



Control Number: 46120



Item Number: 86

Addendum StartPage: 0

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

October 23, 2017

RECEIVED
2017 OCT 25 AM 11:36
ELECTRONIC FILING CLERK

**TO: Stephen Journey, Director
Commission Advising and Docket Management
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701**

VIA EMAIL

**RE: 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***

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. There is no deadline in Phase 1 of this case, which the PFD addresses, but the Preliminary Order requests that the case be expedited to the extent possible. Please notify me and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,

A handwritten signature in black ink that reads "Steven D. Arnold".

Steven D. Arnold
Administrative Law Judge

Enclosure

xc: All Parties of Record

300 W. 15th Street, Suite 504, Austin, Texas 78701/P.O. Box 13025, Austin, Texas 78711-3025
512.475.4993 (Main) 512.475.3445 (Docketing) 512.475.4994 (Fax)
www.soah.texas.gov

Handwritten initials in black ink, appearing to be "SL" or "SE".

000001

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

CITY OF MIDLOTHIAN'S NOTICE OF	§	BEFORE THE STATE OFFICE
INTENT TO SERVE AREA	§	
DECERTIFIED FROM MOUNTAIN	§	OF
PEAK SPECIAL UTILITY DISTRICT IN	§	
ELLIS COUNTY	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

This proceeding addresses the issue of whether any property of Mountain Peak Special Utility District (Mountain Peak) was rendered valueless or useless by virtue of the decertification of approximately 97.7 acres of land in Ellis County, Texas, granted by the Public Utility Commission of Texas (Commission) in Docket No. 44394.¹ The Administrative Law Judge recommends that the Commission find that no property has been rendered valueless or useless as a result of the decertification.

II. JURISDICTION AND NOTICE

The Commission has jurisdiction over this proceeding pursuant to Texas Water Code §§ 13.041 and 13.254(d)-(e). The State Office of Administrative Hearings (SOAH) has jurisdiction over matters relating to the conduct of the hearing in this proceeding pursuant to Texas Government Code § 2003.049.

No party contested the form or substance of the notice of this proceeding. Uncontested findings of fact and conclusions of law related to jurisdiction and notice are included in this proposal for decision (PFD).

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).

III. PROCEDURAL HISTORY

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. The Preliminary Order made clear that the *only* issue in this proceeding was to determine what property had been rendered valueless or useless by the decertification.²

On July 19, 2016, Mountain Peak filed a motion to intervene. On August 22, 2016, the Commission referred this matter to SOAH. On October 12, 2016, SOAH Order No. 1 granted 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. 45848.³ 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 because Midlothian was the only party to file testimony, and that testimony indicated that no property had been rendered valueless or useless as a result of the decertification.

On September 14, 2017, SOAH Order No. 12 issued, stating that the ALJ intended to grant the motion for summary decision and requesting the parties either file a stipulation or an agreed order that would permit the ALJ to prepare a proposal for decision.

² Preliminary Order at 2.

³ *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).

On September 26, 2017, Midlothian filed agreed findings of fact and conclusions of law as requested by Order No. 12, and requested that (1) 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 (2) Direct Testimony of Michael G. Adams and (3) Victoria R. Harkins, Ph.D., P.E., (respectively, PUC Interchange Items 58 and 59), filed on January 17, 2017, be admitted into evidence. Those documents were admitted into evidence as Exhibits 1, 2, and 3, in SOAH Order No. 13, and the record closed on September 26, 2017.

IV. DISCUSSION AND ANALYSIS

The Preliminary Order in this case clearly delineated the issues to be considered. The case was referred in phases, and the *only* issue in this phase of the proceeding was to determine what property had been rendered valueless or useless by the decertification.⁴

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. That testimony demonstrates that there is no property that has been rendered useless or values as a result of the decertification. Therefore, the ALJ finds that the uncontested evidence in this proceeding establishes that there is no property rendered valueless or useless by the decertification in Docket No. 44394.

V. PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

A. Findings of Fact

Procedural History

1. On May 5, 2015, the Public Utility Commission of Texas (Commission) issued an order in *Petition of City of Midlothian to Amend Mountain Peak Special Utility District's*

⁴ Preliminary Order at 2.

