



Control Number: 51355



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**DeAnn T. Walker**  
Chairman  
**Arthur C. D'Andrea**  
Commissioner  
**Shelly Botkin**  
Commissioner  
**John Paul Urban**  
Executive Director



**Greg Abbott**  
Governor

2021 JAN -3 AM 10: 22

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CLERK

## *Public Utility Commission of Texas*

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

All Parties of Record

FROM: Gregory R. Siemankowski  
Administrative Law Judge

A handwritten signature in black ink, appearing to be "G. Siemankowski".

RE: **Open Meeting of January 29, 2021**  
**Docket No. 51355** – *Petition of LDG001, LLC to Amend Mountain Peak Special Utility District's Certificate of Convenience and Necessity in Johnson County by Expedited Release*

DATE: January 8, 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 Tuesday, January 19, 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. 51355**

<b>PETITION OF LDG001, LLC TO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AMEND MOUNTAIN PEAK SPECIAL</b>	<b>§</b>	
<b>UTILITY DISTRICT'S CERTIFICATE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>OF CONVENIENCE AND NECESSITY</b>	<b>§</b>	
<b>IN JOHNSON COUNTY BY</b>	<b>§</b>	
<b>EXPEDITED RELEASE</b>	<b>§</b>	

**PROPOSED ORDER**

This Order addresses the petition by LDG001, LLC for streamlined expedited release of a tract of land in Johnson County from the service area under 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.

**Petitioner**

1. The petitioner is a Texas limited liability company registered with the Texas secretary of state under filing number 803101963.

**CCN Holder**

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

**Petition**

4. On September 22, 2020, the petitioner filed a petition for streamlined expedited release of the tract of land from the CCN holder's service area under CCN number 10908.

5. The petition includes the affidavit, dated September 18, 2020, of Tim Barton, the president of Carnegie Development, LLC, which is the manager of the petitioner, LDG001. The petition also includes a copy of the special warranty deed by which the petitioner acquired the tract, a metes-and-bounds description of the tract, maps, and a copy of the notice.
6. On September 30, 2020, the petitioner filed shapefiles in support of its petition.
7. In Order No. 3 filed on October 23, 2020, the administrative law judge (ALJ) found the petition administratively complete.

#### **Notice**

8. The petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder on September 22, 2020.
9. In Order No. 3 filed on October 23, 2020, the ALJ found the notice sufficient.

#### **Intervention and Response to Petition**

10. In Order No. 2 filed on October 7, 2020, the ALJ granted the CCN holder's motion to intervene.
11. On November 12, 2020, Mountain Peak asserted that it has the capability to provide retail water service to the tract of land and, in the alternative that if the petition is granted, that Mountain Peak is entitled to compensation.

#### **The Tract of Land**

12. The tract of land is approximately 47.86 acres and is in Johnson County.
13. The petitioner's tract of land is located within the CCN holder's certificated service area.

#### **Ownership of the Land**

14. The petitioner acquired the 47.86 acres by special warranty deed dated August 31, 2018.

#### **Qualifying County**

15. Johnson County abuts Tarrant County.
16. Tarrant County has a population greater than one million people.

#### **Water Service**

17. The tract of land is not receiving actual water service from the CCN holder.
18. The petitioner has never requested that the CCN holder provide service to the tract of land.

19. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
20. The CCN holder has no facilities or lines that provide water service to the tract of land.
21. The CCN holder has not performed any acts for or supplied anything to the tract of land.

**Map and Certificate**

22. On November 24, 2020, Commission Staff filed its recommendation that included a certificate and a map on which it identified the tract of land in relationship to the CCN holder's certificated 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 petitioner provided notice of the petition in compliance with 16 TAC §§ 22.55 and 24.245(h)(3)(F).
3. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC §§ 13.254 or 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 petitioner owns the tract of land, which is at least 25 acres, for which it seeks 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 is not receiving 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 petitioner is entitled under TWC § 13.2541(b) to the release of the release property 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 water service to the petitioner's released property.
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 petitioner's 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 November 24, 2020.
5. The Commission approves the certificate filed by Commission Staff on November 24, 2020.
6. The CCN holder must file in this docket proof of the record 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 to be awarded to the CCN holder, if any, commences with the filing of this Order in accordance with Order No. 3. 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**

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**DEANN T. WALKER, CHAIRMAN**

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**ARTHUR C. D'ANDREA, COMMISSIONER**

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**SHELLY BOTKIN, COMMISSIONER**