

Control Number: 46120



Item Number: 40

Addendum StartPage: 0

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BEFORE THE  
PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
OF TEXAS

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

**MOUNTAIN PEAK SUD'S MOTION TO COMPEL  
RESPONSES TO SECOND REQUEST FOR INFORMATION  
AND ADMISSIONS TO MIDLOTHIAN**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES, Mountain Peak Special Utility District ("Mountain Peak") and, pursuant to PUC Procedural Rule 22.144(e) and Order No. 2, files this Motion to Compel in response to the City of Midlothian's Objections to Mountain Peak's Second Requests for Information and Admissions. In support thereof, Mountain Peak would respectfully show as follows:

**INTRODUCTION**

In Docket No. 44394, an approximately 97.7-acre tract of land (the "Amended Park Property") owned by the City of Midlothian ("Midlothian") was decertified from Mountain Peak's water CCN.<sup>1</sup> The instant proceeding is about the compensation that is owed to Mountain Peak under Texas Water Code § 13.254 due to the decertification, and the PUC has directed that the first Phase is to deal with what property of Mountain Peak has been rendered useless or valueless as a result of the decertification.

On November 23, 2016, Mountain Peak served its Second Requests for Information and Admissions on Midlothian, including RFIs 2-1 through 2-8 and RFAs 2-1 through 2-4.<sup>2</sup> These requests focused primarily on discovering whether statements made by Midlothian in its Response to the Motion to Stay were true, and focused on Midlothian's allegations that the decertified property is intended to be used as a "park", what water facilities Midlothian is

<sup>1</sup> *Petition 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 (May 1, 2015). Mountain Peak has appealed this decertification to the Third Court of Appeals. See *Mountain Peak Special Utility Dist. v. Public Utility Comm'n of Tex.*, No. 03-16-00796-CV (Tex.App.—Austin, Nov. 29, 2016).

<sup>2</sup> Mountain Peak Special Utility District's Second RFI and RFA to the City of Midlothian, Texas (Nov. 23, 2016). A copy of these requests is attached hereto as Exhibit "A."

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planning and constructing to serve water to the “park” and the details surrounding the alleged expenditure of public funds and issuance of bonds for development of the “park.”

Legal counsel for Midlothian and Mountain Peak diligently conducted negotiations, and, in good faith, Mountain Peak agreed to clarify or narrow certain requests. However, the parties were unable to resolve all disputes. On November 30, 2016, Midlothian filed its objections to *all* of the RFIs and RFAs propounded by Mountain Peak.<sup>3</sup> Midlothian asserts an overall objection to the relevance of the requests. Because Mountain Peak contends these requests fall within the broad scope of discovery and are relevant to the subject matter of this case, Mountain Peak moves to compel responses to the requests.

### **PRELIMINARY STATEMENT ON RELEVANCE**

To date, in response to Mountain Peak’s *thirty* RFI’s, Midlothian has *not produced a single document* in this docket. Midlothian asserts (wrongly) that because the focus of this proceeding is on property of Mountain Peak, that *none* of Midlothian’s actions, plans, reports, designs, or like information concerning the decertified property can be relevant. That is incorrect.

Midlothian owns and operates a water system, similar to Mountain Peak. Further, Midlothian has already designed and, in some cases actually installed, water system facilities to serve water to the Amended Park Property. Indeed, Mountain Peak has observed a sixteen-inch (16”) water line that Midlothian has installed to the site of the Amended Park Property.

The sizing of water lines, pumps, storage tanks and related water facilities *by* Midlothian *to actually serve* the Amended Park Property, will obviously provide direct and concrete information as to the size and type of facilities needed to serve the Amended Park Property. Hence, that information from Midlothian is relevant to what size and type of water facilities of Mountain Peak may be rendered useless or valueless as a result of the decertification. For example, if at hearing there is a dispute over what size pipeline, tank, pump or other facility of Mountain Peak has been rendered useless or valueless, then the actual plans or facilities of Midlothian to serve the subject tract will be evidence to prove or disprove the size or type of facility of Mountain Peak that may be stranded. Again, here we are talking about discovery seeking Midlothian’s *actual plans* to serve the *subject tract*, not discovery of general plans to

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<sup>3</sup> Objections of City of Midlothian to Mountain Peak Special Utility District’s Second Requests for Information and Admissions (Nov. 30, 2016). Midlothian’s objections are attached hereto as Exhibit “B.”