- Certificate of Convenience and Necessity by Expedited Release in Ellis County*, Docket No. 44394, Order (May 1, 2015), approving the City of Midlothian's (Midlothian) petition for expedited release of approximately 97.7 acres from CCN No. 10908 of Mountain Peak Special Utility District (Mountain Peak) (the Tract).
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 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?"
 8. On October 13, 2016, the ALJ 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 February 13, 2017, the case was abated pending the Commission's decision in *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).
 11. 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.
 12. 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.

13. On September 6, 2017, the ALJ issued SOAH Order No. 11, granting Mountain Peak's Motion to Withdraw.
14. On September 26, 2017, pursuant to SOAH Order No. 12, Midlothian and Staff 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. The record closed that day.

Notice

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

Midlothian's Tract

16. 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.
17. On purchase and at the time of decertification, the Tract consisted of undeveloped farmland and pasture that had never been platted.
18. At the time of decertification, the Tract was not receiving water service, Midlothian 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.
19. Midlothian has never paid Mountain Peak fees or charges to initiate or maintain water service to the Tract.

Mountain Peak's Property

20. At the time of decertification, Mountain Peak had no customers within the Tract.
21. Mountain Peak has a water line along the southern property line of the Tract and has other facilities in the vicinity of the tract.
22. These facilities and water line were not committed to providing water service to the Tract.
23. Mountain Peak does not have any facilities or lines that have been abandoned due to the decertification of the tract.

24. Mountain Peak intervened and subsequently withdrew as a party to this proceeding.
25. There is no evidence that any of Mountain Peak's property is useless or valueless.


B. Conclusions of Law

1. Midlothian is a municipality in Texas and a retail public utility as defined in Texas Water Code § 13.002(19) and 16 Texas Administrative Code § 24.3(59) that possesses certificate of convenience and necessity number 11706.
2. The Commission has jurisdiction over this matter in accordance with Texas Water Code §§ 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. Texas Water Code § 13.254(d) and 16 Texas Administrative Code § 24.113(o) 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 Texas Water Code § 13.254(d)-(g-1) includes all property, real and personal, and tangible and intangible.
7. The terms "useless" and "valueless" in Texas Water Code § 13.254 should be given their ordinary or plain meaning.
8. Mountain Peak has the burden of proof in this case under 16 Texas Administrative Code § 24.12 and 1 Texas Administrative Code § 155.427.
9. Mountain Peak does not have any property that was rendered useless or valueless under Texas Water Code § 13.254. *See, 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).*

C. 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.

SIGNED October 23, 2017.



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

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 504
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

SERVICE LIST

AGENCY: **Public Utility Commission of Texas (PUC)**
STYLE/CASE: **CITY OF MIDLOTHIAN**
SOAH DOCKET NUMBER: **473-16-5823.WS**
REFERRING AGENCY CASE: **46120**

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE
ALJ STEVEN ARNOLD

REPRESENTATIVE / ADDRESS

PARTIES

STEPHEN JOURNEY
DIRECTOR
PUBLIC UTILITY COMMISSION
LEGAL AND ENFORCEMENT DIVISION
1701 N. CONGRESS AVE., SUITE 8-110 P. O. BOX 13326
AUSTIN, TX 78711
(512) 936-7215 (PH)
(512) 936-7208 (FAX)
stephen.journey@puc.texas.gov

PUBLIC UTILITY COMMISSION OF TEXAS

PATRICK LINDNER
ATTORNEY
DAVIDSON TROILO REAM & GARZA, P.C.
7550 W. INTERSTATE 10, SUITE 800
SAN ANTONIO, TX 78229-5815
(210) 349-6484 (PH)
(210) 349-0041 (FAX)
plindner@dtrglaw.com

CITY OF MIDLOTHIAN

ERIKA GARCIA
PUBLIC UTILITY COMMISSION
LEGAL AND ENFORCEMENT DIVISION
P. O. BOX 13326
AUSTIN, TX 78711
(512) 936-7290 (PH)
(512) 936-7268 (FAX)
erika.garcia@puc.texas.gov

PUBLIC UTILITY COMMISSION OF TEXAS

PAUL M. GONZALEZ
DAVIDSON, TROILO, REAM, & GARZA, P.C.
601 NW LOOP 410, SUITE 100
SAN ANTONIO, TX 78216
(210) 349-6484 (PH)
(210) 349-0041 (FAX)
pgonzalez@dtrglaw.com

CITY OF MIDLOTHIAN
