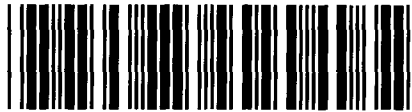


Control Number: 46120



Item Number: 56

Addendum StartPage: 0

RECEIVED

2017 JAN 17 PM 1:23

CITY OF MIDLOTHIAN'S NOTICE OF	§	BEFORE THE STATE OFFICE
INTENT TO SERVE AREA	§	OF
DECERTIFIED FROM MOUNTAIN	§	ADMINISTRATIVE HEARINGS
PEAK SPECIAL UTILITY DISTRICT IN	§	
ELLIS COUNTY	§	

**SOAH ORDER NO. 8
RULING ON MOTION TO RECONSIDER STAY OF PROCEEDING PENDING
APPEAL OR, IN THE ALTERNATIVE, MOTION TO BROADEN SCOPE OF
PROCEEDING**

On December 29, 2016, Mountain Peak Special Utility District (Mountain Peak) filed its Motion to Reconsider Stay of Proceeding Pending Appeal or, in the Alternative, Motion to Broaden Scope of Proceeding. Staff of the Public Utility Commission of Texas (Commission) and the City of Midlothian (City) filed responses on January 4, 2017. This order rules on Mountain Peak's motions and denies the relief sought.

**I. MOTION TO RECONSIDER STAY OF PROCEEDING PENDING
APPEAL**

The first aspect of Mountain Peak's motion is to request reconsideration of its motion to stay the proceeding pending its appeal of the Commission's decertification decision in Docket No. 44394¹ to the Third Court of Appeals.² This is the same relief requested by Mountain Peak in its November 10, 2016, motion, which was denied in Order No. 3 issued November 22, 2016.

Mountain Peak argues essentially the same grounds in its current motion as it did in its November 10, 2016. Admittedly, Mountain Peak makes certain arguments that could arguably

¹ *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).

² *Mountain Peak Special Utility Dist. v. Public Utility Comm'n of Tex.*, No. 03-16-00796-CV (Tex. App.- Austin) Nov. 22, 2016).

56

be characterized as additions to those in its initial request, they existed at the time of the initial request and serve only to expand on matters included in the original request.

Staff and the City argue that the request for reconsideration is not well-founded. They argue that Order No. 3 fully addressed Mountain Peak's contentions and that there is nothing new (either in terms of substantive matters or argument) to support reconsideration of that order. The City also argues that Mountain Peak's request is untimely, as the Commission's rules provide only a limited time (which has now passed) for the appeal of an interim order.

The ALJ agrees with Staff and the City, both on substantive grounds and on procedural grounds. The time for an appeal of Order No. 3 has passed.³ Even if the request were not procedurally flawed, it is substantively insufficient. There are no new substantive grounds alleged in support of the request. The request reconsideration of the request for stay is denied.

II. MOTION TO BROADEN SCOPE OF PROCEEDING

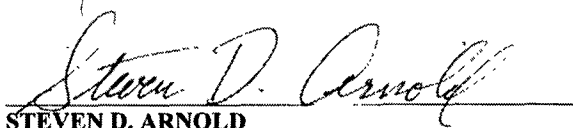
In the alternative, Mountain Peak asks that the scope of this proceeding be broadened to include the presentation of evidence on the additional compensation factors set forth in Texas Water Code § 13.254(g), which may not be directly tied to "property" that "has been rendered useless or valueless." The basis of Mountain Peak's argument is that utilities in the position of Mountain Peak are entitled to compensation for more than simply property rendered useless or valueless as a result of the decertification. Mountain Peak argues that the compensation factors enumerated in Texas Water Code § 13.254(g) include consideration of items such as (i) the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; (ii) the amount of the retail public utility's contractual obligations allocable to the area in question; and (iii) any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification.

³ 16 Texas Administrative Code § 22.123(a)(2).

Again, both Staff and the City respond in opposition to Mountain Peak's request. Both argue that the only matter at issue at this juncture is an identification of the property rendered useless or valueless by the Commission's decertification order and that Mountain Peak's requested additional matters are merely ill-timed evidentiary contentions that will be relevant only after the initial determination is made.

The ALJ finds that the arguments raised by Staff and the City are more compelling and consistent with the mandate issued by the Commission. Although the Commission left open the possibility that additional questions could be addressed in this proceeding, implicit in that order are the over-arching limitations included in that very order. It is not reasonable to conclude that the Commission ordered an examination limited to what property has been rendered useless or valueless and then conclude that the Commission left open the possibility of expanding that order to include compensation matters. Mountain Peak's alternative motion is denied.

SIGNED January 17, 2017.


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