



Control Number: 46120



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

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

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

To: Mountain Peak Special Utility District, Respondent in the above-referenced matter, 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

NOW COMES CITY OF MIDLOTHIAN, TEXAS ("Midlothian"), in the above-styled proceeding, and serves its Responses to Mountain Peak Special Utility District's ("Mountain Peak" or "MPSUD") First Set of Requests for Information ("RFIs"). These responses are timely filed.¹

The RFI responses are submitted subject to objections previously made by Midlothian in this proceeding.² Midlothian stipulates that responses to Mountain Peak's requests for information can be treated by all parties as if the answers were filed under oath. Midlothian reserves the right to amend or supplement its responses.


¹ Two RFIs were subsequently withdrawn (Nos. 7 and 10) and other RFIs were clarified or narrowed by Mountain Peak (Nos. 8, 11 and 12).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.

² Objections of City of Midlothian to Mountain Peak Special Utility District's First Requests for Information (Oct. 3, 2016). Mountain Peak has submitted a motion to compel under 16 Tex. Admin. Code § [PUC PROC. R.] 22.144(e), but is not "seeking to compel responses" as to three RFIs. Mountain Peak Special Utility District's Motion to Compel note 4 (Oct. 10, 2016).

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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
State Bar No. 12367850
Paul M. González
State Bar No. 00796652
Richard Lindner
State Bar No. 24065626

ATTORNEYS FOR CITY OF MIDLOTHIAN

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was served on the parties of record in this proceeding on October 13, 2016, by facsimile:


Paul M. González

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MPSUD RFI 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.

Response: See previously filed Objection:

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.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: N/A

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MPSUD RFI 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.

Response: See previously filed Objection:

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.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: N/A

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MPSUD RFI 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.

Response : See previously filed Objection:

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.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: N/A

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MPSUD RFI 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.

Response: See previously filed Objection:

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.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: N/A

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MPSUD RFI No. 5:

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

Response: See previously filed Objection:

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.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: N/A

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MPSUD RFI 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.

Response: See previously filed Objection:

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).

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: N/A

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MPSUD RFI No. 8:

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

Response: See previously filed Objection:

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.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: N/A

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MPSUD RFI No. 9:

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

Response: See previously filed Objection:

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.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: N/A

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MPSUD RFI 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.

Response: See previously filed Objection:

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).

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: N/A

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MPSUD RFI 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.

Response: See previously filed Objection:

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.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: N/A

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MPSUD RFI 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.

Response: See previously filed Objection:

OBJECTION: This request fails to specifically identify the document(s) sought to be produced, and thus, constitutes a "fishing expedition." See *Loflin 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.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: N/A

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MPSUD RFI 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.

Response: See previously filed Objection:

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.

Prepared by or under direction of: Counsel for Mountain Peak

Sponsored by: N/A

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MPSUD RFI No. 15:

Please produce all correspondence or documents exchanged between you and any person who may be called to present expert testimony in this case.

Response:

No testifying expert has been identified; Midlothian will supplement this response when the designation is made.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: To be determined.

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MPSUD RFI No. 16:

Please produce the curriculum vitae of each witness you may call to present expert testimony in this case or by deposition.

Response:

See Midlothian's Response to MPSUD RFI No. 15.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: To be determined.

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MPSUD RFI No. 17:

Please produce the curriculum vitae of each consulting expert whose opinions, impressions or work product have been reviewed by a testifying expert in connection with the issues presented in this proceeding.

Response:

See Midlothian's Response to MPSUD RFI No. 15.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: To be determined.

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MPSUD RFI No. 18:

Please produce all documents prepared, considered, reviewed, or relied upon by each testifying expert and/or consulting expert whose opinions or impressions have been reviewed by a testifying expert or whose work has formed the basis, in whole or in part, for the mental impressions and opinions of an expert who may be called to testify.

Response:

See Midlothian's Response to MPSUD RFI No. 15.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: To be determined.

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MPSUD RFI No. 19:

Please produce all documents relating to the charges or expenses you have incurred as result of the work done by any expert who may be called to testify as a witness in this proceeding and by each consulting expert whose opinions or impressions have been reviewed by a testifying expert or whose work has formed the basis, in whole or in part, for the mental impressions and opinions of a testifying expert.

Response:

See Midlothian's Response to MPSUD RFI No. 15.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: To be determined.

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MPSUD RFI No. 20:

Please produce all documents relating to all impeachment or rebuttal witnesses that you may call to testify at a hearing in this proceeding, the necessity of whose testimony can be reasonably anticipated before the hearing.

Response:

No impeachment or rebuttal witness has been identified. Midlothian reserves its right to present impeachment or rebuttal testimony, and will supplement as required.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: To be determined.

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MPSUD RFI No. 21:

Please produce all writings, drawings, graphs, charts, maps, photographs, or other tangible items intended to be used by You as exhibits, including demonstrative exhibits, in a hearing in this proceeding.

Response:

None at this time. Midlothian will supplement this response as required.

Prepared by or under direction of: Counsel for Midlothian

Sponsored by: To be determined.

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MPSUD RFI No. 22:

Please produce all documents containing or reflecting any admissions or statements and/or admissions You contend were made by Mountain Peak relating to the issues in this proceeding.

Response:

Please see documents submitted by or pertaining to Mountain Peak, or its predecessor in interest, Mountain Peak Water Supply Corporation, as filed in PUC Docket No. 44394, available on the PUC Interchange, as filed in the appeal to state district court in Cause No. D-1-GN-15-002843, *Mountain Peak Special Utility District v. Public Utility Commission of Texas*, pending in the 200th Judicial District Court, Travis County, Texas, and as filed in TNRCC Docket No. 96-1192-UCR, *Amending the Certificate of Convenience and Necessity (CCN No. 10908) issued to Mountain Peak Water Supply Corporation*.

Responsive documents will include documents produced by Mountain Peak in this proceeding.

Prepared by or under direction of: Michael Adams, City of Midlothian

Sponsored by: To be determined.