similar or like tracts. Clearly, that information involves facts of consequence to the type of property rendered useless or valueless, and therefore is relevant and discoverable:

Finally, Midlothian itself interjected the subject matter of this discovery by statements it made in its Response to the Motion to Stay proceeding.”<sup>4</sup> In that Motion, Midlothian asserted:

“This Park property will serve many area residents . . . Midlothian has *expended public funds* to *develop the park* . . . The public purpose of the parkland and, ongoing, expenditure of voter-authorized *bond funds* in *developing the park* are compelling reasons . . .”<sup>5</sup>

Then, arrogantly in response to Mountain Peak’s RFA 2-2 (“Admit that Midlothian issued bonds to develop the Subject Tract into a park.”) Midlothian *objected* on the grounds of *relevance*. Likewise, in response to *each* of Mountain Peak’s other RFA’s and RFI’s seeking discovery regarding the matters that Midlothian had discussed in its Response to the Motion to Stay, Midlothian asserted identical or similar relevance objections. They can’t have it both ways – opening the door to the issues in pleadings, then utterly refusing to respond to discovery on the very same matters.

#### **LEGAL STANDARD**

Pursuant to PUC Procedural Rule 22.141, the scope of discovery in proceedings instigated at the PUC is quite broad and includes “any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”<sup>6</sup> The Texas Rules of Civil Procedure allow discovery on “any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”<sup>7</sup> The information sought need not be admissible if it “appears reasonably calculated to lead to the discovery of admissible evidence.”<sup>8</sup> The Texas

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<sup>4</sup> City of Midlothian’s Response to Mountain Peak Special Utility District’s Motion to Stay Proceeding Pending Appeal (Nov. 14, 2016). Midlothian’s Response to the Motion to Stay is attached hereto as Exhibit “C.”

<sup>5</sup> *Id.* at 3.

<sup>6</sup> 16 Tex. Admin. Code § 22.141(a) (TAC). The State Office of Administrative Hearings has adopted PUC’s rules for matters referred to SOAH from the PUC. 1 TAC § 155.1(d).

<sup>7</sup> Tex. R. Civ. P. 192.3(a).

<sup>8</sup> *Id.*

Supreme Court has described the scope of discovery as “broad” and only limited by a “reasonable expectation of obtaining information that will aid the dispute’s resolution.”<sup>9</sup>

The Preliminary Order in this case identified one issue which must be addressed in this proceeding: “What property, if any, has been rendered useless or valueless to Mountain Peak by the decertification granted in Docket No. 44394?”<sup>10</sup> The Preliminary Order goes on to state: “This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary . . . .”<sup>11</sup> Thus, discovery in this proceeding is not limited to the single issue identified in the Preliminary Order, and other issues may be addressed. Moreover, as provided by the PUC’s procedural rules and the Texas Rules of Civil Procedure, the scope of discovery is not limited to the issues, claims, or defenses of Mountain Peak, but extends to all matters “relevant to the subject matter in the proceeding” including potential claims or defenses to be raised by Midlothian.

### MOTION TO COMPEL

1. RFA 2-1 and RFI 2-1

RFA 2-1, which seeks to confirm the *date* Midlothian acquired the property which is the subject of this proceeding, is a request initially submitted to Mountain Peak by Midlothian.<sup>12</sup> Although Mountain Peak was not privy to the date Midlothian acquired the property – except through information obtained from Midlothian – Midlothian clearly thought the request was relevant. RFI 2-1 seeks the documents demonstrating this transfer in ownership. The date the property changed ownership and the information known to the parties at that time regarding the provision of water service is relevant to the subject matter of this proceeding. The date Midlothian purchased the subject tract and the documents demonstrating that transfer may lead to information regarding the real or personal property of Mountain Peak that was rendered useless or valueless to Mountain Peak due to the decertification. Moreover, it may lead to information which could be used to rebut Midlothian’s potential claims and defenses that no property was rendered useless or valueless.

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<sup>9</sup> *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003).

<sup>10</sup> Preliminary Order at 2 (Sept. 23, 2016).

<sup>11</sup> *Id.* at 3 (emphasis added).

<sup>12</sup> City of Midlothian’s Second Set of RFIs and RFAs, RFA No. 2-2 (Oct. 17, 2016).

