



## Filing Receipt

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**DOCKET NO. 52460**

<b>APPLICATION OF MOUNTAIN PEAK</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SPECIAL UTILITY DISTRICT TO</b>	<b>§</b>	
<b>AMEND ITS CERTIFICATE OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>ELLIS AND JOHNSON COUNTIES</b>	<b>§</b>	

**AGREED MOTION TO ADMIT EVIDENCE  
AND PROPOSED NOTICE OF APPROVAL**

On August 23, 2021, Mountain Peak Special Utility District (Mountain Peak SUD) filed an application to amend its Certificate of Convenience and Necessity (CCN) No. 10908 in Ellis and Johnson counties. The requested service area consists of 33 acres with two existing connections.

On January 21, 2022, the administrative law judge (ALJ) filed Order No. 4, establishing a deadline of April 4, 2022 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) and Mountain Peak SUD to file joint proposed findings of fact and conclusions of law. Therefore, this pleading is timely filed.

**I. MOTION TO ADMIT EVIDENCE**

The parties respectfully request that the following documents be admitted into evidence in this proceeding:

- a. Mountain Peak SUD's application and attachments, filed on August 23, 2021 (Interchange Item No. 1);
- b. Mountain Peak SUD's NOD response for mapping deficiencies, filed on October 25, 2021 (Interchange Item No. 5);
- c. Commission Staff's supplemental recommendation on administrative completeness and proposed procedural schedule, filed on November 23, 2021 (Interchange Item No. 6);
- d. Mountain Peak SUD's notice to neighboring utilities, landowners, political subdivisions, and others with affidavit. Publication tear sheets and affidavit of publication, filed on January 4, 2022 (Interchange Item No. 8);
- e. Commission Staff's recommendation on sufficiency of notice and proposed procedural schedule, filed on January 19, 2022 (Interchange Item No. 9);

- f. Mountain Peak SUD's CCN consent form for application to amend CCN No. 10908 in Ellis and Johnson Counties, Texas, filed on February 26, 2022 (Interchange Item No. 11); and
- g. Commission Staff's final recommendation, including attachments, filed on March 21, 2022.

## **II. PROPOSED NOTICE OF APPROVAL**

The parties have agreed on the attached Proposed Notice of Approval, which would grant Mountain Peak SUD's application to amend water CCN No. 10908. The parties request that the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs from the Notice of Approval.

## **III. CONCLUSION**

The parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the attached Proposed Notice of Approval be adopted.

Dated: March 29, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on March 29, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Jenna Keller  
Jenna Keller

**DOCKET NO. 52460**

**APPLICATION OF MOUNTAIN PEAK § PUBLIC UTILITY COMMISSION  
SPECIAL UTILITY DISTRICT TO §  
AMEND ITS CERTIFICATE OF § OF TEXAS  
CONVENIENCE AND NECESSITY IN §  
ELLIS AND JOHNSON COUNTIES §**

**PROPOSED NOTICE OF APPROVAL**

This Notice of Approval addresses the application of Mountain Peak Special Utility District to amend its certificate of convenience and necessity (CCN) number 10908 in Ellis and Johnson counties. The Commission amends Mountain Peak SUD’s water CCN number 10908 to include the requested area to the extent provided in this Notice of Approval.

**I. Findings of Fact**

The Commission makes the following findings of fact:

**Applicant**

1. Mountain Peak SUD is a special utility district operating in Ellis and Johnson counties.
2. Mountain Peak SUD operates, maintains, and controls various facilities for providing retail water service in Ellis and Johnson counties under CCN number 10908.
3. Mountain Peak SUD owns and operates a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 0700042.

**Application**

4. On August 23, 2021, Mountain Peak SUD filed an application to amend its water CCN number 10908 in Johnson and Ellis counties.
5. On October 25, 2021, Mountain Peak SUD filed a supplement to the application.
6. Mountain Peak SUD’s application, as supplemented, seeks to amend its water CCN number 10908 to add approximately 33 acres, with two existing connections, to its certificated service area.
7. The requested area is located approximately 1.45 miles south of downtown Midlothian, Texas, and is generally bounded on the north by Mount Zion Road, on the east by Oak Tree Lane; on the south by Lake Grove Loop; and on the west by Farm to Market 663.

