



Control Number: 46120



Item Number: 82

Addendum StartPage: 0

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SOAH DOCKET NO. 473-16-5823.WS  
PUC DOCKET NO. 46120

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CITY OF MIDLOTHIAN'S NOTICE OF §  
INTENT TO SERVE AREA §  
DECERTIFIED FROM MOUNTAIN §  
PEAK SPECIAL UTILITY DISTRICT IN §  
ELLIS COUNTY §

PUBLIC UTILITY COMMISSION  
BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S RESPONSE TO MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S MOTION TO WITHDRAW AS A PARTY AND MOTION FOR SUMMARY DISPOSITION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Commission Staff's Response to Mountain Peak Special Utility District's Motion to Withdraw as a Party and Motion for Summary Disposition. In support thereof, the Parties show the following:

**I. BACKGROUND**

On July 1, 2016, the City of Midlothian (Midlothian) notified the Commission of its intent to provide retail water service to an approximately 97.7-acre tract of land that was decertified in Docket No. 44394.<sup>1</sup> On July 19, 2016, Mountain Peak Special Utility District (Mountain Peak SUD) filed a motion to intervene. On August 22, 2016, the Commission referred this matter to the State Office of Administrative Hearings (SOAH). On October 12, 2016, SOAH Order No. 1 was entered, granting Mountain Peak SUD's motion to intervene. On January 17, 2017, Midlothian and Mountain Peak SUD filed direct testimony.

On February 13, 2017, SOAH Order No. 10 was issued, abating this proceeding until the Commission issued a final order in Docket No. 45848.<sup>2</sup> On August 30, 2017, Staff and Midlothian timely filed a status update in accordance with SOAH Order No. 10. Mountain Peak SUD did not join the status update, and filed a Motion to Withdraw.

<sup>1</sup> See *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, Order (May 1, 2015).

<sup>2</sup> *City of Celina's Notice of Intent to Provide Water and Sewer Service to Area Decertified from Aqua Texas, Inc., in Denton County*, SOAH Docket No. 473-16-5011.WS, PUC Docket No. 45848, Order on Rehearing (Jun. 29, 2017).

82

Pursuant to 16 Tex. Admin. Code § 22.78(a) (TAC), responsive pleadings are due within five working days after receipt of the pleading to which the response is made. Staff received Mountain Peak SUD's Motion to Withdraw on August 30, 2017. Therefore, this Response is timely filed by September 7, 2017.<sup>3</sup>

On September 6, 2017, SOAH Order No. 11 was issued, granting Mountain Peak SUD's Motion to Withdraw and setting a prehearing conference.

## II. STAFF'S RESPONSE AND MOTION FOR SUMMARY DISPOSITION

Mountain Peak SUD has requested withdrawal as a party in this docket in light of the Commission's recent decisions in similar cases.<sup>4</sup> Mountain Peak SUD stated that based on these decisions, it sees no benefit in expending further resources to pursue compensation in this docket.<sup>5</sup>

In response to Mountain Peak SUD's Motion to Withdraw, Staff clarifies that it takes no position as to the merits of the motion. However, in order for Midlothian to begin providing retail water service to the decertified land at issue in this case, a determination on whether any property has been rendered useless or valueless as a result of the decertification, and ultimately, on whether Midlothian owes any compensation to Mountain Peak SUD must be made by the Commission.<sup>6</sup> Staff respectfully requests that if the Administrative Law Judge (ALJ) grants Mountain Peak SUD's Motion to Withdraw, which the ALJ has done in SOAH Order No. 11, that the ALJ also grant summary disposition in this matter pursuant to 16 TAC § 22.182(b) and find that no property has been rendered useless or valueless. If Mountain Peak SUD is permitted to withdraw, Midlothian's direct testimony stating that there is no property rendered useless or valueless is uncontested,<sup>7</sup> there are no longer any genuine issues as to any material fact, and no hearing is necessary. Staff does not wish any party to expend further resources in pursuing this case once the protesting party has been allowed to withdraw.

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<sup>3</sup> The Commission was not open for business on Monday, September 4, 2017 in observance of Labor Day. Therefore, five working days after August 30, 2017 is September 7, 2017.

<sup>4</sup> See *Mountain Peak Special Utility District's Motion to Withdraw as a Party* at 1 (Aug. 30, 2017).

<sup>5</sup> *Id.*

<sup>6</sup> See Tex. Water Code § 13.254(d).

<sup>7</sup> Direct Testimony of Michael G. Adams on Behalf of the City of Midlothian, Texas (Jan. 17, 2017); Direct Testimony of Victoria R. Harkins, Ph.D., P.E. (Jan. 17, 2017).

Further, while this case was filed prior to the effective date of the Commission's recently adopted substantive rules related to water Certificates of Convenience and Necessity (CCNs), 16 TAC § 24.113 now provides that there is a rebuttable presumption that there is no useless or valueless property if a former CCN holder fails to timely intervene.<sup>8</sup> In this case, Mountain Peak SUD did intervene, participated in the case, and is now requesting to withdraw based on recent Commission precedent. Staff believes that summary disposition in this situation would be consistent with the procedures for these types of cases going forward.

Staff has conferred with counsel for Midlothian and is authorized to represent that Midlothian joins in Staff's Motion for Summary Disposition.

### **III. CONCLUSION**

For the above stated reasons, Staff respectfully requests that the ALJ grant summary disposition in this matter.

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<sup>8</sup> See 16 TAC § 24.113(n)(3) (effective May 28, 2017).

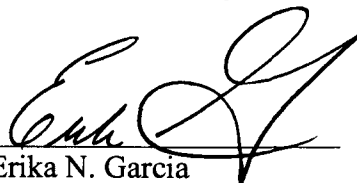
Dated: September 7, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
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**SOAH DOCKET NO. 473-16-5823.WS  
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CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record September 7, 2017, in accordance with 16 TAC § 22.74.



Erika N. Garcia