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

ORDER

This Order addresses whether Mountain Peak Special Utility District had any property rendered useless or valueless by the decertification of a 97.7-acre tract of land from its water certificate of convenience and necessity (CCN) in Docket No. 44394.¹ This Order also addresses the amount of compensation due to Mountain Peak for any such property. The City of Midlothian filed a notice of intent to provide water service to the 97.7-acre tract decertified in Docket No. 44394.² The matter was referred to the State Office of Administrative Hearings (SOAH) to determine what property, if any, had been rendered useless and valueless by the decertification. Prior to hearing, Mountain Peak withdrew its intervention seeking compensation for its decertified property. The administrative law judge (ALJ) issued a proposal for decision in this docket.³ In the proposal for decision, the ALJ recommended that no property was rendered useless and valueless to Mountain Peak. Except as discussed in this order, the Commission adopts the proposal for decision, including findings of fact and conclusions of law.

I. Background and Procedural History

On July 1, 2016, the City of Midlothian filed a notice of intent to provide water service to the 97.7-acre tract decertified in Docket No. 44394. The matter was referred to the State Office of Administrative Hearings (SOAH) to determine what property, if any, had been rendered useless and valueless by the decertification. Mountain Peak filed and was granted intervention.

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).

² Notice of Intent (Jul. 1, 2016).

³ Proposal for Decision (Oct. 25, 2017) (PFD).

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However, the SOAH administrative law judge (ALJ) abated this proceeding until the Commission issued a final order in the *City of Celina*⁴—the first case of this type to go to hearing and be decided on the merits by the Commission. On June 29, 2017, the Commission issued its order on rehearing in *Celina*, including a number of significant rulings regarding the application of Texas Water Code (TWC) § 13.254 subsections (d) and (g) that are controlling on the issues in this docket. In light of the Commission’s holdings in *Celina*, Mountain Peak filed a motion to withdraw its intervention seeking compensation for its decertified acreage.⁵ On September 6, 2017, Mountain Peak's motion to withdraw was granted.⁶

Because Mountain Peak withdrew its intervention for compensation, Commission Staff, joined by Midlothian, filed a motion for summary decision under 16 TAC § 22.182(b), on the grounds that Midlothian’s evidence—no property had been rendered valueless or useless as a result of the decertification—became uncontested and there were no longer any genuine issues of material fact. The SOAH ALJ gave Commission Staff and Midlothian the option of an order granting summary decision on this issue and a remand to the Commission or the filing of proposed findings of fact and conclusions of law for preparation of a PFD. The parties filed proposed findings of fact and conclusions of law, and the SOAH ALJ granted admission of Midlothian’s notice of intent and the direct testimony of Michael G. Adams and Victoria R. Harkins, Ph.D., P.E. into evidence. The record closed on September 26, 2017.⁷ The ALJ issued a proposal for decision recommending that no property was rendered useless and valueless to Mountain Peak.

II. Discussion

The Commission finds that Mountain Peak does not have any property that was rendered useless or valueless because of the decertification in Docket No. 44394. The Commission further finds that Midlothian does not owe any compensation to Mountain Peak, and the City may provide water service to the tract that was decertified in Docket No. 44394.

⁴ *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, Order on Rehearing (Jun. 29, 2017) (*Celina*).

⁵ Mountain Peak Special Utility District’s Motion to Withdraw as a Party (Aug. 30, 2017).

⁶ SOAH Order No. 11 (Sep. 6, 2017).

⁷ SOAH Order No. 13 (Oct. 3, 2017).

The Commission adopts the proposal for decision, including findings of fact and conclusions of law, except for the following changes and additions. The Commission adds new conclusion of law 3A to reflect that the notice given in proposed finding of fact 15 complies with the Administrative Procedures Act and Commission rules, and new conclusion of law 5A to reflect the proposal for decision's discussion and the duties of the Commission under the TWC. In addition, because no party filed any exceptions to the proposal for decision, ordering paragraph 3 is modified to delete any references to requests for entry of specific findings of fact or conclusions of law. Finally, the Commission makes non-substantive changes to findings of fact and conclusions of law for such matters as capitalization, spelling, punctuation, style, grammar, and readability.

The Commission adopts the following findings of fact and conclusions of law:

III. 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 Certificate of Convenience and Necessity by Expedited Release in Ellis County*, Docket No. 44394, Order (May 1, 2015), approving the City of Midlothian's petition for expedited release of approximately 97.7 acres from CCN No. 10908 of Mountain Peak Special Utility District (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 Commission Staff jointly filed proposed findings of fact, conclusions of law, and ordering paragraphs on the sole question of 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.

IV. Conclusions of Law

1. Midlothian is a municipality in Texas and a retail public utility as defined in Texas Water Code (TWC) § 13.002(19)⁸ and 16 Texas Administrative Code (TAC) § 24.3(59) 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 Tex. Gov't Code Ann. §§ 2001.058 and 2003.049.⁹
- 3A. Notice of the hearing was provided consistent with Tex. Gov't Code Ann. § 2001.052 and 16 TAC § 24.106.
4. This docket was processed in accordance with the requirements of the TWC, the Administrative Procedure Act,¹⁰ and the Commission's rules.
5. TWC § 13.254(d) and 16 TAC § 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.
- 5A. Under TWC § 13.254(e) and 16 TAC § 24.113(i), the Commission is required to determine the amount of monetary compensation, if any, that must be paid to a decertified retail public utility for its property rendered useless or valueless as a result of decertification when another retail public utility seeks to provide service to a previously decertified area.
6. The term property in TWC § 13.254(d)-(g-1) 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 Tex. Water Code Ann. § 13.002(19) (West 2008 & Supp. 2017) (TWC).

⁹ Tex. Gov't Code Ann. §§ 2001.058 and 2003.049 (West 2016 & Supp. 2017).

¹⁰ Tex. Gov't Code Ann. §§ 2001.001-.902 (West 2016 & Supp. 2017) (APA).

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. *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).

V. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:


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 and any other request for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 17th day of November 2017.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



BRANDY MARTY MARQUEZ, COMMISSIONER



ARTHUR C. D'ANDREA, COMMISSIONER