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

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CITY OF MIDLOTHIAN'S NOTICE OF § BEFORE THE STATE OFFICE
INTENT TO SERVE AREA §
DECERTIFIED FROM MOUNTAIN § OF
PEAK SPECIAL UTILITY DISTRICT IN §
ELLIS COUNTY § ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 1
CASE DESCRIPTION; RULING ON MOTION TO INTERVENE; NOTICE OF
PREHEARING CONFERENCE; DISCOVERY AND FILING REQUIREMENTS

I. CASE DESCRIPTION

On July 1, 2016, the City of Midlothian (City) 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 (Mountain Peak) water certificate of convenience and necessity 10908 in Docket No. 44394.¹ Midlothian'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.²

On August 22, 2016, the Public Utility Commission of Texas (Commission) referred this case to the State Office of Administrative Hearings (SOAH), requesting the assignment of an Administrative Law Judge (ALJ) to conduct a hearing and issue a proposal for decision, if such is necessary. SOAH has jurisdiction over matters relating to the conduct of the hearing in this proceeding pursuant to Texas Government Code § 2003.049. On September 23, 2016, the Commission issued its preliminary order in this proceeding. In its preliminary order, the Commission recognized that it was unlikely that SOAH could issue a decision within the 90-days deadline contemplated by Texas Water Code § 13.254(e) and, therefore, established the following procedures to be followed. After appropriate discovery, the SOAH ALJ will hold a hearing on the first phase of this docket and determine what property has been rendered useless or valueless. The ALJ will issue a proposal for decision (PFD) on that issue to allow the

¹ *Petitioner 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)).

² Tex. Water Code § 13.254(d); 16 Tex. Admin. Code § 24.113(i).

Commission to make the determination that is required under Texas Water Code § 13.254(d): what property has been rendered useless or valueless as a result of the decertification. The Commission will issue an interim order memorializing 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 needed and if the Commission appoints a third-party appraiser under Texas Water Code § 13.254(g-1) because the parties are unable to 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.

II. RULING ON MOTION TO INTERVENE

On July 19, 2016, Mountain Peak filed a motion to intervene. No objections were filed. Accordingly, Mountain Peak's motion to intervene is granted.

III. NOTICE OF PREHEARING CONFERENCE

The undersigned ALJ will convene a prehearing conference at **10:00 a.m. on November 8, 2016, at the SOAH hearing facilities located at the William P. Clements Office Building, 300 West 15th, Fourth Floor, Austin, Texas.** The following matters will be discussed at the prehearing conference:

1. Pending motions to intervene.

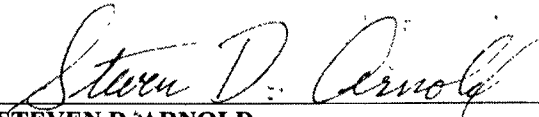
2. Any other motion filed by 3:00 p.m. on November 7, 2016, and emailed to the ALJ's Administrative Assistant, Erin Hurley, on that day.³
3. A procedural schedule.
4. Any other matters that may assist in the disposition in a fair and efficient manner.

Those attending the prehearing are advised that they must check in with building security personnel in the lobby of the William P. Clements Building and be issued visitor badges before proceeding to the hearing room. The parties should allow sufficient time for the check-in procedure.

IV. DISCOVERY; FILING REQUIREMENTS

Discovery may begin immediately pursuant to Subchapter H of the Commission's Procedural Rules. All pleadings shall be filed with the Commission's filing clerk, not with the SOAH filing clerk. The Commission's filing clerk will forward a copy of the pleadings to SOAH. The parties may contact Erin Hurley, the ALJ's Administrative Assistant, at 512-475-3519, with any procedural questions.

SIGNED October 11, 2016.


STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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