



Control Number' 46120



Item Number' 8

Addendum StartPage 0

RECEIVED

2016 AUG 23 PM 2: 23

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

BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK
OF

ADMINISTRATIVE HEARINGS

**JOINT EXPEDITED MOTION OF
CITY OF MIDLOTHIAN AND MOUNTAIN PEAK SPECIAL UTILITY DISTRICT
FOR SUSPENSION OF REQUIREMENT TO FILE APPRAISAL REPORTS**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COME, the City of Midlothian, Texas (Midlothian) and Mountain Peak Special Utility District (Mountain Peak), joint movants herein, and request suspension of the pending deadline of August 30, 2016 for the parties to file competing appraisal reports under Texas Water Code (TWC) § 13.254(e) and 16 Texas Administrative Code (TAC) § 24.113(i) & (j)(1). Expedited consideration of this motion is requested.

I. BACKGROUND

On July 1, 2016, Midlothian notified the Commission pursuant to TWC § 13.254(d) & (e) and 16 TAC § 113(h) & (i) of Midlothian's intent to provide retail water service to an approximately 97.7-acre tract of land (Decertified Property) which was decertified from Mountain Peak's water Certificate of Convenience and Necessity (CCN) No. 10908 in PUC Docket No. 44394.¹ The parties previously notified the Commission that they did not reach agreement on a single appraiser.² Unless abated by State Office of Administrative Hearings (SOAH), the parties' separate appraisals are due to be submitted to the Commission no later than 60 days after the date the Notice of Intent to Serve was filed, i.e. on or before **August 30, 2016**, per default deadlines in TWC § 13.254(e) and 16 TAC § 24.113(i) & (j)(1).

On August 22, 2016, the PUC's Commission Advising & Docket Management granted Midlothian's unopposed request for referral of the case to SOAH, without ruling on Midlothian's unopposed request for suspension of the requirement file appraisal reports (Order of Referral,

¹ Tex. Pub. Util. Comm'n, *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 (May 5, 2016).

² See Mountain Peak's Motion to Intervene and Notice of Selection of Appraiser at 2-3 (July 19, 2016) and Midlothian's Notice of Non-Agreement on Single Appraiser at 1 (July 25, 2016).

8

Exhibit 1, hereto).³ Other than the Order of Referral, no orders have been entered by the Commission and no prehearing conference has been scheduled in this proceeding.

II. EXPEDITED MOTION

The Order of Referral *expressly deferred* to SOAH any decision on Midlothian's *unopposed* request to suspend the requirement that appraisal reports be by August 30.⁴ Joint movants believe the immediate abatement of the requirement is both necessary and appropriate in this docket.

In at least two similar contested CCN compensation cases, the Commission has implemented a process to refer the contested issues to SOAH.⁵ The parties believe that there are disputes and fact-intensive issues regarding the nature and scope of the appraisals in the instant matter, which may include: i) whether any of the decertified utility's facilities (Mountain Peak's) have been rendered useless or valueless under TWC § 13.254(d) and 16 TAC § 24.113(h); ii) the proper evaluation of the factors ensuring that the compensation to the decertified utility (Mountain Peak) is just and reasonable under TWC § 13.254(g) and 16 TAC § 24.113(k), and iii) the amount of such compensation to the decertified utility, if any. Because of these contested issues, premature filing of appraisals by the parties will waste resources of two public entities (Midlothian and Mountain Peak) and will not serve to move the hearing process forward, or promote an efficient hearing.

In light of the parties' impending deadlines, to effectuate the expeditious treatment contemplated under TWC § 13.254(d), (e) & (g), to promote the timely and efficient management of this proceeding contemplated under 16 TAC §§ 22.121 and 22.122(a), and to minimize the time and expense being expended prematurely to produce appraisals that may be rendered superfluous, the joint movants respectfully request immediate abatement of any requirement for the filing of appraisals. The parties propose that the deadline for appraisals should be set by a SOAH ALJ in a subsequent scheduling order in this docket.

³ Order of Referral at 1-2 (Aug. 22, 2016).

⁴ *Id.* at 2.

⁵ See Tex. Pub. Util. Comm'n, *Zipp Road Utility Road Company LLC's Notice of Intent to Provide Sewer Service to Are Decertified from Guadalupe-Blanco River Authority in Guadalupe County*, Docket No. 45679 (*Zipp*), Preliminary Order (July 20, 2016) and *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 (*Celina*), Preliminary Order (July 20, 2016).

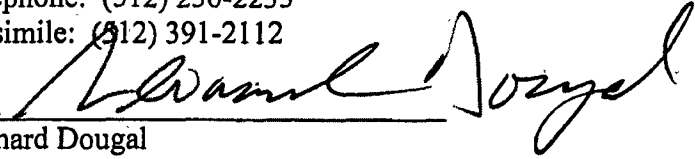
Commission Staff previously declined to support or oppose this request, and the parties believe the Staff remains unopposed. The undersigned counsel is authorized to sign on behalf of the joint parties.

