

Control Number 46120



Item Number 6

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

BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS 2:43

MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S RESPONSE TO 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:

NOW COMES, Mountain Peak Special Utility District ("Mountain Peak") and files this Response to the City of Midlothian's Expedited Motion for Referral to SOAH, Suspension of Requirement to File Appraisal Reports, and Entry of Preliminary Order. In support thereof, Mountain Peak would respectfully show as follows:

On July 1, 2016, the City of Midlothian ("Midlothian") filed a notice of its intent (the "Notice of Intent") to provide retail water service to property previously decertified from Mountain Peak's water CCN. Mountain Peak filed a Motion to Intervene, and Mountain Peak and Midlothian have determined that they will not be able to agree upon an appraiser for the compensation process required by Texas Water Code § 13.254 and 16 Texas Administrative Code § 24.113.<sup>1</sup> Pursuant to § 13.254 and 16 TAC § 24.113, and absent any further procedural orders, the parties' separate appraisals must be submitted to the Commission no later than 60 days after the date of Midlothian's Notice of Intent 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.

<sup>1</sup> See Mountain Peak's Motion to Intervene and Notice of Selection of Appraiser (July 19, 2016); Midlothian's Notice of Non-Agreement on Single Appraiser (July 25, 2016).

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On August 12, 2016, Midlothian filed its Expedited Motion for Referral to SOAH, Suspension of Requirement to File Appraisal Reports, and Entry of Preliminary Order (“Motion”). This Response is timely filed.<sup>2</sup> In the Motion, Midlothian requested referral of this case to State Office of Administrative Hearings (“SOAH”), abatement of the requirement to file appraisals, and issuance of a Preliminary Order identifying the issues to be addressed at SOAH. Mountain Peak agrees with the general principles of Midlothian’s request: Mountain Peak also asks that the deadlines to file appraisals be abated and that this matter be referred to SOAH. However, Mountain Peak disagrees with Midlothian about the proposed scope of the ‘phase one’ referral to SOAH.

In at least two cases, the Commission has implemented a bifurcated process where the first phase is designed to determine what property has been rendered useless or valueless under § 13.254 and the second phase is designed to determine the compensation based on the value of the property identified in the first phase.<sup>3</sup> In these cases, the Commissioners requested that the SOAH Administrative Law Judge (“ALJ”) address what property, if any, had been rendered useless or valueless to the decertified entity in the decertification matters while referencing § 13.254(d) and 16 TAC § 24.113(h).<sup>4</sup>

However, Mountain Peak urges the Commission to clarify that the SOAH ALJ shall additionally take into consideration the factors specified in § 13.254(g), that statutorily must be used in determining the compensation owed. The factors in § 13.254(g) are mandated by the

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<sup>2</sup> 16 Tex. Admin. Code § 22.78(a).

<sup>3</sup> See Tex. Pub. Util. Comm’n, *Zipp Road Utility Company LLC’s Notice of Intent to Provide Sewer Service to Area Decertified from Guadalupe-Blanco River Authority in Guadalupe County*, Docket No. 45679, Preliminary Order (July 20, 2016); *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, Preliminary Order (July 20, 2016).

<sup>4</sup> *Id.*

statute to ensure the compensation to the decertified entity is 'just and adequate' and the statute states that the compensation 'shall include' the factors. The statute at § 13.254(g) provides as follows:

(g) The factors ensuring that the compensation to a retail public utility is just and adequate, shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors. The utility commission shall adopt rules governing the evaluation of these factors. (emphasis added)

Hence, a determination in a SOAH 'phase one' proceeding of merely property rendered useless or valueless will not properly take into account the other factors such as the 'amount of the retail public utility's debt allocable for service to the area in question'. If these § 13.254(g) factors are not taken into account in determining the property to be valued, they may not adequately be considered in the second phase. Therefore, Mountain Peak respectfully requests an order providing as follows:

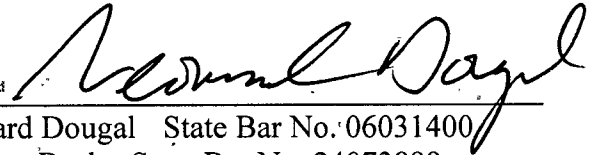
1. Referral of this matter to SOAH for an expedited hearing to determine what property, if any, has been rendered useless or valueless to Mountain Peak by the decertification in PUC Docket No. 44394, taking into consideration the factors required for determining compensation owed to Mountain Peak, Tex. Water Code § 13.254(d) and (g), 16 Tex. Admin. Code § 24.113(h) and (k);
2. Abatement of the requirement to file any appraisals until otherwise ordered by the presiding officer or Commission;
3. Entry of a Preliminary Order requesting expedited handling of the case by SOAH and identifying the issues to be determined by SOAH, including, but not limited to, what property, if any, has been rendered useless or valueless to Mountain Peak by the decertification in PUC Docket No. 44394, and taking into consideration the

factors required for determining compensation owed to Mountain Peak, Tex. Water Code § 13.254(d) and (g), 16 Tex. Admin. Code § 24.113(h) and (k).

Mountain Peak respectfully requests that the Commission issue an order as requested herein.

Respectfully submitted,

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