2. RFA 2-2, 2-3, 2-4, RFI 2-2, 2-3, 2-4, 2-6, 2-7, and 2-8

Each of these requests seeks information regarding Midlothian's bonds, loans, or public funds related to the development and the planning and designs of Midlothian for provision of water service to the subject tract. Midlothian contends that these requests are not relevant. Midlothian also asserts that RFI 2-2, 2-4, 2-7, and 2-8 are unduly burdensome under Tex. R. Civ. P. 192.4(a) and (b).

First, Midlothian itself raised the issue of its bonds in its response to Mountain Peak's Motion to Stay indicating that its use of public funds to support the development on the subject tract was relevant to this proceeding. It is inconsistent with the scope of discovery for Midlothian to use this information in arguing that the case should not be stayed but then refuse to produce the documents themselves.

More importantly, however, this information is relevant to the parties' claims and defenses and the subject matter of this proceeding – the property rendered useless or valueless to Mountain Peak. The acquisition by Midlothian of bonds or loans and the expenditure by Midlothian of public funds to design, develop, and install facilities to provide water service to this property may lead to the discovery of information regarding the capacity needs of facilities to serve the subject property. The capacity needs of the property are directly tied to what property could have been used by Mountain Peak to serve the property. Further, Midlothian's expenditures could indicate whether Midlothian considered obtaining water service from Mountain Peak and what property of Mountain Peak Midlothian anticipated using. This information could be used by Mountain Peak to defend against claims by Midlothian that no property has been rendered useless or valueless. Because these requests are aimed at obtaining information relevant to the subject matter of this proceeding, they are within the scope of discovery, and Midlothian's objection should be overruled.

Finally, Midlothian claims that some of these requests are unduly burdensome but fails to put forward any evidence regarding the alleged burden to Midlothian. The requests are targeted to focus on information regarding (1) bonds, loans or expenditures of public funds; (2) related to the provision of water; and (3) related to the subject tract. These are targeted requests which likely would not place a great burden on Midlothian. Without any evidence that these requests are burdensome, let alone unduly so, Midlothian's objections on this ground should be overruled.

3. RFI No. 2-5

This request seeks information regarding Midlothian's plans and designs for the facilities to provide water to the subject tract. Midlothian contends this request is irrelevant. This request is targeted to discovering information regarding the anticipated facilities, design and capacity needs for water service to the subject property. As such, it is directly relevant to what facilities, and types of facilities, of Mountain Peak could have been used to serve the subject tract but now may be rendered useless or valueless.

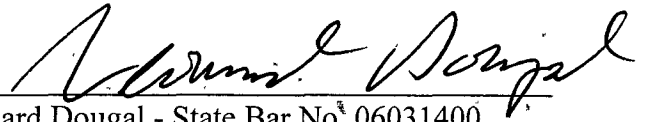
Midlothian also objects that this request is overly broad and unduly burdensome. However, Midlothian has made no effort to demonstrate that the request would place any burdens, let alone undue ones, on Midlothian. Moreover, the request is narrowly tailored to obtaining only information that is relevant to this proceeding. This request seeks only documents that demonstrate planning and design and only for facilities that would be used to provide water to the subject tract. This request is inherently limited in time – Midlothian likely was not planning and designing facilities for the property before it purchased the property – and it is limited by the subject property and to facilities used to provide water service.

**CONCLUSION**

For these reasons, Mountain Peak respectfully requests that the Honorable Administrative Law Judge issue an order compelling Midlothian to respond to Mountain Peak's Second Requests for Information and Admission.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: 

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ATTORNEYS FOR MOUNTAIN PEAK  
SPECIAL UTILITY DISTRICT



**CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of December 2016, a true and correct copy of the foregoing document was served on the individuals listed below by facsimile.

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*Attorney for City of Midlothian, Texas*

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*Attorney for the Public Utility Commission of Texas*

  
\_\_\_\_\_  
Leonard H. Dougal

# **EXHIBIT “A”**

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2016 NOV 23 - AM 10: 50  
BEFORE THE  
PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
OF TEXAS

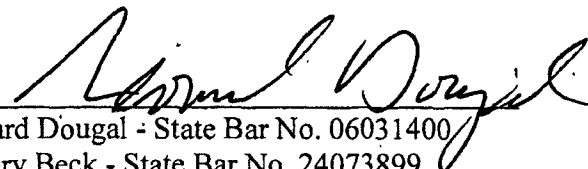
CITY OF MIDLOTHIAN NOTICE OF  
INTENT TO PROVIDE WATER  
SERVICE TO LAND DECERTIFIED  
FROM MOUNTAIN PEAK SPECIAL  
UTILITY DISTRICT §  
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**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S SECOND SET OF REQUESTS  
FOR INFORMATION AND REQUESTS FOR ADMISSION TO THE CITY OF  
MIDLOTHIAN, TEXAS**