III. PRAYER

THEREFORE, the City of Midlothian and Mountain Peak Special Utility District pray that the SOAH administrative law judge promptly consider and grant this motion, and abate the pending August 30, 2016 deadline.

Respectfully submitted,

JACKSON WALKER, LLP
100 Congress, Suite 1100
Austin, Texas 78701
Telephone: (512) 236-2233
Facsimile: (512) 391-2112

By: 
Leonard Dougal
State Bar No. 06031400
Mallory Beck
State Bar No. 24073899
Email: ldougal@jw.com

David A. Miller
MILLER MENTZER WALKER, PC
P.C.P.O. Box 130
Palmer, Texas 75152
Telephone: (972) 845-2222
Facsimile: (972) 845-3398
Email: dmiller@milmen.com

ATTORNEYS FOR MOUNTAIN PEAK SPECIAL UTILITY DISTRICT

Patrick W. Lindner
Paul M. Gonzalez
DAVIDSON, TRÓILO, REAM & GARZA
601 NW Loop 410, Suite 100
San Antonio, Texas 78216
Telephone: (210) 349-6484
Facsimile: (210) 349-0041
Email: PLindner@dtrglaw.com

ATTORNEYS FOR CITY OF MIDLOTHIAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document is being served on the following parties on August 23, 2016, via facsimile and e-mail:

Attorneys for the Public Utility Commission of Texas:

Sam Chang

Stephen Mack

Attorney-Legal Division

Public Utility Commission

1701 N. Congress

P.O. Box 13326

Austin, Texas 78711-3326

Email: sam.chang@puc.texas.gov

Telephone: 512-936-7261

Email: stephen.mack@puc.texas.gov

Telephone: 512-936-7442

Facsimile: 512-936-7268


Leonard Dougal

EXHIBIT 1
PUC Order of Referral

RECEIVED

P.U.C. DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS

2016 AUG 22 PM 2:16

PUBLIC UTILITY COMMISSION
FILING CLERK

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

ORDER OF REFERRAL

The Public Utility Commission of Texas (Commission) refers this docket to the State Office of Administrative Hearings (SOAH) and requests the assignment of an 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.

In order to develop a list of the issues to be addressed in this docket, as well as any necessary statement of Commission policy, precedent, and/or position on any threshold legal or policy issue(s) relevant to this proceeding City of Midlothian and Mountain Peak Special Utility District, shall, and the Commission Staff and any other interested party may, file with the Commission a list of issues to be addressed in the docket by **September 6, 2016**. This pleading may also (1) identify any issue(s) which should not be addressed in the docket, and (2) identify any threshold legal and/or policy issue(s) which should be briefed for purposes of a preliminary order. Specific explanations should support proposals included in the pleading pursuant to (1) and (2). Parties shall not file responses to any pleading submitted in response to this Order, unless specifically requested.

All subsequent pleadings in this docket must contain both the SOAH and PUC docket numbers to allow for efficient processing. Parties shall make filings in accordance with 16 Tex. Admin. Code § 22.71(c) (TAC) regarding the number of copies to be filed or 16 TAC § 22.71(d) regarding the number of confidential items to be provided.

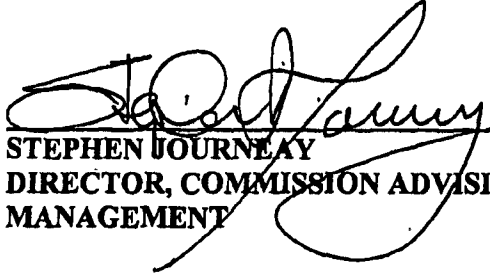
The Commission will issue and provide to SOAH a preliminary order which includes a list of issues and areas that must be addressed in this proceeding, pursuant to Tex. Gov't Code

Ann. § 2003.049(e) (West 2016) (APA), and any necessary statement of Commission policy, precedent, or position on threshold issues, or combination thereof, relevant to this proceeding, pursuant to APA § 2001.058(c). The Commission will consider and possibly adopt a preliminary order in this docket in the open meeting currently scheduled to convene on **September 22, 2016**.

The Commission defers to the SOAH ALJ for a ruling on the motion to intervene of Mountain Peak Special Utility District and the motion of the City of Midlothian for suspension of the requirement to file appraisal reports.

SIGNED AT AUSTIN, TEXAS the 22^d day of August 2016.

PUBLIC UTILITY COMMISSION OF TEXAS


STEPHEN JOURNEY
DIRECTOR, COMMISSION ADVISING & DOCKET
MANAGEMENT