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BEFORE THE

PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION

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

OF TEXAS

**CITY OF MIDLOTHIAN'S EXPEDITED
MOTION FOR REFERRAL TO SOAH, SUSPENSION OF REQUIREMENT TO FILE
APPRAISAL REPORTS, AND ENTRY OF PRELIMINARY ORDER**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

On July 1, 2016, the City of Midlothian, Texas (Midlothian) notified the Commission pursuant to Texas Water Code (TWC) § 13.254(d) & (e) and 16 Texas Administrative Code (TAC) § 113(h) & (i) of Midlothian's intent to provide retail water service to an approximately 97.7-acre tract of land (Decertified Property) which was decertified from Mountain Peak Special Utility District (Mountain Peak) water Certificate of Convenience and Necessity (CCN) No. 10908 in PUC Docket No. 44394.¹ Midlothian now moves for referral of this proceeding to the State Office of Administrative Hearings (SOAH), abatement of deadlines associated with the submission of appraisals, and entry of a Preliminary Order to guide the proceedings forward on an expedited basis. Expedited consideration of this motion is requested.

I. BACKGROUND

The parties have notified the Commission that they did not reach agreement on a single appraiser.² Midlothian understands that, under TWC § 13.254(e) and 16 TAC § 24.113(i) & (j)(1), the parties' appraisals must be submitted to the Commission no later than 60 days after the date of its Notice of Intent to Serve was provided, i.e., on or before August 30, 2016. To-date, no orders have been entered by the Commission and no prehearing conference has been scheduled in this proceeding.

However, in at least two nearly indistinguishable cases the Commission has implemented a bifurcated process to first determine whether any of the decertified utility's facilities have been

¹ 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, 2016).

² See Mountain Peak's Motion to Intervene and Notice of Selection of Appraiser at 2-3 (July 19, 2016) and Midlothian's Notice of Non-Agreement on Single Appraiser at 1 (July 25, 2016).

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rendered useless or valueless under TWC § 13.254(d) and 16 TAC § 24.113(h).³ Because the “first phase” inquiries are expected to be fact-intensive, the two cases were referred by the Commission to SOAH for issuance of a proposal for decision (PFD) after an expedited hearing to determine what property has been rendered useless or valueless in the decertification process.⁴ The first phase will end when the Commission memorializes findings as to what was rendered useless or valueless, and the second phase will determine the compensation, if any, that may be due to the decertified utility through the use of appraisers as set forth in section 13.254(e) and 16 TAC § 24.113(i).

II. MOTION

In light of the parties’ impending deadlines, to effectuate the expeditious treatment contemplated under TWC § 13.254(d) & (e), 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 being expended prematurely to produce appraisals that may be rendered superfluous, Midlothian respectfully requests orders consistent with the *Zipp* and *Celina* cases, to wit:

1. Midlothian requests that the Commission refer this matter to SOAH for an expedited hearing to determine what property, if any, has been rendered useless or valueless;
2. Midlothian further requests that the Commission immediately abate the requirement for the filing of any appraisals until the second phase, i.e., the time that an appraisal becomes necessary and appropriate in this proceeding; and
3. In addition, because the issues for phase one of this case are not materially distinguishable, Midlothian requests entry of a Preliminary Order requesting expedited handling of the case by SOAH and identifying the same issues as were utilized in the *Zipp* and *Celina* cases.

Earlier today the undersigned counsel conferred with counsel for Mountain Peak but, as of this filing, no position has been developed regarding this motion. Likewise, we were unable to confer with counsel for Commission Staff.

³ See Tex. Pub. Util. Comm’n, *Zipp Road Utility Road Company LLC’s Notice of Intent to Provide Sewer Service to Are Decertified from Guadalupe-Blanco River Authority in Guadalupe County*, Docket No. 45679 (*Zipp*), Preliminary Order (July 20, 2016) and *City of Celina’s Notice of Intent to Provide Water and Sewer Service to Area Decertified from Aqua Texas, Inc. in Denton County*, Docket No. 45848 (*Celina*), Preliminary Order (July 20, 2016).

⁴ *Zipp*, Docket No. 45679, Order of Referral (July 26, 2016); *Celina*, Docket No. 45848, Order of Referral (July 7, 2016).

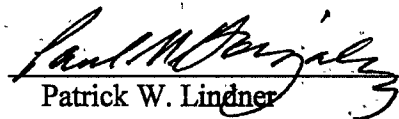
III. PRAYER

THEREFORE, the City of Midlothian prays that the Commission promptly consider and grant this motion.

Respectfully submitted,

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ATTORNEYS FOR CITY OF MIDLOTHIAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document is being served on the following parties on August 12, 2016, via facsimile and e-mail:

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