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September 26, 2017

Honorable Steven D. Arnold
Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
P.O. Box 13025
Austin, Texas 78711-3025

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PUBLIC UTILITY COMMISSION
FILING CLERK

Re: PUC Docket No. 46120; SOAH Docket No. 473-16-5823.WS, *City of Midlothian Notice of Intent to Provide Water Service to Land Decertified From Mountain Peak Special Utility District*

Hon. Judge Arnold:

Order No 12, issued September 14, 2017, invited the parties to file proposed Findings of Fact, Conclusions of Law and ordering paragraphs if the parties desired a proposal for decision to be prepared by you for consideration by the Public Utility Commission of Texas regarding resolution of the above-styled docket. Agreed proposed findings, conclusions and ordering paragraphs are attached hereto. A copy in Microsoft Word format is included in an email to your assistant, Ms. Hurley. This submittal is timely.

In addition, the City of Midlothian and Commission Staff agree that the following should be admitted into evidence in this docket in support of the pending motion for summary decision:

- Midlothian's Notice of Intent to Provide Water Service to Land Decertified from Mountain Peak Special Utility District (PUC Interchange Item 1), filed on July 1, 2016; and
- Direct Testimony of Michael G. Adams and Victoria R. Harkins, Ph.D., P.E., (respectively, PUC Interchange Items 58 and 59), filed on January 17, 2017.

On Monday I contacted Ms. Hurley to make two corrections to the service list: to identify Ms. Garcia as Commission Staff's attorney of record, and to remove Mr. Miller, an attorney for non-party, Mountain Peak Special Utility District.

Sincerely,


Paul M. González

ATTORNEYS FOR CITY OF MIDLOTHIAN

PMG/lg

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Hon. Judge Steven D. Arnold
September 26, 2017
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Enclosure (as stated)

cc: Ms. Erika N. Garcia (via facsimile and email – Erika.garcia@puc.texas.gov)
Commission Staff

Ms. Erin Hurley (via email only – erin.hurley@soah.texas.gov)
SOAH

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

CITY OF MIDLOTHIAN'S NOTICE OF INTENT TO SERVE AREA DECERTIFIED FROM MOUNTAIN PEAK SPECIAL UTILITY DISTRICT IN ELLIS COUNTY	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

FINDINGS OF FACT

Procedural History

1. On May 5, 2015, the Commission issued an order in the petition of landowner, the City of Midlothian (Midlothian), to amend Mountain Peak Special Utility District's (Mountain Peak's) water certificate of convenience and necessity (CCN) in Ellis County by expedited release, Docket No. 44394, approving Midlothian's petition for expedited release of approximately 97.7 acres from CCN No. 10908 of Mountain Peak (the Tract).¹

2. On July 1, 2016, Midlothian filed a Notice of Intent to provide retail water service to the tract decertified in Docket No. 44394.

3. On July 19, 2016, Mountain Peak Special Utility District (Mountain Peak) filed a Motion to Intervene and Notice of Selection of Appraiser.

4. On July 25, 2016, Midlothian filed a Notice of Non-Agreement on a Single Appraiser.

5. On August 12, 2016, Midlothian filed an Expedited Motion for Referral to the State Office of Administrative Hearings (SOAH).

6. On August 22, 2016, the Commission issued an Order of Referral, referring the matter to SOAH for the Administrative Law Judge (ALJ) to "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."

7. On September 23, 2016, the Commission issued a Preliminary Order, in which it identified the sole issue in the initial phase of this proceeding before SOAH: "What property, if any, has been rendered useless or valueless to Mountain Peak by the decertification granted in Docket No. 44394?"

¹ *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).*

8. On October 13, 2016, the presiding officer issued SOAH Order No. 1, granting Mountain Peak's motion to intervene.

9. On January 17, 2017, Midlothian filed direct testimony of Michael G. Adams and Victoria R. Harkins, Ph.D., P.E., and Mountain Peak filed direct testimony of Randel Kirk and Donald G. Rauschuber, P.E.