8. In Order No. 3 filed on November 29, 2021, the administrative law judge (ALJ) found the application, as supplemented, administratively complete.

### Notice

9. On January 4, 2022, Mountain Peak SUD filed the affidavit of Randall Kirk, Mountain Peak SUD's general manager, attesting that notice was mailed to neighboring utilities, county authorities, municipalities, and affected parties on December 8, 2021.
10. On January 4, 2022, Mountain Peak SUD also filed a publisher's affidavit attesting to the publication of notice in the *Waxahachie Sun*, a newspaper of general circulation in Johnson and Ellies counties, on December 15 and 22, 2021.
11. In Order No. 4 filed on January 21, 2022, the ALJ found the notice sufficient.

### Evidentiary Record

12. On April 4, 2022, Commission Staff filed an agreed motion to admit evidence and proposed notice of approval.
13. In Order No. \_\_\_ filed on \_\_\_\_\_, 2022, the ALJ admitted the following evidence into the record for this proceeding: (a) Mountain Peak SUD's application and attachments, filed on August 23, 2021; (b) Mountain Peak SUD's NOD response for mapping deficiencies, filed on October 25, 2021; (c) Commission Staff's supplemental recommendation on administrative completeness and proposed procedural schedule, filed on November 23, 2021; (d) Mountain Peak SUD's notice to neighboring utilities, landowners, political subdivisions, and others with affidavit with publication tear sheets and affidavit of publication, filed on January 4, 2022; (e) Commission Staff's recommendation on sufficiency of notice and proposed procedural schedule, filed on January 19, 2022; (f) Mountain Peak SUD's CCN consent form for application to amend CCN No. 10908 in Ellis and Johnson Counties, Texas, filed on February 26, 2022; and (g) Commission Staff's final recommendation, including attachments, filed on March 21, 2022.

### Adequacy of Existing Service

14. Mountain Peak SUD currently provides retail water service to the requested area.
15. Mountain Peak SUD has a TCEQ-approved public water system.
16. The public water system that will provide service to the requested area is registered under public water system identification number 0700042.

17. The Commission's complaint records, which go back to 2017, show 5 complaints against Mountain Peak SUD, all of which have been resolved or are on the path to compliance.

**Need for Service**

18. There are currently two customers within the requested service area. Therefore, there is a need for service.

**Effect of Granting the Certificate**

19. Granting the CCN amendment will obligate Mountain Peak SUD to provide service to future customers in the requested area, and such service must be continuous and adequate.
20. All landowners with a tract of land of 25 acres or more that are located within the requested area received notice and did not file comments or a request to opt out.
21. All retail public utilities in the proximate area were provided notice of the CCN amendment requested in this proceeding, and none requested to intervene.
22. There will be no effect on any retail public utility servicing the proximate area.

**Ability to Serve: Managerial and Technical**

23. Mountain Peak SUD will provide water service to the proposed development using public water system number 0700042.
24. Mountain Peak SUD is rated by the TCEQ as having a "superior" compliance history.
25. The Commission's complaint records, which go back to 2017, show 5 complaints against Mountain Peak SUD, but all violations have been resolved or are on the path to compliance.
26. Mountain Peak SUD has access to an adequate supply of water and is capable of providing water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the Texas Water Code (TWC), and the TCEQ's rules.
27. Mountain Peak SUD employs several TCEQ-licensed operators who are responsible for operating and maintaining public water system number 0700042.
28. Mountain Peak SUD has the managerial and technical capability to provide continuous and adequate service to the requested area.

**Feasibility of Obtaining Service from Adjacent Utilities**

29. Mountain Peak SUD currently provides service in the requested area under the Mountain Peak SUD public water system registered under identification number 0700042.

30. Water utilities within a two-mile radius, Sardis Lone Elm Water Supply Corporation, City of Midlothian, and Ellis and Johnson counties were properly noticed to determine if an adjacent utility was willing and able to provide retail water service, and no utility intervened.
31. It is not feasible to obtain service from an adjacent retail public utility.

**Ability to Serve: Financial Ability and Stability**

32. Mountain Peak SUD has a debt-to-equity ratio that is less than 1.0, satisfying the leverage test.
33. Mountain Peak SUD demonstrated that it has sufficient cash on hand to cover any projected operations and maintenance shortages during the first five years of operations after approval of the CCN amendment, satisfying the operations test.
34. Mountain Peak SUD has demonstrated the financial ability and stability to provide continuous and adequate service to the requested area.

