



Control Number: 46120



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PUC DOCKET NO. 46120

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

RECEIVED
2016 JUL 19 PM 12:55
BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT’S MOTION TO INTERVENE AND
NOTICE OF SELECTION OF APPRAISER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES, Mountain Peak Special Utility District (“Mountain Peak”) and files this Motion to Intervene. In support thereof, Mountain Peak would respectfully show as follows:

INTRODUCTION

In Docket No. 44394, the Public Utility Commission of Texas (“PUC”) granted the City of Midlothian’s (“Midlothian”) petition to amend Mountain Peak’s water Certificate of Convenience and Necessity (“CCN”) No. 10908 by expedited release on May 1, 2015 (“PUC Order”). The PUC’s Order resulted in the decertification of an approximately 97.7-acre tract of land owned by Midlothian (the “Property”) from Mountain Peak’s water CCN. Mountain Peak filed a motion for reconsideration which was overruled as a matter of law and subsequently filed a petition for judicial review which remains pending in Travis County District Court.¹ On July 1, 2016, Midlothian filed a notice of its intent (the “Notice of Intent”) to provide retail water service to the Property. Midlothian, incorrectly, asserts that no property of Mountain Peak’s has been rendered useless or valueless by the decertification. Mountain Peak seeks to intervene in this matter to protect its property interest and insure appropriate compensation is found to be owed to Mountain Peak.

¹ *Mountain Peak Special Utility Dist. v. Public Utility Comm’n of Tex.*, No. D-1-GN-15-002843 (200th Judicial Dist. Ct., Travis County, Tex., July 14, 2015).

MOTION TO INTERVENE

Mountain Peak respectfully requests to intervene as a party in the above-captioned proceeding. Although Mountain Peak believes it is a necessary party to this action and intervention is not required, out of an abundance of caution, Mountain Peak requests to intervene pursuant to PUC Procedural Rules 22.103 and 22.104.²

Mountain Peak has the right to intervene under PUC Procedural Rule 22.103(b) because, as the former holder of the CCN, it is a key party with justiciable interests which may be adversely affected by the outcome of this proceeding. Mountain Peak has a justiciable interest in the determination of the compensation owed to it.

NOTICE OF SELECTION OF APPRAISER

Midlothian may not render retail water or sewer service to the Property without providing compensation to Mountain Peak for any of Mountain Peak's property which the PUC determines is rendered useless or valueless to Mountain Peak as a result of the decertification in Docket No. 44394.³ Compensation is to be determined at the time another retail public utility seeks to provide service but before the service is provided.⁴ The amount of compensation is to be determined first by a qualified independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to provide service.⁵ If they are unable to agree on an independent appraiser within ten days after the date of the notice of intent to serve, they each engage, at their own expense, their own appraiser.⁶

² 16 Tex. Admin. Code §§ 22.103, 22.104.

³ Tex. Water Code § 13.254(d).

⁴ *Id.* § 13.254(e).

⁵ *Id.* § 13.254(f).

⁶ *Id.* § 13.254(g-1).

Unfortunately, the parties were unable to agree on an appraiser. Mountain Peak has selected Jack Stowe, Grant Rabon and/or Christopher Ekrut of NewGen Strategies & Solutions, 1300 E. Lookout Dr., Suite 100, Richardson, Texas 75082, as its appraiser.

PRAYER

Mountain Peak respectfully requests that the PUC grant its motion to intervene and accept this notice that Mountain Peak and Midlothian did not agree on an independent appraiser.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: 

Leonard Dougal - State Bar No. 06031400

Mallory Beck - State Bar No. 24073899

100 Congress, Suite 1100

Austin, Texas 78701

E: ldougal@jw.com

T: (512) 236 2233

F: (512) 391-2112

David A. Miller – State Bar No. 14067025

MILLER MENTZER WALKER, P.C.

P.O. Box 130

Palmer, Texas 75152

E: dmiller@milmen.com

T: (972) 845-2222

F: (972) 845-3398

ATTORNEYS FOR MOUNTAIN PEAK
SPECIAL UTILITY DISTRICT

CERTIFICATE OF SERVICE

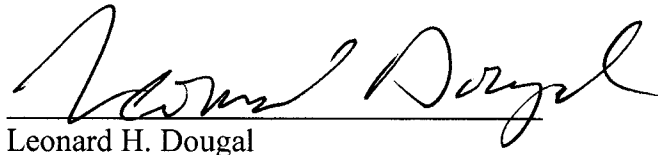
I hereby certify that on the 19th day of July 2016, a true and correct copy of the foregoing document was served on the individuals listed below by hand delivery, email, facsimile or First Class Mail.

Patrick W. Lindner
Paul M. Gonzalez
Davidson, Troilo, Ream, & Garza, P.C.
601 NW Loop 410, Suite 100
San Antonio, Texas 78216
Telephone: (210) 349-6484
Facsimile: (210) 349-0041
Email: plindner@davidsontroilo.com

Attorney for City of Midlothian, Texas

Sam Chang
Stephen Mack
Attorney-Legal Division
Public Utility Commission
1701 N. Congress
P. O. Box 13326
Austin, Texas 78711-3326
sam.chang@puc.texas.gov
stephen.mack@puc.texas.gov
512-936-7261
512-936-7442
512-936-7268 (Facsimile)

Attorney for the Public Utility Commission of Texas


Leonard H. Dougal