10. On January 31, 2017, Mountain Peak filed a Motion to Temporarily Abate Pending PUC Commissioners' Decision in PUC Docket No. 45848.²

11. On February 13, 2017, the presiding officer issued SOAH Order No. 10, granting Mountain Peak's Motion to Abate.

12. On August 30, 2017, Mountain Peak filed a Motion to Withdraw as a party to this proceeding and, pursuant to SOAH Order No. 10, Midlothian and Commission Staff filed a Joint Status Update.

13. On September 7, 2017, Commission Staff submitted a response to Mountain Peak's Motion to Withdraw and, joined by Midlothian, a Motion for Summary Disposition if Mountain Peak was allowed to withdraw from the proceeding.

14. On September 6, 2017, the presiding officer issued SOAH Order No. 11, granting Mountain Peak's Motion to Withdraw.

15. On September 26, 2017, pursuant to SOAH Order No. 12, Midlothian and Staff to jointly filed proposed findings of fact, conclusions of law, and ordering paragraphs on the sole question for the first phase as set forth in the Preliminary Order.

Notice

16. Midlothian provided notice to Mountain Peak on June 28, 2016, by certified mail.

Midlothian's Tract

17. Midlothian purchased 104.44 acres of property in 2010 for use as a "Multi-Use Community Park," which included the Tract, the approximately 97.7 acres removed from Mountain Peak's CCN No. 10908 in Docket No. 44394.

18. Upon purchase and at the time of decertification, the Tract consisted of undeveloped farmland and pasture that had never been platted.

19. At the time of decertification, the Tract was not receiving water service, the City had never requested water service to the Tract and no written or service agreement existed between Midlothian and Mountain Peak for water service to the Tract.

² *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).

20. Midlothian has never paid Mountain Peak fees or charges to initiate or maintain water service to the Tract.

Mountain Peak's Property

1. At the time of decertification, Mountain Peak had no customers within the Tract.
2. Mountain Peak has a water line along the southern property line of the Tract and has other facilities in the vicinity of the tract.
3. These facilities and water line were not committed to providing water service to the Tract.
4. Mountain Peak does not have any facilities or lines that have been abandoned due to the decertification of the tract.
5. Mountain Peak intervened and subsequently withdrew as a party to this proceeding.
6. There is no evidence that any of Mountain Peak's property is useless or valueless under Tex. Water Code § 13.254 (TWC).

CONCLUSIONS OF LAW

1. The City of Midlothian is a municipality in Texas and a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(58) that possesses certificate of convenience and necessity number 11706.
2. The Commission has jurisdiction over this matter in accordance with TWC §§ 13.041 and 13.254(d)-(e).
3. SOAH has jurisdiction over this proceeding pursuant to Texas Government Code §§ 2001.058 and 2003.049.
4. This docket was processed in accordance with the requirements of the Texas Water Code, the Administrative Procedure Act, Texas Government Code Chapter 2001, and the Commission's rules.
5. TWC § 13.254 and 16 TAC § 24.113 prohibit a retail public utility from providing service to an area that has been decertified under those sections without first providing compensation for any property that the Commission determines is rendered "useless or valueless" to the decertified retail public utility as a result of the decertification.
6. The term "property" in TWC § 13.254 includes all property, real and personal, and tangible and intangible.

7. The terms “useless” and “valueless” in TWC § 13.254 should be given their ordinary or plain meaning.

8. Mountain Peak has the burden of proof in this case under 16 TAC § 24.12 and 1 TAC § 155.427.

9. Mountain Peak does not have any property that was rendered useless or valueless under TWC § 13.254.

ORDERING PARAGRAPHS

1. Mountain Peak does not have any property that was rendered useless or valueless as a result of the decertification in Docket No. 44394.

2. Midlothian does not owe any compensation to Mountain Peak and may provide water service to the tract that was decertified in Docket No. 44394.

3. All other motions, requests for entry of specific finds of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.