Pursuant to PUC Proc. Rule 22.144, Mountain Peak Special Utility District ("Mountain Peak") hereby files its Second Set of Requests for Information ("RFIs") and Requests for Admission ("RFAs") to the City of Midlothian, Texas ("Midlothian"). Responses to the RFIs and RFAs set forth in Exhibit "A" hereto should be served on the undersigned counsel for Mountain Peak at the address indicated within ten (10) days of service hereof. Exhibit "A" is attached hereto and incorporated herein for all purposes.

Respectfully submitted,

JACKSON WALKER L.L.P.

By:   
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ATTORNEYS FOR MOUNTAIN PEAK  
SPECIAL UTILITY DISTRICT

**CERTIFICATE OF SERVICE**

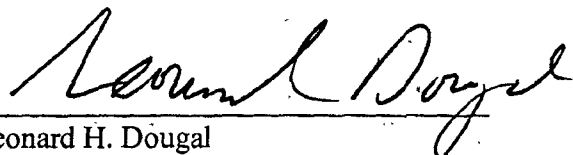
I hereby certify that on the 23rd day of November 2016, a true and correct copy of the foregoing document was served on the individuals listed below by hand delivery, email, facsimile or First Class Mail.

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512-936-7268 (Facsimile)

*Attorney for the Public Utility Commission of Texas*

  
Leonard H. Dougal

## EXHIBIT "A"

### DEFINITIONS

1. "Midlothian," "You," or "Your" refer to the City of Midlothian, Texas, its mayor, city council members, officers, employees, consultants, agents, attorneys, and affiliates to the extent such other persons are acting for or on behalf of Midlothian.
2. "Document" and/or "Documents" refers to all written, reported, or graphic material within the scope of Rule 192 of the Texas Rules of Civil Procedure, however produced or reproduced. Without limiting the foregoing, the terms include the following: agreements, contracts, communications, correspondence, letters, faxes, e-mail, instant message records, text message records, memoranda, records, reports, summaries, records of telephone conversations, diary entries, calendars, appointment books, drafts, notes, telephone bills or records, bills, statements, records of obligations and expenditures, invoices, lists, journals, receipts, checks, canceled checks, letters of credit, envelopes, or folders voice recordings, voice recordings, electronic data, electronic media, and any other data or information that exists in written, electronic, or magnetic form.
3. "Communication" refers to any oral or written utterance, notation, or statement of any nature whatsoever, by or to whomsoever made, and every manner or means of disclosure, transfer, or exchange of information, whether orally or by document, whether in person, in writing, by telephone, by cell phone, or otherwise, including, but not limited to: correspondence, conversation, dialogues, discussions, interviews, consultations, agreements, telegrams, telexes, cables, memorandum, electronic mail, hand-deliveries, facsimile, or other understandings and exchanges of ideas or information between two or more persons.
4. "Relate to," "related to," or "relating to" means concerning, relating to, referring to, having a relationship with or to, pertaining to, identifying, describing, explaining, summarizing, or to be otherwise factually, legally or logistically connected to the subject matter of the particular request.
5. "Subject Tract" means the property subject to decertification in PUC Docket No. 44394, which was described as an approximately 97.7-acre tract of land.
6. "Identify" or "identification" means:
  - a. When used in reference to a natural person, that you should state that person's full name, address, and telephone number.
  - b. When used with respect to a "document," 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.
- c. When used in respect to any meeting or conversation, that you should state the date and specific location of the meeting or conversation plus the "identification" of all persons present, attending, participating, witnesses or having knowledge of the meeting or conversations.
  - d. When used in respect to an occurrence, event, or happening, 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.
  - e. When used in respect to a statement, that you should state the substance of the statement, the date and specific location of the statement, and "identify" all persons present, witnessing, making or having knowledge of the statement.

