

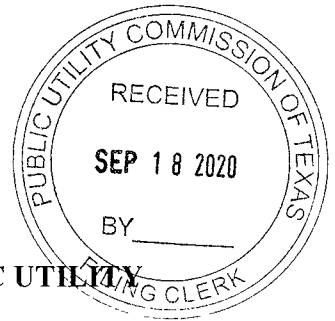


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PUC DOCKET NO. 51158

PETITION OF JOHNSTON & ASSOCIATES, LLP AND FRANK CARVALHO TO AMEND MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN JOHNSON COUNTY BY STREAMLINED EXPEDITED RELEASE § **BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

RESPONSE OF JOHNSTON & ASSOCIATES, LLP AND FRANK CARVALHO TO MOUNTAIN PEAK SUD'S OBJECTION TO COMMISSION STAFF'S RECOMMENDATION OF ADMINISTRATIVE COMPLETENESS

COMES NOW, Johnston & Associates, LLP and Frank Carvalho, jointly, ("Petitioners"), and file with the Public Utility Commission ("Commission") this Response to Mountain Peak Special Utility District's ("Mountain Peak") Objection to Commission Staff's Recommendation of Administrative Completeness, and provides as follows:

I. Background

On August 7, 2020, the Johnson Legal Group and Frank Carvalho filed a Petition for Streamlined Expedited Release in this matter.

On September 10, 2020, Commission Staff filed its Recommendation on Administrative Completeness and Notice, in which it advised the Commission that the Petition is administratively complete, but that it should be restyled to correct one of the parties named in the petition. Staff correctly recognized that, although the attached affidavit and deed correctly referred to Johnson & Associates, LLP, the Petition inadvertently used the generic name of the Johnson Legal Group instead of the formal legal name of Johnson & Associates, LLP.

Also, on September 10, 2020, without citation to any case law, Mountain Peak asserted that the Petition is fatally defective because the name Johnson Legal Group was used in the Petition.

On September 15, 2020, Petitioners filed a First Amended Petition, correcting the name.

II. Argument

An “amended pleading replaces and supersedes the previous pleading, and once an amended pleading is filed, earlier pleadings are no longer part of the proceedings.” *State v. Mehendale*, NO. 03-99-00224-CV, 2000 Tex. App. LEXIS 573, at *17 (Tex. App. – Austin, Jan. 27, 2000, pet. dismiss’d) (citing Tex. R. Civ. P. 65; *Drake Ins. Co. v. King*, 606 S.W.2d 812, 817 (Tex. 1980)). Further, an “amended pleading replaces the previous pleading and ***renders it ineffective.***” *In re D.L.Z.*, No. 09-09-00148-CV, 2010 Tex. App. LEXIS 2917, at *6 (Tex. App. – Beaumont, Apr. 22, 2010) (emphasis added) (citing Tex. R. Civ. P. 65; *Wren v. Tex. Employment Comm’n*, 915 S.W.2d 506, 508 (Tex. App.--Houston [14th Dist.] 1995, no writ).

The filing of the First Amended Petition corrected any errors that were in the Original petition, and Mountain Peak’s objections are, therefore, moot.

With respect to a plaintiff being incorrectly named, the Texas Supreme Court has stated:

[Texas Rules of Civil Procedure 28] requires that the correct legal name be substituted, but it does not mandate the procedural method by which substitution may be accomplished. We said in [*Chilkewitz v. Hyson*, 22 S.W.3d 825 (Tex. 1999)] that, before judgment, the plaintiff “must *amend* the petition to add the correct legal name” of the party using an assumed name. *Chilkewitz*, 22 S.W.3d at 829 (emphasis added). But we did not mean to imply that amendment is the sole method by which the required substitution may be made. Under Rule 28, the “true name” may be substituted “on a motion by any party or on the court’s own motion.” TEX. R. CIV. P. 28. Therefore, the correct legal name may be substituted by filing either a motion requesting substitution **or a pleading that substitutes the correct legal name** for the assumed name.

Sixth RMA Partners, L.P. v. Sibley, 111 S.W.3d 46, 53 (Tex. 2003) (emphasis added).

Even if the Amended Petition that was filed on September 15, 2020 is not sufficient, according to *Sixth RMA Partners*, the court can make its own motion to amend a name.

Finally, Mountain Peak states in its objections that “Texas Water Code § 13.2541(b) specifically allows ‘an owner’ of a tract of land that is at least 25 acres and that is not receiving water or sewer service to petition for expedited release.”¹ The statute does not say “all owners” –

¹ Mountain Peak’s Objections at 1-2.

it says “the owner.” There is no dispute that Frank Carvalho is an owner, and therefore qualifies as a person who was authorized to file the Petition (with or without Johnson & Associates, LLP).

III. Prayer

Mountain Peak’s Objections should be overruled as moot. To the extent they are not moot, the objections have been cured and should be denied on that basis. Although Petitioner does not deem it necessary, to the extent the ALJ deems is necessary, Petitioner requests that that ALJ correct the name on the ALJ’s own Motion.

Respectfully submitted,

/s/ David J. Tuckfield

ANDY BARRETT & ASSOCIATES, PLLC

Andrew N. Barrett

State Bar No. 01808900

3300 Bee Cave Road, Suite 650 #189

Austin, Texas 78746

512-600-3800

512-330-0499 FAX

THE AL LAW GROUP, PLLC

David J. Tuckfield

12400 Highway 71 West

Suite 350-150

Austin, TX 78738

(512) 576-2481

(512) 366-9949 Facsimile

david@allawgp.com

ATTORNEYS FOR PETITIONERS

Johnson & Associates, LLP

Frank Carvalho

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing First Amended Petition was served on Mountain Peak Special Utility District on this the 17th day of September 2020, as follows:

Leonard H. Dougal
Jackson Walker LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Telephone: (512) 236-2233
Facsimile: (512) 391-2112
E-mail: ldougal@jw.com

email

Justin C. Adkins
State Bar No. 24101070
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7289
(512) 936-7268 (facsimile)
Justin.Adkins@puc.texas.gov

email

/s/ David J. Tuckfield
David J. Tuckfield