



Control Number: 46120



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

RECEIVED

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

BEFORE THE STATE OFFICE

2017 SEP 14 PM 4:29

PUBLIC UTILITY COMMISSION  
FILING CLERK

ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 12  
REQUESTING STIPULATION OR, IN THE ALTERNATIVE, AGREED PROPOSED  
ORDER; CANCELLING PREHEARING CONFERENCE

On July 1, 2016, the City of Midlothian (Midlothian) notified the Public Utility Commission of Texas (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) 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's motion to intervene. On January 17, 2017, Midlothian and Mountain Peak 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, the Commission staff (Staff) and Midlothian timely filed a status update in accordance with SOAH Order No. 10. Mountain Peak did not join the status update, and filed a Motion to Withdraw.

On September 6, 2017, SOAH Order No. 11 was issued, granting Mountain Peak's Motion to Withdraw and setting a prehearing conference. On September 7, 2017, Staff filed a Motion for Summary Disposition based on the fact that the only testimony filed in the docket by a current party was that filed by Midlothian and that testimony indicated there was no property that has been rendered valueless or useless as a result of the decertification.

<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).

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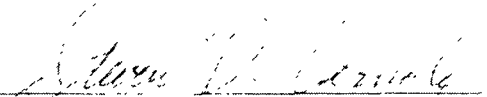
The Order of Referral in this case contains language that is critical to reaching the proper result in this case. The Order of Referral asked that an Administrative Law Judge (ALJ) be assigned and that the ALJ “conduct a hearing and issue a proposal for decision, *if such is necessary in the event one or more issues are contested by the parties.*”<sup>3</sup>

The Preliminary Order clarified that this case was referred in phases, and that the only issue in this phase of the proceeding was to determine what property had been rendered valueless or useless by the decertification.<sup>4</sup>

With the withdrawal of Mountain Peak, the only testimony on the sole issue in this phase of this proceeding is that filed by Midlothian, which is uncontested. Therefore, the ALJ intends to grant summary disposition as requested by Staff, unless Staff and Midlothian file a stipulation indicating that there is no property rendered valueless or useless by the decertification, requesting the admission of evidence to support the agreements set forth in the stipulation, stating that all issues are resolved by agreement of the parties, and requesting that the docket be remanded to the Commission for processing. If such a stipulation is filed no later than two weeks after the date of this order, the ALJ will dismiss the docket from the SOAH docket and remand to the Commission. If the parties adopt the alternative path, no later than two weeks from the date of this order they shall file agreed findings of fact, conclusions of law, and ordering paragraphs to permit the ALJ to prepare a proposal for decision.

Consistent with this order, the prehearing conference scheduled for September 25, 2017, is cancelled.

**SIGNED September 14, 2017.**

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

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<sup>3</sup> Order of Referral at 1.

<sup>4</sup> Preliminary Order at 2.