



Control Number: 51158



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DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Katie Moore *KCM*
Administrative Law Judge

RE: **Open Meeting of January 29, 2021**
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*

DATE: January 4, 2021

Because of the COVID-19 state of disaster, the Commission has moved to a work-at-home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Friday, January 29, 2021, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties must file corrections or exceptions to the Proposed Order on or before Friday, January 15, 2021.

If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 51158

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

PROPOSED ORDER

This Order addresses the petition by Johnston & Associates, LLP and Frank Carvalho for streamlined expedited release of a tract of land they co-own in Johnson County from the service area under water certificate of convenience and necessity (CCN) number 10908. Mountain Peak Special Utility District is the holder of CCN number 10908. For the reasons stated in this Order, the Commission releases the tract of land from Mountain Peak's certificated service area. In addition, the Commission amends Mountain Peak's CCN number 10908 to reflect the removal of this property from the service area.

Following entry of this Order, the Commission will determine the amount of compensation, if any, to be awarded to Mountain Peak, which will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioners

1. Johnston & Associates is a Texas limited liability company registered with the Texas secretary of state under filing number 803850088.
2. Mr. Carvalho is an individual.

CCN Holder

3. Mountain Peak is a special utility district operating under chapter 65 of the Texas Water Code.
4. Mountain Peak holds CCN number 10908 that obligates it to provide retail water service in its certificated service area in Johnson County and other surrounding counties.

Petition

5. On August 11, 2020, the petitioners filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 10908.
6. The petition includes a warranty deed dated October 13, 2011, a warranty deed dated December 14, 2005, the affidavit, dated June 30, 2020, of Michael Johnston, the managing partner of Johnston & Associates, the affidavit, dated June 25, 2020, of Mr. Carvalho, vicinity maps of the tract of land; a metes-and-bounds description and survey plat of the tract of land; and a compact disk with mapping information.
7. On September 17, 2020, the petitioners filed an amended petition.
8. The amended petition includes the aforementioned documents and corrects the name of one of the petitioners from the Johnston Legal Group to Johnston & Associates, LLP.
9. In Order No. 5 filed on September 30, 2020, the administrative law judge (ALJ) found the first amended petition administratively complete.
10. In Order No. 7 filed on November 13, 2020, the ALJ rescinded her earlier finding of administrative completeness.
11. In Order No. 9 filed on December 31, 2020, the ALJ found the supplemented application administratively complete.

Notice

12. The petitioners sent a copy of the original petition by certified mail, return receipt requested, to the CCN holder on August 7, 2020.
13. The petitioners sent a copy of the amended petition by certified mail, return receipt requested, to the CCN holder on September 15, 2020.
14. In Order No. 5 filed on September 30, 2020, the ALJ found the notice sufficient.

Intervention and Response to Petition

15. In Order No. 2 filed on September 1, 2020, the ALJ granted the CCN holder's motion to intervene.
16. The CCN holder filed a response to the amended petition on October 20, 2020.
17. The response is not supported by a notarized affidavit or other attachments.

The Tract of Land

18. The tract of land for which the petitioners seek expedited release is approximately 59 acres and is in Johnson County.
19. The petitioners' tract of land is located with the CCN holder's certificated service area.

Ownership of the Tract of Land

20. Mr. Carvalho acquired a 66.7% undivided ownership interest in the tract of land via a warranty deed dated October 13, 2011.
21. Johnston & Associates acquired a 33.3% undivided ownership interest in the tract of land via a warranty deed dated December 14, 2005.

Qualifying County

22. Johnson County abuts Tarrant County.
23. Tarrant County has a population greater than one million people.

Water Service

24. The tract of land is not receiving actual water service from the CCN holder.
25. There are no water connections or meters on the tract of land.
26. The petitioners have never requested that the CCN holder provide water service to the tract of land, have never paid any fees or charges to the CCN holder to initiate or maintain water service, and do not have an account with the CCN holder for water service.
27. The CCN holder has sufficient water supplies to serve the tract of land and is currently in the planning process for the design and construction of a new water transmission line to transfer water to a new pump station within two miles of the tract of land.
28. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
29. The CCN holder has no facilities or lines that provide water service to the tract of land.
30. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

31. On December 21, 2020, Commission Staff filed a supplemental final recommendation that included a certificate and map on which it identified the tract of land in relationship to the CCN holder's service area.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this petition for streamlined expedited release under TWC §§ 13.254 and 13.2541.
2. The petitioners provided notice of the petition in compliance with 16 TAC § 24.245(h)(3)(F).
3. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC §§ 13.254 and 13.2541 or 16 TAC § 24.245(h)(7).
4. Petitions for streamlined expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are not contested cases.
5. Landowners seeking streamlined expedited release under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are required to submit a verified petition through a notarized affidavit, and the CCN holder may submit a response to the petition.
6. To obtain release under TWC § 13.2541(b), a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.
7. The petitioners own the tract of land, which is at least 25 acres, for which they seek streamlined expedited release through the petition.
8. Johnson County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
9. The tract of land is not receiving water service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).

10. The petitioners are entitled under TWC § 13.2541(b) to the release of its tract of land from the CCN holder's certificated service area.
11. After the date of this Order, the CCN holder has no obligation under TWC § 13.254(h) to provide retail sewer service to the petitioners' tract of land.
12. The Commission has no authority to decertificate any facilities or equipment owned and operated by the CCN holder to provide retail water service or retail sewer service through the streamlined-expedited-release process under Texas Water Code § 13.2541(b).
13. The Commission processed the petition in accordance with the TWC and Commission rules.
14. Under TWC § 13.257(r) and (s), the CCN holder is required to record certified copies of the approved certificate and map, along with a boundary description of the service area, in the real property records of Johnson County no later than the 31st day after the date the CCN holder receives this Order.
15. A retail public utility may not under TWC § 13.254(d) provide retail water service or retail sewer service to the public within the tract of land unless just and reasonable compensation under TWC § 13.254(g) has been paid to the CCN holder.

III. Ordering Paragraphs

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

1. The Commission releases the tract of land identified in the petition from the CCN holder's service area under CCN number 10908.
2. The Commission does not decertificate any of the CCN holder's equipment or facilities that may lay on or under the petitioners' tract of land.
3. The Commission amends CCN number 10908 in accordance with this Order.
4. The Commission approves the map filed by Commission Staff on December 21, 2020.
5. The Commission approves the certificate filed by Commission Staff on December 21, 2020.

6. The CCN holder must file in this docket proof of the recording required in TWC § 13.257(r) and (s) within 45 days of the date of this Order.
7. The proceeding to determine the amount of compensation, if any, that should be awarded to the CCN holder commences with the filing of this Order in accordance with the schedule adopted in Order No. 5. Any decision on compensation will be made by a separate order.
8. The Commission denies all other motions and any other requests for general or specific relief not expressly granted by this Order.

Signed at Austin, Texas the _____ day of January 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER