mountain Peak's debt, including, but not limited to, the identity of each issuer, the date of issuance, the amount of debt initially incurred, any unpaid balance as of May 1, 2016, the date the debt is expected to be extinguished if Mountain Peak makes all payments on schedule, any unpaid balance as of the July 1, 2016, and any resolution authorizing its issuance or identifying its purpose.

Request for Information No. 1-20.

Produce each of Mountain Peak's subdivision service extension policies in effect from 2000 to 2016 and, if not apparent from the policy, identify the effective date(s) of each.

Request for Information No. 1-21.

Produce any Service Application to provide water service to the Park Property, including all maps and documents required for the amended application.

Request for Information No. 1-22.

Identify and Produce any document that evaluates the impact a proposed subdivision service extension to serve the Park Property will make on Mountain Peak's water supply system.

Request for Information No. 1-23.

Produce any documents that evaluate the impact a proposed subdivision service extension to serve the property of SKJ Lawson Farms Development, L.P. will make on Mountain Peak's water supply system for properties within 1000 feet of the Park Property.

Request for Information No. 1-24.

Produce deeds to Mountain Peak for any property located within 1000 feet of the Park Property and any documents setting for the reason(s) for acquisition of such property.

Request for Information No. 1-25.

Identify and Produce any easements held by Mountain Peak on or within 1000 feet of the Park Property.

Request for Information No. 1-26.

Identify and Produce any document related to the provisions or reservation of water supply capacity for the Park Property, including developer payments for same.

Request for Information No. 1-27.

Identify and Produce any document of forfeiture of reserved water supply service capacity for failure to pay applicable fees related directly or indirectly to the Park Property.

Request for Information No. 1-28.

Identify and Produce any documents, including designs, approved by Mountain Peak for provision of service to the Park Property.

Request for Information No. 1-29.

If you contend that any intangible property is rendered useless or valueless, in whole or in part, by the decertification of the Park Property, state the legal and factual basis for your claim(s), identify each type of intangible property affected and amounts paid for the intangible property and the claimed reduction in value or usefulness of the intangible property, and produce any document relied upon in making such claim(s).

Request for Information No. 1-30:

Identify any facility or other property Mountain Peak claim was rendered useless or valueless, in whole or in part, as the result of decertification of the Park Property, including, for each facility or other property:

- a. A description and the location of each;
- b. The dates of construction and of placement into service;
- c. The costs of construction and of design; and
- d. Information on remaining debt service for loans or bonds to finance design and/or construction as of May 1, 2016.

To the extent that you have identified the facility or other property in response to RFI No. 1-4 or No. 1-7, no further response is solicited.

Request for Admission No. 1-14.

Admit that the usefulness or value of the facilities to Mountain Peak identified in response to RFI No. 1-7 has not decreased as a result of decertification of the Park Property.

Request for Information No. 1-31.

If you cannot unequivocally admit the foregoing request (RFA No. 1-14), explain the factual basis for your belief that the usefulness and/or value of the facilities has decreased as a result of the decertification, identifying specifically which facilities were affected and the amount of any decrease in usefulness or value.