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

PUBLIC UTILITY COMMISSION
BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 7
RULING ON MOTION TO COMPEL RESPONSES TO DISCOVERY REQUESTS**

On November 23, 2016, Mountain Peak Special Utility District (Mountain Peak) served its Second Discovery Request (Second Mountain Peak Discovery Request) on the City of Midlothian (City). On November 30, 2016, the City filed objections to Requests for Admissions (RFA) Nos. 2-1 through 2-4 and Request for Information (RFI) Nos. 2-1 through 2-8 of the Second Mountain Peak Discovery Request. On December 5, 2016, Mountain Peak filed a motion to compel responses to the Second Mountain Peak Discovery Request. The City responded to the motion to compel on December 8, 2016, withdrawing its objections to RFA Nos. 2-1 through 2-4.

I. RFI NOS. 2-1

The City objected to the following question on the grounds of relevance:

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

Mountain Peak argues that information known to the parties at the time the park property was acquired regarding the provision of water service is relevant to the subject matter of this proceeding. It continues that 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.

The City responds by stating that the means and methods used to transfer ownership of the park property are irrelevant to this proceeding and nothing therein has a tendency "to make the existence of any fact that is of consequence to the determination of the action more probable or less probable, or would lead to evidence which would."¹

The ALJ notes that the party objecting to discovery has the burden of proving the existence of its objections. In this case, the ALJ finds the arguments advanced by both parties to be weak. This, given the fact that the City bears the burden of proof in the context of objections, leads the ALJ to find that the City has failed to meet that burden. Accordingly, the objection is overruled.

II. RFI NOS. 2-2 THROUGH 2-4 AND 2-6 THROUGH 2-8

The City objected to RFI Nos. 2-2 through 2-4 and 2-6 through 2-8 on the grounds of relevance and, as to RFI Nos 2-2, 2-4, 2-7, and 2-8, on the additional grounds of overbreadth. Those questions are set forth below:

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.

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.

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.

¹ *In re National Lloyds Ins.*, 449 S.W.3d 486, 489 (Tex. 2014).

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

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

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.

Mountain Peak first argues that the information sought in these questions is made relevant by the City's reference to the use of bonds to acquire the park property in its response to Mountain Peak's motion to stay this proceeding. Mountain Peak argues that is inconsistent with the scope of discovery for the City to use this information in arguing that the case should not be stayed but then refuse to produce the documents themselves.

The City responds by stating that Mountain Peak's motion to stay required the consideration and argument of a different set of facts and law than is at issue in this docket; specifically, Mountain Peak requested abatement of this case citing its, pending appeal of the decertification order of May 1, 2015, in Docket No. 44394.² Neither the motion to stay, nor the City's response to the motion to stay, changed the issues to be ultimately determined under this Docket, nor did they change the facts of consequence at issue in this docket.

The ALJ agrees with the City. The motion to stay involved a different set of facts and law than is at issue here. The fact that the City advanced an argument in response to the motion to stay does not make facts relevant to that argument relevant to issues in this docket.

As to the main point of contention, relevance, Mountain Peak argues that the acquisition by the City of bonds or loans and the expenditure by the City of public funds to design, develop, and install facilities to provide water service to the park property may lead to the discovery of information regarding the capacity needs of facilities to serve the park property. The capacity

² *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 (May1, 2015).

needs of the park property are directly tied to what property could have been used by Mountain Peak to serve the park property. Further, the City's expenditures could indicate whether the City considered obtaining water service from Mountain Peak and what property of Mountain Peak the City anticipated using. This information, according to Mountain Peak, could be used by Mountain Peak to defend against claims by the City that no property has been rendered useless or valueless.

The City responds by stating that its funding, cost, design plans, or schemes have no bearing on what Mountain Peak property was rendered useless or valueless at the time of decertification in May 2015. What Mountain Peak could have used to serve the park property is not relevant: the Commission in Docket No. 44394 concluded that, irrespective of the City's funding or design plans, the park property was an unplatted tract of land that was not receiving service from Mountain Peak.³ Finally, the City argues that its choice of funding doesn't change Mountain Peak's property as of May 1, 2015, or its value if it were somehow determined to be rendered useless or valueless.

