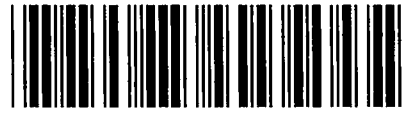




Control Number: 51158



Item Number: 12

Addendum StartPage: 0



DOCKET NO. 51158

**PETITION OF JOHNSTON LEGAL §
GROUP AND FRANK CARVALHO TO §
AMEND MOUNTAIN PEAK SPECIAL §
UTILITY DISTRICT’S CERTIFICATE §
OF CONVENIENCE AND NECESSITY §
IN JOHNSON COUNTY BY §
STREAMLINED EXPEDITED §
RELEASE §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF’S RESPONSE TO ORDER NO. 3

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Order No. 3. In support thereof, Staff respectfully shows the following:

I. BACKGROUND

On August 11, 2020, Johnston Legal Group (Johnston) and Frank Carvalho (Carvalho) (collectively, Petitioners) filed a petition for streamlined expedited release to amend Mountain Peak Special Utility District’s (MPSUD) water Certificate of Convenience and Necessity (CCN) No. 10908 in Johnson County, pursuant to Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h) (Petition). Petitioners assert that the tract of land in question is at least 25 contiguous acres, is not receiving water service, and is located in Johnson County, which is a qualifying county.

On September 10, 2020, in response to Order No. 1, Staff filed its Recommendation on Administrative Completeness and Notice (Staff’s Recommendation). Staff recommended that the Petition be found administratively complete and that notice provided by Petitioners be found sufficient. Staff further recommended restyling the docket to *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*.

On the same day, MPSUD filed its Objection to Commission Staff’s Recommendation of Administrative Completeness (Objection) alleging that: (1) the Petition is defective on its face because it was not filed by “an owner” as contemplated by TWC § 13.2541; and (2) that restyling

the Petition will not resolve the ownership issue. MPSUD requested dismissal of the petition without prejudice.¹

On September 11, 2020, the Administrative Law Judge (ALJ) issued Order No. 3, requiring Petitioners to file a response to MPSUD's Objection by September 18, 2020. The Order also required Staff to file a reply to both MPSUD's Objection and Petitioners' response to same by September 24, 2020.

On September 17 and 18, 2020, respectively, Petitioners filed a First Amended Petition² (Amended Petition) and Response to MPSUD's Objection (Petitioner's Response).³

In accordance with the September 24, 2020 deadline established in Order No. 3, this pleading is timely filed.

II. STAFF'S RESPONSE

Staff acknowledges that the August 11, 2020 Petition named Johnston Legal Group as one of the Petitioners. However, Staff asserts that the inadvertent use of a related name in the styling of the docket and recitation of facts is not fatal to the Petition. Both the Petition and Amended Petition demonstrate the owners of the tract of land in question, as required by Texas Water Code § 13.2541(b) and 16 TAC § 24.245(h).

Included with the August 11, 2020 Petition was a certified copy of a Warranty Deed, dated December 14, 2005, transferring an undivided one-third interest in the 59 acres of land at issue in this docket from R.J. Carvalho d/b/a R-H Land Development & Company to Johnston & Associates, LLP, then located at 307 W. Seventh Street, Suite 800, Fort Worth, Texas 76102 (2005 Deed).⁴ Also filed with the Petition was a Warranty Deed, dated October 13, 2011, transferring to Frank Carvalho "All remaining interest (66.7% undivided interest)" of the same 59 acre tract

¹ Mountain Peak SUD's Objection to Commission Staff's Recommendation of Administrative Completeness (Sep. 10, 2020).

² First Amended Petition of Johnston & Associates, LLP and Frank Carvalho to Amend Mountain Peak SUD's Water Certificate of Convenience and Necessity in Johnson County by Streamlined Expedited Release Pursuant to Texas Water Code §13.2541 and 16 TAC §24.245(l) (Sep. 17, 2020).

³ Response of Johnston & Associates, LLP and Frank Carvalho to Mountain Peak SUD's Objection to Commission Staff's Recommendation of Administrative Completeness (Sep. 18, 2020).

⁴ Petition, Ex. A at 6.

previously granted to Johnston & Associates (2011 Deed).⁵ The 2011 Deed explicitly provides that the grant is “[s]ubject to 33.3% undivided interest owned by Johnston & Associates, LLP.”⁶ In addition, the 2011 Deed provides instructions that after recording, the deed is to be returned to Michael Johnston, JOHNSTON LEGAL GROUP PC in Fort Worth, Texas 76117.

Exhibit D to the Petition is the signed and notarized affidavit of Michael Johnston, who attested on June 30, 2020 to being the Managing Partner of Johnston & Associates, LLP (Johnston’s Affidavit).⁷ Exhibit E to the Petition is a similar affidavit from Mr. Carvalho, attesting to ownership of the tract of land at issue in this matter.⁸

The supporting documentation filed with the Petition clearly indicates that Johnston & Associates, LLP is an owner of the subject property, and that Petitioners intended Johnston & Associates, LLP to be a party to this docket. Furthermore, Petitioners acknowledged that they inadvertently used “the generic name of the Johnson Legal Group instead of the formal legal name of Johnson [sic] & Associates, LLP.”⁹ Petitioners have attempted to rectify their initial error by filing their Amended Petition, which eliminates reference to Johnston Legal Group, replacing it with Johnston & Associates, LLP.

Petitioners have clearly indicated that Johnston & Associates, LLP is the proper party in this docket and that the reference to Johnston Legal Group was inadvertent and accidental. Therefore, Staff continues to recommend that the Petition be found sufficient in order to maintain the streamlined nature of this proceeding. If the ALJ agrees with MPSUD that the Petition as filed is defective, then Staff recommends a finding of insufficiency with an opportunity to cure rather than dismissal for two reasons. First, MPSUD has not identified the specific subsection of under which it is seeking dismissal 16 TAC § 22.181. Second, Petitioners have already filed the Amended Petition correcting their oversight.

⁵ *Id* at 2.

⁶ *Id*

⁷ Petition, Ex. D.

⁸ Petition, Ex. E.

⁹ *Id* at 1.

III. CONCLUSION

On the aforementioned basis, Staff respectfully recommends that MPSUD's request that the Petition be dismissed on the grounds of being defective be denied. Staff also reiterates its request that the docket be restyled to *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* as provided in Staff's Recommendation filed on September 10, 2020.

Dated: September 24, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 51158
CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on September 24, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Justin C. Adkins
Justin C. Adkins