**Financial Assurance**

35. There is no need to require Mountain Peak SUD to provide a bond or other financial assurance to ensure continuous and adequate service.

**Environmental Integrity and Effect on the Land**

36. Because construction of a physically separate water system is not needed to serve the requested area, the land and environmental integrity of the requested area will not be affected.

**Improvement in Service or Lowering of Cost**

37. Water service to the requested area will improve because Mountain Peak SUD will be obligated to provide service to existing and future customers in the requested area.
38. Mountain Peak SUD will provide water service to the future customers in the requested area with the same level of service and at the same rates it currently charges.

**Regionalization or Consolidation**

39. Because construction of a physically separate water system is not needed to serve the requested area, concerns of regionalization or consolidation are not applicable.



**Map and Certificate**

40. On February 22, 2022, Commission Staff emailed its proposed final map and certificate to Mountain Peak SUD.
41. On February 26, 2022, Mountain Peak SUD filed its consent to the proposed final map and certificate.
42. On March 21, 2022, Commission Staff filed the final map and certificate as attachments to its final recommendation.

**Informal Disposition**

43. More than 15 days have passed since the completion of notice provided in this docket.
44. No person filed a protest or motion to intervene.
45. Commission Staff and Mountain Peak SUD are the only parties to this proceeding.
46. No party requested a hearing and no hearing is needed.
47. The decision is not adverse to any party.

**II. Conclusion of Law**

The Commission makes the following conclusions of law:

1. The Commission has authority over this proceeding under TWC §§ 13.241, 13.242, 13.244, and 13.246.
2. Mountain Peak SUD is a retail public utility as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Mountain Peak SUD provided notice of the application that complies with TWC § 13.246(a) and 16 TAC § 24.235.
4. Mountain Peak SUD's application meets the requirements of TWC § 13.244 and TAC § 24.227.
5. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act<sup>1</sup>, the TWC, and Commission rules.
6. After consideration of the factors in TWC §§ 13.241(a) and 13.246(c) and 16 TAC § 24.227(a) and (e), Mountain Peak SUD demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested service

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<sup>1</sup> Tex. Gov't Code Ann. §§ 2001.001–2001.903.

- area and its current service area in Ellis and Johnson counties, as required by TWC § 13.241(a) and 16 TAC § 24.227.
7. Regionalization or consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate water system is not required.
  8. It is not necessary for Mountain Peak SUD to provide a bond or other financial assurance under TWC § 13.246(d) or 16 TAC § 24.227(f).
  9. Mountain Peak SUD demonstrated that the amendment to water CCN number 10908 to include the requested area is necessary for the service, accommodation, convenience, or safety of the public, as required by TWC § 13.246(b) and 16 TAC § 24.227(d).
  10. Mountain Peak SUD has access to an adequate supply of water to serve the requested area, and its public water system is capable of providing water that meets the requirements of Chapter 341 of the Texas Health and Safety Code, Chapter 13 of the TWC, and the rules of the TCEQ in accordance with TWC § 13.241(b) and 16 TAC § 24.227(a)(1).
  11. Mountain Peak SUD must record a certified copy of its approved map and certificate, along with a boundary description of the service area, in the real property records of Ellis and Johnson counties within 31 days of receiving this Notice of Approval and submit evidence of the recording to the Commission in accordance with TWC § 13.257(r) and (s).
  12. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

### **III. Ordering Paragraphs**

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

1. The Commission amends Mountain Peak SUD's CCN number 10908 to include the requested area as described in this Notice of Approval and shown on the attached map.
2. The Commission approves the map attached to this Notice of Approval.
3. The Commission issues the certificate attached to this Notice of Approval.
4. Mountain Peak SUD must provide service to every customer and applicant for service within the approved area under CCN number 10908 who requests water service and meets the terms of Mountain Peak SUD's water service, and such service must be continuous and adequate.

5. Mountain Peak SUD must comply with the recording requirements of TWC § 13.257(r) and (s) for the areas in Ellis and Johnson counties affected by the application and file in this docket proof of the recording no later than 45 days after receipt of this Notice of Approval.
6. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

**Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 2022.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**ADMINISTRATIVE LAW JUDGE**