



Control Number: 51158



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**PUC 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**

**MOUNTAIN PEAK SUD'S OBJECTION TO COMMISSION STAFF'S  
RECOMMENDATION OF ADMINISTRATIVE COMPLETENESS**

Mountain Peak Special Utility District ("Mountain Peak") hereby submits this Objection to Commission Staff's Recommendation of Administrative Completeness. On August 11, 2020, Johnston Legal Group and Frank Carvalho (collectively "Johnston") filed with the Public Utility Commission of Texas ("the Commission") a petition for 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 (the "Petition"). 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 a defect in the parties named in the petition. For the reasons explained herein, the Petition is fatally defective, and Mountain Peak therefore objects to Commission Staff's conclusion and recommendation that the Petition is administratively complete. This objection is timely.

**I. THE PETITION IS DEFECTIVE BECAUSE IT IS NOT FILED BY "AN  
OWNER" OF A TRACT OF LAND SUBJECT TO TEXAS WATER CODE § 13.2541.**

The Petition is defective because Petitioner Johnston Legal Group has not demonstrated that it is an owner of the subject Property. 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

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petition for expedited release of the area from a certificate of public convenience and necessity.<sup>1</sup> As Commission Staff acknowledges, one of the Petitioners, the Johnston Legal Group, has shown no legal entitlement to the Property.<sup>2</sup> Rather, the evidence submitted with the Petition demonstrates that a different party, Johnston & Associates, LLP, owns the property.<sup>3</sup> Specifically, the warranty deed offered to purportedly prove Johnston Legal Group's ownership instead lists "Johnston & Associates, LLP" as the grantee,<sup>4</sup> and the affidavit of Michael Johnston states that "Johnston & Associates, LLP," *not* the Johnston Legal Group, is the co-owner of the Property.<sup>5</sup>

On the face of the documents submitted with the Petition, Petitioner Johnston Legal Group has not proven ownership of the Property and is therefore not statutorily qualified to seek its decertification under Texas Property Code § 13.2541. The Petition is therefore defective and not administratively complete. Mountain Peak respectfully disagrees with Commission Staff's conclusion and recommendation that the Petition is administratively complete.

**II. COMMISSION STAFF'S RECOMMENDATION TO "RESTYLE THE DOCKET" WILL NOT CURE THE DEFECT IN THE PETITION.**

To remedy the defect it has identified, Commission Staff recommends that this docket be "restyled" to substitute Johnston & Associates, LLP in place of the Johnston Legal Group as petitioner. Respectfully, simply restyling the docket will not cure the defect *in the petition* and would not comport with Commission Rules concerning parties. The Commission should instead dismiss the petition without prejudice to refileing.

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<sup>1</sup> TEX. WATER CODE § 13.2541(b).

<sup>2</sup> Commission Staff's Recommendation on Administrative Completeness and Notice at 3.

<sup>3</sup> *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.

<sup>4</sup> *Id.* at Ex. A.

<sup>5</sup> *Id.* at Ex. D.

A petition filed with the Commission sets forth the parties seeking relief therein. Rule 22.102 defines “parties” to a proceeding before the Commission as being classified into the following categories:

- (1) applicants, or complainants;
- (2) respondents;
- (3) intervenors; and
- (4) Commission staff representing the public interest.<sup>6</sup>

Additionally, Rule 22.2 defines an “applicant” as a “person, including commission staff, *who seeks action from the commission by written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.*”<sup>7</sup>

The written application in this docket is a petition stating that *the Johnston Legal Group* is seeking action from the Commission. But as explained herein and as recognized by Commission Staff, the Johnston Legal Group has no legal entitlement to the relief it seeks. The party that does—Johnston & Associates, LLP—has not invoked the Commission’s authority. In particular, Johnston & Associates, LLP—the co-owner of the subject Property—*has not* initiated a proceeding in the Commission by filing a written application seeking action from the Commission. The Petition, which seeks action on behalf of a party who has no statutory entitlement to the relief it seeks, is fatally defective. The Commission should dismiss the Petition without prejudice to the proper party, Johnston & Associates, LLP, submitting a complete and accurate petition for streamlined expedited release.

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<sup>6</sup> Pub. Util. Comm’n R. 22.102.

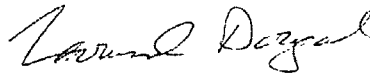
<sup>7</sup> Pub. Util. Comm’n R. 22.2 (emphasis added).

**III. CONCLUSION AND REQUESTED RELIEF**

Based on the foregoing, Mountain Peak respectfully requests that the Commission dismiss Johnston Legal Group and Frank Carvalho's Petition for Streamlined Expedited Release.

Respectfully submitted,

JACKSON WALKER L.L.P.



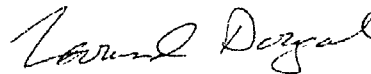
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Leonard H. Dougal  
State Bar No. 06031400  
Danica Milios – State Bar No. 00791261  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
Telephone: (512) 236-2233  
Facsimile: (512) 391-2112  
Email: ldougal@jw.com  
Email: dmilios@jw.com

**ATTORNEYS FOR MOUNTAIN PEAK  
SPECIAL UTILITY DISTRICT**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the forgoing was served on all parties of record in this proceeding on the 10th day of September, 2020 by hand delivery, facsimile, electronic mail, First Class U.S. Mail, or overnight delivery.



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Leonard H. Dougal