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PUBLIC UTILITY COMMISSION

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

§ BEFORE THE STATE OFFICE
§
§ OF
§
§ ADMINISTRATIVE HEARINGS

**CITY OF MIDLOTHIAN'S OBJECTIONS AND MOTION TO STRIKE DIRECT
TESTIMONY OF DONALD G. RAUSCHUBER**

TO THE ADMINISTRATIVE LAW JUDGE:

NOW COMES, City of Midlothian ("Midlothian") and serves its Objections and Motion to Strike Direct Testimony of DONALD G. RAUSCHUBER. These objections are filed by the deadline established in the procedural schedule, and are therefore timely.

I. OBJECTIONS

A. Relevance

"Relevant evidence" is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."¹ Only relevant evidence may be admissible.² Irrelevant evidence should be excluded.³

Midlothian objects to the following testimony as not relevant:

6:10-6:11 ("and costs and expenses associated with those assets and with the decertification of the Park Property"): In this selection, the witness is testifying regarding cost and expenses relating to certain facilities. This testimony does not discuss the value or usefulness of those facilities, but instead relates to compensation factors set forth in Texas Water Code Section 13.254(g) which are not relevant to this phase of the proceeding.⁴ Midlothian incorporates by reference for all purposes, its arguments set for in its Response to Mountain Peak's Motion to Broaden Scope of Proceeding filed January 4, 2017.

¹ Tex. R. Evid. 401.

² Tex. R. Evid. 402.

³ PUC. PROC. R. § 22.221(a).

⁴ See SOAH Order No. 8 (January 17, 2017); Preliminary Order at 2.

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10:9-10:19: In this selection, the witness is testifying that he defines the word “property” under Texas Water Code Chapter 13, Tex. Property Code Chapter 21 and the PVC’s rules as including “expenses”. Compensation factors like those discussed in Texas Water Code Section 13.254(g), regardless of the name the witness assigns to them, are not relevant to this phase of the proceeding.⁵ Midlothian incorporates by reference for all purposes, its arguments set for in its Response to Mountain Peak’s Motion to Broaden Scope of Proceeding filed January 4, 2017.

11:1-14:2: In this selection, the witness is testifying regarding several development plans, of which the decertified property was only a portion of the area. This testimony is irrelevant as it has no bearing on whether or not property, currently in existence at the time of decertification, was rendered useless or valueless. Instead, the witness manipulates data to calculate “single family equivalents” as to calculate his compensation-related discussion, which is not germane to this Phase of the proceeding. Regardless of the planned uses, hoped-for value and historical reasons for certain facilities; a property either has value or use or it does not. Midlothian incorporates by reference for all purposes, its arguments set for in its Response to Mountain Peak’s Motion to Broaden Scope of Proceeding filed January 4, 2017.

19:15-19:25: In this selection, the witness is testifying regarding cost and expenses relating to certain facilities. This testimony does not discuss the value or usefulness of those facilities, but instead relates to compensation factors set forth in Texas Water Code Section 13.254(g) which are not relevant to this Phase of the proceeding.⁶

20:20-21:3: In this selection, the witness is testifying about future facilities not in existence. This testimony is irrelevant as it has no bearing on whether or not property, currently in existence at the time of decertification, was rendered useless or valueless.

21:15-21:28: In this selection, the witness appears to be testifying about future facilities not in existence. Theoretical or future facilities provide no facts of consequence to whether or not any currently existing property is rendered useless or valueless.

22:1-23:15 In this selection, the witness is testifying regarding cost and expenses relating to certain facilities and expenses related to these proceedings related to the Park Property. This testimony does not discuss the value or usefulness of those facilities, but instead relates to compensation factors set forth in Texas Water Code Section 13.254(g) which are not

⁵ See SOAH Order No. 8 (January 17, 2017); Preliminary Order at 2.

⁶ Id.

relevant to this phase of the proceeding.⁷ Midlothian incorporates by reference for all purposes, its arguments set for in its Response to Mountain Peak's Motion to Broaden Scope of Proceeding filed January 4, 2017.

25:8-26:17: In this selection, the witness is speculating about future affects of what they would consider a negative ruling in this Docket. While these may be interesting equitable arguments for a legislative body to consider, they provide no help to the fact finder as to whether or not property was rendered useless or valueless. In addition it is testimony relating to compensation factors set forth in Texas Water Code Section 13.254(g) which are not relevant to this phase of the proceeding.⁸ Midlothian incorporates by reference for all purposes, its arguments set for in its Response to Mountain Peak's Motion to Broaden Scope of Proceeding filed January 4, 2017.

Exhibit DGR-5: To the extent this exhibit includes testimony and opinions regarding future/planned projects, Midlothian objects the testimony is irrelevant as it has no bearing on whether or not property, currently in existence at the time of decertification, was rendered useless or valueless. To the extent this exhibit includes testimony and opinions regarding costs or expenses incurred by Mountain Peak, Midlothian objects the testimony is irrelevant because compensation factors like those discussed in Texas Water Code Section 13.254(g), regardless of the name the witness assigns to them, are not relevant to this phase of the proceeding.⁹ Midlothian incorporates by reference for all purposes, its arguments set for in its Response to Mountain Peak's Motion to Broaden Scope of Proceeding filed January 4, 2017. This exhibit should be modified to reflect any rulings made as a result of Motions to Strike.

B. Hearsay

Hearsay is a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.¹⁰ A "statement" is means a person's oral or written verbal expression, or nonverbal conduct that a person intended as a substitute for verbal expression.¹¹ "Matter asserted" means:

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Tex. R. Evid. 801

¹¹ Id

(1) any matter a declarant explicitly asserts; and (2) any matter implied by a statement, if the probative value of the statement as offered flows from the declarant's belief about the matter.¹²

Midlothian objects to the following as hearsay:

Exhibit DGR2: This purports to be a document prepared by Welch Engineering, Inc. which was alleged to have been marked on by Childress Engineering, Inc., neither of which are a party to the case, and have not been identified as expert or fact witnesses. Midlothian objects to the introduction into evidence of this document as it is hearsay. The document is being admitted to prove the truth of the matter of the size of the purported development, year proposed, and the number and type of lots to be built thereon. This information, at least in part, forms the basis of the witness's opinion as to "single-family unit equivalents" which then forms the basis of his stranded capacity opinions.¹³ The declarants are Welch Engineering, Inc. and Childress Engineering, Inc., which have not been deposed. This document has not been authenticated other than a statement that it is accurate based on un-identified platting and utility maps the witness had reviewed. The witness must have personal knowledge on which to base the authentication, and the witness does not.¹⁴ The document has also not been certified as a public record or under seal as required by the public record exception TEX. R. CIV. EVID. 902(2).

III. CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Midlothian respectfully requests the Administrative Law Judge to sustain these objections and strike the above identified testimony of DONALD G. RAUSCHUBER.

¹² Id.

¹³ See Direct Testimony of DONALD G. RAUSCHUBER 12:17-13:13, 17:22- 19:14, and Exhibit DRG-5.

¹⁴ See TRE 602; see, e.g., *City of Dallas v. GTE Sw., Inc.*, 980 S.W.2d 928, 935 (Tex.App.—Fort Worth 1998, pet. denied).

Respectfully submitted,

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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 January 23, 2017, in the following manner: by e-mail.


Paul M. González