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Item Number: 14

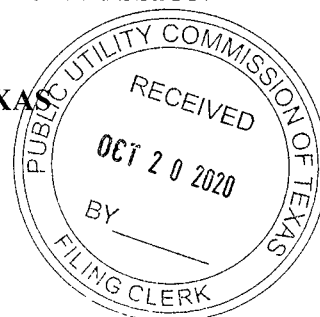
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PUC DOCKET NO. 51158

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 § § § § § § § §

PUBLIC UTILITY COMMISSION

OF TEXAS



MOUNTAIN PEAK SUD'S RESPONSE TO THE FIRST AMENDED PETITION

Mountain Peak Special Utility District ("Mountain Peak") hereby submits this Response (the "Response") to the First Amended Petition of Johnston & Associates, LLP and Frank Carvalho (collectively "Petitioners"), filed on September 17, 2020, with the Public Utility Commission of Texas ("the Commission"). The First Amended Petition (hereinafter referred to as "the Petition") seeks the expedited release of an approximately 59-acre tract (the "Property") that lies within the boundaries of Mountain Peak's existing Certificate of Convenience and Necessity ("CCN") No. 10908 in Johnson County.¹

On September 30, 2020, and pursuant to Order No. 5, the Administrative Law Judge ("ALJ") deemed the Petition to be administratively complete and directed Mountain Peak to respond by October 20, 2020.² This Response is therefore timely filed.

¹ The original petition in this Docket was filed on August 11, 2010, and included as named petitioners the Johnston Legal Group and Frank Carvalho. After Commission Staff recommended that the original petition be deemed administratively complete, Mountain Peak objected on the basis that the Johnston Legal Group was not an owner of the Property and was therefore not permitted to seek decertification. The Administrative Law Judge ordered the Johnston Legal Group and Frank Carvalho to respond to Mountain Peak's objection. Instead, Johnston & Associates—the correctly identified co-owner of the property—and Frank Carvalho filed the First Amended Petition. This Response is directed to the amended petition, but for simplicity will refer to the filing as "the Petition."

² *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 Expedited Release*, Docket No. 51158, Order No. 5.

I. STATEMENT OF POSITION

At the outset, it is important to note that Mountain Peak, a regional water supplier currently serving in excess of 6000 customer connections, is fully capable of providing continuous and adequate retail water service to the Property. In addition to its existing water supplies, Mountain Peak is deep into the planning process for the design and construction of a major new 24" water transmission line to transport water from a new pump station at the City of Mansfield and deliver the water to a new pump station northeast of the City of Venus, and within two miles of the Property. The new pump stations are being designed for a through-put capacity of 10 million gallon per day (MGD), and the entire project is intend to serve growth in and around the area of the Property.

Nonetheless, Petitioner has opted to forgo retail service from the long-standing and stable existing regional water provider and instead seek decertification. That choice will come with consequences. In particular, if the Commission grants the Petition, Petitioners will be required to pay compensation for the adverse impacts of the decertification on Mountain Peak as authorized by law. Therefore, if the Commission grants the Petition, it should then initiate the compensation phase of these proceedings to determine the amount of just and adequate compensation that Petitioners will owe to Mountain Peak for the decertification, according to Texas Water Code § 13.254(g) and Commission Rule 24.245(j).³

³ Commission Rule 24.245(i) (requiring the amount of compensation to be determined "after the commission has granted a petition for streamlined expedited release").

**II. MOUNTAIN PEAK MUST BE PROPERLY COMPENSATED
IF THE PROPERTY IS DECERTIFIED FROM ITS CCN**

As typical of other regional water providers, Mountain Peak has undertaken other planning efforts to ensure its water system can meet the needs of a growing population. If the Commission grants the Petition, Mountain Peak intends to seek full compensation, as allowed by law, due to the decertification, including for planning, design, and construction of the service facilities that are allocable to service to the Property.

At this stage in the process, however, the amount of monetary compensation owed to Mountain Peak has not yet been determined. In the event the Petition is not denied, the Commission should ensure that Mountain Peak, as a retail public utility with substantial service obligations to existing customers within its CCN, receives just and adequate compensation as part of the decertification process. The property of Mountain Peak subject to compensation can be any property that has been impacted by the decertification as set forth in Texas Water Code § 13.254(g), and is no longer limited to property that is rendered “useless or valueless.”⁴

As Commission Rule 24.245(j) makes clear, the following factors, as required by Texas Water Code § 13.254(g), must be considered in valuing the real and personal property of the decertified utility.

First, the value of Mountain Peak’s affected real property must be determined according to the standards set forth in chapter 21 of the Texas Property Code governing actions in eminent domain.⁵

Second, the value of Mountain Peak’s affected personal property must be determined considering:

⁴ The recent enactment of S.B. 2272, which became effective September 1, 2019, eliminates the concept of “useless and valueless” property from Texas Water Code §§ 13.254, 13.2541.

⁵ *Id.* § 13.254(g).

- (A) the amount of the former CCN holder's debt allocable to service to the removed area;
- (B) the value of the service facilities belonging to the former CCN holder that are located within the removed area;
- (C) the amount of any expenditures for planning, design, or construction of the service facilities of the former CCN holder that are allocable to service to the removed area;
- (D) the amount of the former CCN holder's contractual obligations allocable to the removed area;
- (E) any demonstrated impairment of service or any increase of cost to consumers of the former CCN holder remaining after a CCN revocation or amendment under this section;
- (F) the impact on future revenues lost from existing customers;
- (G) necessary and reasonable legal expenses and professional fees, including costs incurred to comply with Texas Water Code §13.257(r); and
- (H) any other relevant factors as determined by the Commission.⁶

Of course, the actual calculation of the proper compensation will be determined in the next phase of this process by an appraiser, which may be an individual agreed to by the parties or, if not agreed, using a process where each party selects an appraiser and a third appraiser makes a determination based upon the other two appraisals.⁷

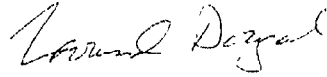
III. CONCLUSION AND REQUESTED RELIEF

Based on the foregoing, Mountain Peak respectfully requests that, if the Commission grants the Petition, it then proceed to the compensation phase of these proceedings to initiate the appraisal process, and following such appraisal, award compensation to Mountain Peak. Mountain Peak additionally requests all other relief to which it may be entitled.

⁶ Commission Rule 24.245(j).

⁷ *Id.* §§ 13.2541(g), (i).

Respectfully submitted,

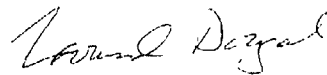


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ATTORNEYS FOR MOUNTAIN PEAK
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CERTIFICATE OF SERVICE

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on October 20, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Leonard H. Dougal