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CITY OF MIDLOTHIAN'S NOTICE OF §  
INTENT TO SERVE AREA §  
DECERTIFIED FROM MOUNTAIN §  
PEAK SPECIAL UTILITY DISTRICT IN §  
ELLIS COUNTY §

BEFORE THE STATE OFFICE OF PUBLIC UTILITY COMMISSION  
OF  
ADMINISTRATIVE HEARINGS  
FILING CLERK

SOAH ORDER NO. 5  
MEMORIALIZING PREHEARING CONFERENCE; ESTABLISHING PROCEDURAL  
SCHEDULE; NOTICE OF PREHEARING CONFERENCE; NOTICE OF HEARING ON  
THE MERITS

On December 8, 2016, a prehearing conference convened with the City of Midlothian (City), Mountain Peak Special Utility District (Mountain Peak), and Staff (Staff) of the Public Utility Commission of Texas (Commission) in attendance.

I. BURDEN OF PROOF

The Administrative Law Judge (ALJ) informed the parties that in his view the City bears the burden of persuasion in this matter, but that once the City had presented its position the burden of going forward with the evidence shifted to Mountain Peak.<sup>1</sup> The ALJ also told the parties that he is cognizant of the fact that Mountain Peak has a vested interest in the determination of the property rendered valueless or useless as a result of the decertification and would take all necessary steps to ensure that Mountain Peak's rights were preserved.

II. PROCEDURAL SCHEDULE

The parties agreed that the following procedural schedule would govern this proceeding, and the ALJ adopted the following schedule:

<sup>1</sup> The ALJ is aware that on December 2, 2016, the Commission published a proposed rule stating that the former certificate holder (in this case, Mountain Peak) bears the burden of proof in cases such as these. As the rule is not yet adopted and is still subject to change, the ALJ declines to assign the burden of proof in a manner different than that stated above.

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<b>Deadline</b>	<b>Action Item</b>
January 17, 2017	Direct Testimony of the City and Mountain Peak
January 23, 2017	Objections to Direct Testimony of the City and Mountain Peak
January 27, 2017	Responses to Objections to Direct Testimony of the City or Mountain Peak
January 27, 2017	Staff Direct Testimony
February 3, 2017	Objections to Staff Direct Testimony
February 17, 2017	Staff Response to Objections to Staff Direct Testimony
February 17, 2017	Cross-rebuttal Testimony of the City and Mountain Peak
February 23, 2017	Objections to Cross-rebuttal Testimony
February 28, 2017	Replies to Objections to Cross-rebuttal Testimony
March 3, 2017	Prehearing Conference (if needed)
March 3, 2017	Statements of Position Due
March 7, 2017	Hearing on the Merits

### **III. AGREED SERVICE PROCEDURES**

The parties informed the ALJ that they had agreed that service could be effected through email in addition to the traditional manner of service. This was acceptable to the ALJ, who reminded the parties that service of orders by the ALJ can be effected through email if a request for email service is made in the manner indicated of the SOAH website at [www.soah.texas.gov](http://www.soah.texas.gov).

### **IV. DISCOVERY LIMITATIONS**

The parties agreed that once testimony is filed, the parties are limited to propounding no more than two sets of written requests for information, requests for admission, and requests for production of documents that, in total, require no more than 30 responses (including subparts). This limit does not include discovery served before the date of the December 8, 2016, prehearing conference.

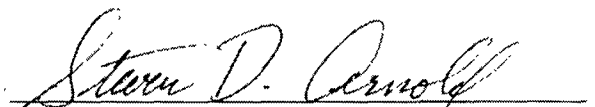
### V. NOTICE OF PREHEARING CONFERENCE

The ALJ will convene a prehearing conference at 10:00 a.m., March 3, 2017, in a fourth floor hearing room at SOAH, located in the William P. Clements Building, 300 West 15th Street, Austin, Texas. The purpose of this prehearing conference will be to address any outstanding motions before the commencement of the hearing on the merits and any other matters raised in motions filed by 3:00 p.m. on March 2, 2017, and served on the ALJ by email delivered to his Administrative Assistant, Erin Hurley at [erin.hurley@soah.texas.gov](mailto:erin.hurley@soah.texas.gov).

### VI. NOTICE OF HEARING ON THE MERITS

The hearing on the merits in this matter will convene at **9:00 a.m. on March 7, 2017**, at the SOAH hearing rooms located at the William P. Clements Office Building, 300 West 15th, Fourth Floor, Austin, Texas, and will continue until concluded. The hearing is currently scheduled to last for one day.

**SIGNED December 9, 2015.**

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