



Control Number: 46120



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RECEIVED

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

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§

BEFORE THE STATE OFFICE  
FILING CLERK  
OF  
ADMINISTRATIVE HEARINGS

**CITY OF MIDLOTHIAN'S OBJECTIONS AND MOTION TO STRIKE DIRECT  
TESTIMONY OF RANDEL KIRK**

TO THE ADMINISTRATIVE LAW JUDGE:

NOW COMES, City of Midlothian ("Midlothian") and serves its Objections and Motion to Strike Direct Testimony of Randel Kirk. 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."<sup>1</sup> Only relevant evidence may be admissible.<sup>2</sup> Irrelevant evidence should be excluded.<sup>3</sup>

Midlothian objects to the following testimony as not relevant:

**4:20-4:26:** In this selection, Mountain Peak is stating that they are appealing the decision from Docket No. 44394. Whether or not Mountain Peak thinks the decision in Docket No. 44394 was correct is immaterial to the issues in the current Docket.

**9:17-9:22 & 10:23-10:26:** In these selections, Mountain Peak is discussing whether expenses were incurred by Mountain Peak regarding "these various assets" that "would have served the pressure zone in which the Park Property is located, including the Park Property" (p. 9) and Mountain Peak "paid its engineers and contractors for the planning, design, and/or construction of these assets [described earlier on page 10]". (p.10) This testimony does not

<sup>1</sup> Tex. R. Evid. 401

<sup>2</sup> Tex. R. Evid. 402.

<sup>3</sup> PUC. PROC. R. § 22.221(a).

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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.<sup>4</sup> 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.

**11:7-11:10 (sentence starting with "In"):** In this selection, Kirk is testifying about future facilities not in existence. Testimony regarding theoretical or future facilities is irrelevant as it does not aid in the determination of whether or not any property in existence at on date of decertification is rendered useless or valueless.

**12:24-14:17:** In this selection, Kirk is testifying about impairment of service and increase of cost to Consumers and legal and professional expenses related to the decertification and this property. These are listed as compensation factors in Texas Water Code Section 13.254(g), and are irrelevant to this phase of the proceeding.<sup>5</sup> 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.

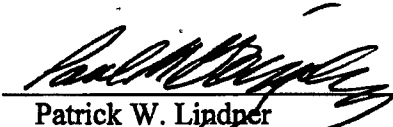
### III. CONCLUSION AND PRAYER

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

Respectfully submitted,

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

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

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**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.

  
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Paul M. González