### INSTRUCTIONS

1. Your responses should conform to the Texas Rules of Civil Procedure and/or the rules of procedure of the Public Utility Commission of Texas.
2. Each document that is made available for review in response to these RFIs shall be produced as it is kept in the usual course of business (i.e., in the file folder or binder in which the documents were located when the request was served) or the documents shall be organized or labeled to correspond to the category of documents requested.
3. If the documents requested herein include electronic data and magnetic data, they shall be produced in their native format with all metadata intact.
4. When answering these RFIs, you are requested to furnish all information available to you, including information in the possession of your attorneys, investigators, consultants, employees, agents, representatives, or any other person acting on your behalf, and not merely such information as is held or known by you personally.
5. In the event any document or other thing referred to in these RFIs is not in your possession, custody, or control, specify what disposition was made of it and identify the person or entity who now has possession, custody, or control of the document or thing.
6. If you withhold any requested documents or information — including redactions of portions of documents — pursuant to an applicable privilege, provide a privilege log describing the documents, communications, or things withheld or redacted with sufficient specificity that the applicability of the privilege or protection may be assessed. See TEX. R. CIV. P. 193.3.

7. PLEASE TAKE FURTHER NOTICE that these RFIs are continuing in nature. Your answers and responses must include all documents that are currently in your possession, custody, and control and that come into your possession, custody, or control in the future.

## REQUESTS FOR INFORMATION

RFA No. 2-1. Admit that Midlothian acquired the Subject Tract on November 9, 2010.

Response:

RFI No. 2-1. Please produce all deeds, contracts, or other documents demonstrating the transfer of ownership of the Subject Tract to Midlothian.

Response:

RFA No. 2-2. Admit that Midlothian issued bonds to develop the Subject Tract into a park.

Response:

RFI No. 2-3. Admit that the bonds issued by Midlothian to develop the Subject Tract included estimated costs to provide water to the Subject Tract.

Response:

RFI No. 2-2. Please produce all communications, memoranda, evaluations, assessments, or reports evaluating the need for any bonds, loans, or other funds related to the provision of water to the Subject Tract or related to the acquisition of the Subject Tract.

Response:

RFI No. 2-3. Please produce all resolutions of the City Council of the City of Midlothian, or any subcommittee of the City Council of the City of Midlothian, approving the decision to set the Park Facilities Bond Program for voter approval.

Response:

RFI No. 2-4. Please produce all documents related to the Park Facilities Bond Program which also relate to the provision of water to the Subject Tract.

Response:

RFI No. 2-5. Please produce all planning and design documents related to the planning and design of the facilities to provide water to the Subject Tract.

Response:

RFI No. 2-6. Please identify the amount of any outstanding loans or bonds related to the provision of water to the Subject Tract.

Response:



RFA No. 2-4. Admit that Midlothian has expended public funds to provide water to the Subject Tract.

Response:

RFI No. 2-7. Please identify the total amount of public funds expended by Midlothian to date to provide water to the Subject Tract.

Response:

RFI No. 2-8. Please identify the individual expenditures of public funds by Midlothian to date to provide water to the Subject Tract and the purpose of each such expenditure.

Response:

# **EXHIBIT “B”**

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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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BEFORE THE PUBLIC UTILITY COMMISSION  
FILING CLERK

PUBLIC UTILITY COMMISSION  
OF TEXAS

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

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") Second Set of Requests for Information ("RFIs") and Requests for Admission ("RFAs") to Midlothian. 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 and RFAs.<sup>1</sup> These objections are filed timely under the SOAH Order No. 2 and the Rule 11 agreement between the parties attached hereto as Exhibit A.

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 all of the requests 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: (1) "What property, if any, has been rendered useless or valueless to Mountain Peak by the decertification

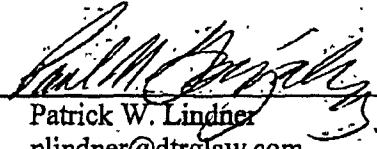
<sup>1</sup> The modifications to RFIs agreed to by Mountain Peak, as understood by Midlothian, are reflected in the text of each affected request.

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granted in Docket No. 44394;” and, (2) “a determination of compensation based on the value of property the Commission has determined to have been rendered useless or valueless.”<sup>2</sup> The Water Code and PUC Substantive Rules identify factors that should be considered in making these determinations in TWC § 13.254(g) and 16 TAC § 24.113(h-k). 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 or plans of Midlothian or the funding of those actions and plans.

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,  
DAVIDSON, TROILO, REAM & GARZA, P.C.  
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By:   
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ATTORNEYS FOR CITY OF MIDLOTHIAN

<sup>2</sup> Preliminary Order (September 23, 2016).

