



Control Number: 51355



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PUC 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 §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S
RESPONSE TO THE PETITION**

Mountain Peak Special Utility District (“Mountain Peak SUD”) hereby submits this Response (“the Response”) to the Petition of LDG001, LLC (“Petitioner”) for Streamlined Expedited Release (“the Petition”).

On September 22, 2020, Petitioner filed with the Public Utility Commission of Texas (“the Commission”) a petition for expedited release of an approximately 47.86-acre tract (the “Property”) that lies within the boundaries of Mountain Peak SUD’s existing Certificate of Convenience and Necessity (“CCN”) No. 10908 in Johnson County.¹ Mountain Peak moved to intervene as a party to the proceeding on September 29, 2020, and the Administrative Law Judge (“ALJ”) granted the motion on October 7, 2020.²

On October 23, 2020, the Administrative Law Judge (“ALJ”) deemed the Petition to be administratively complete and directed Mountain Peak SUD to respond by November 12, 2020.³ This Response is therefore timely filed.

¹ *Petition of LGD001, LLC to Amend Mountain Peak Special Utility District’s Certificate of Convenience and Necessity in Johnson County by Expedited Release*, Docket No. 51355.

² *Id.* Order No. 2.

³ *Id.* Order No. 3.

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 currently implementing significant upgrades to its system. In particular, Mountain Peak is deep into the planning process for the design and construction of new 24” and 30” water transmission lines, as well as new 16” lines on the west side of the Mountain Peak system, 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, 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 intended to serve growth in and around the area of the Property. Mountain Peak is also in negotiations with another special utility district to purchase additional water supply for its service area.

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, Petitioner will be required to pay compensation for the adverse impacts of the decertification on Mountain Peak SUD 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 Petitioner will owe to Mountain Peak SUD for the decertification, according to Texas Water Code § 13.254(g) and Commission Rule 24.245(j).⁴

⁴ 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 SUD MUST BE PROPERLY COMPENSATED IF THE PROPERTY IS DECERTIFIED FROM ITS CCN

As typical of other regional water providers, Mountain Peak SUD 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 SUD 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 SUD has not yet been determined. In the event the Petition is not denied, the Commission should ensure that Mountain Peak SUD, 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 SUD 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.”⁵

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 SUD’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.⁶

⁵ 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.

⁶ *Id.* § 13.254(g).

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

- (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.⁷

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.⁸

⁷ Commission Rule 24.245(j).

⁸ *Id.* §§ 13.2541(g), (i).

III. CONCLUSION AND REQUESTED RELIEF

Based on the foregoing, Mountain Peak SUD 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 SUD. Mountain Peak SUD additionally requests all other relief to which it may be entitled.

Respectfully submitted,

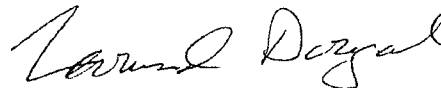


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ATTORNEYS FOR MOUNTAIN PEAK
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CERTIFICATE OF SERVICE

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on November 12, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Leonard H. Dougal