The City also argues that any capacity figures its used in its decision making (much of it done after decertification) might be relevant if there was an application for service made, fees paid, and details regarding capacity needs disclosed before decertification that resulted in some specific actions of Mountain Peak. At decertification, the park property was undeveloped and no request for service had been made by the City. Decertification was effectuated pursuant to Texas Water Code § 13.254(a-5), which meant that the Commission determined that the park property was simply not receiving service, therefore, the information requested cannot be "of consequence" under these facts.

The ALJ finds that the City has presented the more persuasive argument on these questions. As noted, actions by the City after the date of the decertification could not affect the

³ Docket No. 44394, Order, FoF Nos. 47 and 48, CoL Nos. 8, 10, 11, and 17.

determination of whether Mountain Peak's property was rendered valueless or useless on the date of the decertification.

Finally, the City argues that RFI Nos. 2-2 and 2-4 are unduly burdensome because they would require the City to scour its records over a period of several years for any document referencing water and/or funding evaluations. Because the City is in the business of supplying water, this would result in an unreasonably large number of documents to be reviewed. With respect to RFI Nos. 2-7 and 2-8, the City argues that they would require scouring through years of records and trying to determine and inventory of any facility, consultant fee, other fee that has anything to do with the City's water system that may be involved with acquisition or delivery of water to the park property, and to identify the individual cost for each item on that inventory, which the City contends is unduly burdensome.

Mountain Peak contends that 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 park property. Mountain Peak argues that these are targeted requests which likely would not place a great burden on the City.

The ALJ finds the City's arguments more persuasive. These requests would require significant effort for what, in the end, would be very little result.

Given the ALJ's rulings on the various objections raised by the City, the objections to RFI Nos. 2-2 through 2-4 and 2-6 through 2-8 are sustained.

III. RFI NO. 2-5

The City objected to the following questions on the grounds of relevance and that the request is unreasonable and unduly burdensome.

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.

Mountain Peak argues that this request is targeted to discovering information regarding the anticipated facilities, design, and capacity needs for water service to the park property. As such, it is directly relevant to what facilities, and types of facilities, of Mountain Peak could have been used to serve the park property but now may be rendered useless or valueless.

The City responds by stating that the park property was undeveloped when the property was decertified. The City acknowledges that circumstances have changed since decertification, and now, more than a year after decertification, the City is seeking to supply water to the park property that has been developed. The City argues that the information requested has nothing to do with the Commission's determination of the existence of any real or personal property of Mountain Peak that may have been rendered useless or valueless by decertification in Docket No. 44394.

The ALJ finds that the City has presented the more persuasive argument on this question. As noted above, actions by the City after the date of the decertification could not affect the determination of whether Mountain Peak's property was rendered valueless or useless on the date of the decertification.


As to the City's argument that this question is overly broad and burdensome, Mountain Peak simply relies on the fact that, in its objection, the City failed to demonstrate how the question would impose a burden on it. In reply, the City states that the planning and design of facilities is not limited in time (*i.e.*, as of the date of decertification) or scope. Certain facilities may have been designed over several years, but others were planned and designed after the date of decertification in 2015. Also, the request broadly includes any planning and design of any facility that is used in the conveyance and distribution of water from the point of the water's entry into the City's system to its ultimate destinations within the park property. As such, the City contends, the question is overly broad and burdensome.

The ALJ once again finds that the City has presented the more persuasive argument. Inasmuch as the ALJ has found that the City has prevailed on both points of its objections, the objections are sustained.

IV. TIME FOR RESPONSE TO DISCOVERY REQUESTS

The party on whom the discovery request was served and who is subject to an order to produce information as set forth above shall provide the responsive information to the requesting party no later than December 21, 2016.

SIGNED December 14, 2015.



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