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document is being served on the following parties on November 30, 2016, via facsimile:

**Counsel for Mountain Peak Special Utility District:**

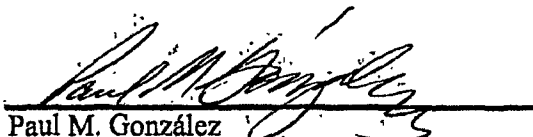
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Paul M. González

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

**MPSUD RFA No. 2-1:**

Admit that Midlothian acquired the Subject Tract on November 9, 2010.

**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.

**MPSUD RFI No. 2-1:**

Please produce all deeds [and], contracts, ~~or other documents~~ demonstrating the transfer of ownership of the Subject Tract to Midlothian.

**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.

**MPSUD RFA No. 2-2:**

Admit that Midlothian issued bonds to develop the Subject Tract into a park.

**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.

**MPSUD RFA No. 2-3:**

Admit that the bonds issued by Midlothian to develop the Subject Tract included estimated costs to provide water 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.

**MPSUD RFI No. 2-2:**

Please produce all communications, memoranda, evaluations, assessments, or reports evaluating the need for any bonds, loans, or other funds related to the provision of water to the Subject Tract ~~or related to the acquisition 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 and is unreasonable and unduly burdensome under the circumstances of this case, as contemplated by Tex. R. Civ. P. 192.4(a) & (b).

**MPSUD RFI No. 2-3:**

Please produce all resolutions of the City Council of the City of Midlothian, or any subcommittee of the City Council of the City of Midlothian, approving the decision to set the Park Facilities Bond Program for voter approval.

**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.

**MPSUD RFI No. 2-4:**

Please produce all documents related to the Park Facilities Bond Program which also relate to the provision of water 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 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).

**MPSUD RFI No. 2-5:**

Please produce all planning and design documents related to the planning and design of the facilities to provide water 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 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).



**MPSUD RFI No. 2-6:**

Please identify the amount of any outstanding loans or bonds related to the provision of water 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.

**MPSUD RFA No. 2-4:**

Admit that Midlothian has expended public funds to provide water 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.

**MPSUD RFI No. 2-7:**

Please identify the total amount of public funds expended by Midlothian to date to provide water 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 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).

**MPSUD RFI No. 2-8:**

Please identify the individual expenditures of public funds by Midlothian to date to provide water to the Subject Tract and the purpose of each such expenditure.

**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).

**EXHIBIT A**  
**Parties' Rule 11 Agreement**

**Paul M. Gonzalez**

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**From:** Paul M. Gonzalez  
**Sent:** Wednesday, November 23, 2016 3:25 PM  
**To:** Dougal, Leonard  
**Cc:** Beck, Mallory; Patrick Lindner; Richard E. Lindner  
**Subject:** Re: City of Midlothian Notice on Intent to Provide Water Service to Land Decertified from Mountain Peak Special Utility District; PUC Docket No. 46120 - Rule 11 request

Thanks, Leonard.

Sent from a mobile device - please forgive typos.

On Nov 23, 2016, at 3:03 PM, Dougal, Leonard <[ldougal@jw.com](mailto:ldougal@jw.com)> wrote:

Paul, Yes, given the short turn around, we agree to Objections due on Wed. Nov. 30. But, I do want to see your answers/responses prior to the Preliminary Hearing. We can discuss on Monday, if needed:

Best,  
Leonard Dougal  
[Ldougal@jw.com](mailto:Ldougal@jw.com)

On Nov 23, 2016, at 1:42 PM, Paul M. Gonzalez <[pgonzalez@dtrglaw.com](mailto:pgonzalez@dtrglaw.com)> wrote:

Good afternoon, Leonard:

The City and DTRG close for Thanksgiving and Friday and I'm outside the office today. Would Mountain Peak agree to extend Midlothian's deadline for objections to next Wednesday? A favorable response to this email would suffice.

Have a good Thanksgiving!

Regards,  
Paul Gonzalez

Sent from a mobile device - please forgive typos.

On Nov 23, 2016, at 11:27 AM, Starkie, Pat <[pstarkie@jw.com](mailto:pstarkie@jw.com)> wrote:

Attached please find a copy of Mountain Peak Special Utility District's Second Set of Requests for Information and Requests for Admission to the City of Midlothian, Texas which has been submitted today to the Public Utility Commission of Texas in connection with the above referenced docket.

Pat Starkie | Legal Administrative Assistant to  
Leonard Dougal, Wes Strickland,  
Ali Abazari and Mallory Beck  
100 Congress Avenue Suite 1100 | Austin, TX | 78701

EXHIBIT A

# **EXHIBIT “C”**

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 RESPONSE TO  
MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S  
MOTION TO STAY PROCEEDING PENDING APPEAL**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The City of Midlothian ("Midlothian") files this Response to Mountain Peak Special Utility District's ("Mountain Peak") Motion to Stay Proceeding Pending Appeal ("Motion to Stay").<sup>1</sup> Midlothian received Mountain Peak's motion on November 10, 2016. This response is therefore timely. Midlothian asserts that the Motion to Stay must be denied, respectfully showing as follows:

**I. ABATEMENT COMPLETELY UNWARRANTED**

*Justice delayed is justice denied – William E. Gladstone<sup>2</sup>*

On July 1, 2016, Midlothian notified the Commission pursuant to TWC § 13.254(d) & (e) and 16 TAC § 113(h) & (i) of Midlothian's intent to provide retail water service to an approximately 97.7-acre tract of parkland ("Park Property") which was decertified from Mountain Peak's water Certificate of Convenience and Necessity (CCN) No. 10908 in PUC Docket No. 44394.<sup>3</sup> More than four months (132 days) later, Mountain Peak requests abatement so it can focus on further appeals of the Commission's decertification order in Docket No. 44394.<sup>4</sup> In other words (and without citing any statutory or precedential basis), Mountain Peak

<sup>1</sup> In addition to those terms or abbreviations defined in this filing, abbreviations and acronyms utilized include: "Commission" or "PUC" for the Public Utility Commission of Texas, "SOAH" for the State Office of Administrative Hearings, "RFI" for request for information, "TAC" for the Texas Administrative Code, and "TWC" for the Texas Water Code.

<sup>2</sup> William E. Gladstone. BrainyQuote.com, Xplore Inc, 2016.  
<https://www.brainyquote.com/quotes/quotes/w/williameg101551.html> (last visited Nov. 13, 2016).

<sup>3</sup> Tex. Pub. Util. Comm'n, *Petition 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 (May 5, 2015).

<sup>4</sup> In particular, Mountain Peak asserts:

wants to *completely freeze* what was meant to be *an expedited process* to determine what compensation, if any, might be appropriate as another retail public utility seeks to serve the decertified area. No good reason -- much less any compelling one -- is presented. Mountain Peak's request must be denied.

Judicial review of the Commission's orders are under the substantial evidence standard of review.<sup>5</sup> Suits for review under the substantial evidence rule do not affect the enforcement of an agency's final order.<sup>6</sup> Therefore, the Commission order granting decertification was final and enforceable from the effective date of that order (May 1, 2015), regardless of the further judicial review remedies Mountain Peak chose to pursue.

This is a separate and distinguishable proceeding filed more than one (1) year after the order decertifying the Park Property. The Commission has recognized and emphasized the need for expediency in this Docket.<sup>7</sup> Midlothian is entitled to use the "expedited" statutory process to establish whether and what compensation is due and to provide service and Mountain Peak's requested relief will undermine this required expediency. In the more-than-four months since this proceeding was initiated, Mountain Peak has acknowledged this statutory expediency and previously referred to the preservation of resources and reductions of costs in this docket *twice*, and chose not to raise the current concerns then.<sup>8</sup>

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Mountain Peak's appeal *could* entirely resolve the need for this compensation process. *If* the Third Court of Appeals finds that decertification was improper, the parties - and the PUC and SOAH - will have wasted time and resources in the instant docket for no reason. Thus, judicial economy favors staying this proceeding. Furthermore, Mountain Peak objects to continuing this proceeding which *could* ultimately result in another PUC Order which *could* be undermined by the Third Court of Appeals' decision. Mountain Peak's interests *could* be irreparably harmed by continuing this proceeding. Rather, the status quo should be maintained until the outcome of Mountain Peak's appeal to the Third Court of Appeals is determined.

Motion to Stay at 2 (emphasis added).

<sup>5</sup> See TEX. WATER CODE § 13.381 and TEX. UTIL. CODE § 15.001; see also, *Reliant Energy, Inc. v. Public Util. Comm'n*, 153 S.W.3d 174, 184 (Tex.App.-Austin 2004, no pet.).

<sup>6</sup> TEX. GOV'T CODE § 2001.176(b)(3); see also *Tex. State Bd. of Pharmacy v. Seely*, 764 S.W.2d 806, 815 (Tex. App.—Austin 1988, writ denied).

<sup>7</sup> Preliminary Order at 2 (Sept. 23, 2016) ("While the Commission requests that the case be expedited to the extent possible, the Commission recognizes it is unlikely that SOAH can complete a hearing and issue a proposal for decision (PFD) within the directory 90-day timeframe provided by Texas Water Code (TWC) § 13.254(e)).

<sup>8</sup> See Joint Expedited Motion of City of Midlothian and Mountain Peak SUD for Suspension of Requirement to File Appraisal Reports (Aug. 23, 2016) ("Joint Motion")(where parties agreed by corresponding Rule 11 to defer submitting appraisal reports, in order to "...effectuate the expeditious treatment contemplated under TWC § 13.254(d), (e) & (g), to promote the timely and efficient management of this proceeding contemplated under 16 TAC §§ 22.121 and 22.122(a), and to minimize the time and expense..."); and Mountain Peak's Threshold Issues

Mountain Peak knew about the pending appeal of Docket No. 44394 since well before this proceeding was initiated. At no time before now, 559 days<sup>9</sup> after the Commission's decertification order, has Mountain Peak requested the Commission or any court involved in the Docket No. 44394 appellate process for the type of relief currently requested by claiming some imminent harm, judicial inefficiency, or otherwise. Instead, either due to strategy or misplaced optimism, Mountain Peak chose to take part in substantial discovery and hearings in this Docket. Mountain Peak should not be rewarded for laying behind the log and raising a fallacious reason to abate this case.

Finally, even if some compelling reason for a stay had been presented (which is not the case here), an abatement is still inappropriate as the decertified area is for a public purpose voted on by the Midlothian's citizens: the uncontroverted evidence in Docket No. 44394 demonstrates how Midlothian's purchase of the Park Property in 2010 is the planned result of a voter-approved Park Facilities Bond Program in 2006, which included the concept for a Multi-Use Community Park of roughly 125 acres, more or less.<sup>10</sup> This park will serve many area residents, (including many that are customers of Mountain Peak). Midlothian has expended public funds to develop the park and is entitled to have this case move forward, even if potentially subject to an adverse ruling in the pending appeal. The public purpose of the parkland and ongoing expenditure of voter-authorized bond funds in developing the park are compelling reasons to push forward in this case. Unfortunately, this Motion to Stay is one more

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and List of Issues to be Addressed at 4 (Sept. 6, 2016) (emphasis added) (arguing in support of its ultimately rejected combined procedure instead of the adopted bifurcated process: "*Judicial economy* suggests that in this case, rather than holding two SOAH hearings, one should suffice").

<sup>9</sup> Here, 559 days equals 1 year, 6 months and 9 days.

<sup>10</sup> PUC Docket No. 44394, City of Midlothian's Response to Order No. 2, Attachment A (Supplemental Affidavit of Michael G. Adams, P.E. ¶9) (March 11, 2015) (PUC Interchange Item 10). In its entirety, this paragraph states:

9. The city's purchase of the Park Property in 2010 is the planned result of a voter-approved Park Facilities Bond Program in 2006, which included the concept for a "Multi-Use Community Park" of roughly 125 acres, more or less. Attached as Exhibit G is a true and correct copy of the information pamphlet on the four separate bond measures set for voter approval on May 13, 2006, including Proposition No. Three for the Park Facilities Bond Program. The Midlothian Community Park was planned and conceptually designed separate and apart from any consideration based upon the park's proximity to the Lawson Farms subdivision. [emphasis in original]

The presiding officer may take official notice of the foregoing affidavit for establishment of the facts addressed therein.




attempt by Mountain Peak to insert needless delays and increased expense into a process intended by the Legislature (and the Commission) to be *expedited*.

## II. CONCLUSION

Midlothian respectfully requests that the Honorable Administrative Law Judge expeditiously deny Mountain Peak's Motion to Stay Proceeding Pending Appeal and requests any and all other relief to which it is justly entitled.

Respectfully submitted,

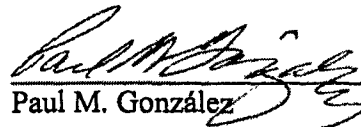
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By:   
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ATTORNEYS FOR CITY OF MIDLOTHIAN

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was served on all parties of record in this proceeding on November 14, 2016, in the following manner: by facsimile and e-mail.

  
Paul M. González