



Control Number: 44322



Item Number: 16

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## OPEN MEETING COVER SHEET

**MEETING DATE:** March 6, 2015

**DATE DELIVERED:** February 27, 2015

**AGENDA ITEM NO.:** 32

**CAPTION:** Docket No. 44322 - Request of Yes Prep  
Public Schools for Emergency Order to  
Obtain Water Service from Sunbelt Fresh  
Water Supply District

**ACTION REQUESTED:** Discussion and possible action with respect  
to Proposed Emergency Order

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## *Public Utility Commission of Texas*

**TO:** Donna L. Nelson, Chairman  
Kenneth W. Anderson, Jr., Commissioner  
Brandy Marty Marquez, Commissioner  
  
All Parties of Record

**FROM:** Irene Montelongo ~~W~~  
Director, Docket Management

**RE:** **Open Meeting of March 6, 2015**  
**Docket No. 44322 – Request of Yes Prep Public Schools for Emergency Order to Obtain Water Service from Sunbelt Fresh Water Supply District**

**DATE:** February 27, 2015

Enclosed is a copy of the Proposed Emergency Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Friday, March 6, 2015, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Emergency Order on or before 10:00 a.m. on Tuesday, March 3, 2015.

The need to address the request for emergency relief to ensure continuous and adequate water service to the Yes Prep north central campus presents good cause pursuant to 16 Tex. Admin. Code § 22.5(b) to waive the 20-day notice requirement of 16 Tex. Admin. Code § 22.35(b) and allow this matter to be considered at the Commission's next regularly scheduled open meeting.

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

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**DOCKET NO. 44322**

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**REQUEST OF YES PREP PUBLIC § PUBLIC UTILITY COMMISSION**  
**SCHOOLS FOR EMERGENCY ORDER §**  
**TO OBTAIN WATER SERVICE FROM § OF TEXAS**  
**SUNBELT FRESH WATER SUPPLY §**  
**DISTRICT §**

**PROPOSED EMERGENCY ORDER**

This emergency order addresses the request for an emergency order filed by YES Prep Public Schools, Inc. (Yes Prep) against Suburban Utility Company (Suburban). YES Prep and Suburban have entered into a settlement agreement that resolves all of the issues in this docket and requests the issuance of this emergency order. Public Utility Commission of Texas (Commission) Staff does not oppose the settlement agreement. The Commission approves the settlement agreement, issues this emergency order without a hearing, and sets a hearing on this matter for March 26, 2015 at the Commission's offices in Austin, Texas.

The Commission adopts the following findings of fact and conclusions of law:

**I. Findings of Fact**

**Procedural History**

1. On January 15, 2015, YES Prep filed an application with the Commission for the issuance of an emergency order under 16 Tex. Admin. Code § 24.14 to allow YES Prep's north central campus to take water service from the Sunbelt Fresh Water Supply District (Sunbelt) rather than Suburban because Suburban was not providing continuous and adequate service.
2. Suburban is a Texas corporation that owns facilities for the sale of potable water in Houston, Texas.
3. Suburban has been issued certificate of convenience and necessity number (CCN) No. 10835 for the provision of retail water service.
4. Suburban owns and operates several public water systems, including the Castlewood Subdivision system, public water system identification number 10101111.

5. YES Prep is a Texas non-profit corporation and a Texas open-enrollment charter school.
6. YES Prep's north central campus is located at Aldine-Westfield Road in Houston, Texas and takes retail water service from Suburban's Castlewood water system.
7. Sunbelt owns facilities for the sale of potable water in Houston, Texas.
8. Sunbelt has been issued CCN No. 10833 for the provision of retail water service and CCN No. 20347 to provide retail sewer service.
9. Sunbelt provides water for fire protection purposes to YES Prep's north central campus through an eight-inch water line that is connected to Sunbelt's distribution system.
10. On January 16, 2015, the Commission's administrative law judge (ALJ) issued Order No. 1, which required Commission Staff to file a response to the application by January 22, 2015, including comments regarding sufficiency of the application, and propose a procedural schedule for processing the application.
11. On January 22, 2015, Commission Staff filed a response to Order No. 1 in which it stated that Commission Staff was in contact with YES Prep and Sunbelt and was working to ascertain additional details regarding the application.
12. On January 27, 2015, YES Prep filed an amendment to its application for an emergency order and later that day supplemented the application with filed copies of the minutes of the meeting of the Sunbelt board on December 4, 2014, indicating that Sunbelt would serve YES Prep's north central campus upon a showing of proper documentation.
13. On January 29, 2015, Suburban filed its response to YES Prep's application. Suburban disagreed with Yep Prep's allegations regarding the lack of continuous and adequate service.
14. The Commissioners considered Yes Prep's application at its open meeting on January 30, 2015 and continued the matter until the February 12, 2015 open meeting to allow Commission Staff time to consider the amended application and response and file its recommendation.
15. Commission Staff filed its second response to Order No.1 on February 4, 2015.

16. On February 9, 2015, Suburban, YES Prep, Sunbelt, and Commission Staff conducted settlement discussions. As a result of the settlement discussions, Suburban, YES Prep, and Commission Staff filed a joint motion for a continuance of this matter.
17. The Commission did not take up the application at its February 12, 2015 open meeting.
18. On February 25, 2015, representatives of Suburban, YES Prep, and Commission Staff filed an agreed motion to admit evidence and to approve an agreed emergency order. On the same day, Commission Staff filed, on behalf of YES Prep and Suburban, a settlement agreement between YES Prep and Suburban, which is unopposed by Commission Staff, and resolves all issues relating to the provision of water service by Suburban to YES Prep's north central campus in this proceeding (Agreement).
19. On February 27, 2015 through Order No. 3, the ALJ admitted the following evidence into the record of this proceeding: (a) YES Prep's application filed on January 15, 2015; (b) YES Prep's amended application filed on January 27, 2015; (c) the minutes of Sunbelt's December 4, 2014 board meeting also filed on January 27, 2015; (d) Suburban's response to YES Prep's application filed on January 29, 2015; and (e) Commission Staff's second response to Order No. 1 filed on February 4, 2015.

**Agreement of Yes Prep and Suburban**

20. Under the Agreement, Suburban agrees to release YES Prep's north central campus from its certificated service area in exchange for an initial payment of \$16,250.00 from YES Prep within seven calendar days after the issuance of this emergency order and a second payment of \$16,250.00 from YES Prep to Suburban within seven calendar days of the issuance of a Commission order decertifying YES Prep's north central campus from Suburban's certificated service area.
21. Suburban and YES Prep agree to work cooperatively to file an application with the Commission within seven days after issuance of this emergency order requesting that YES Prep's north central campus be removed from Suburban's certificated service area.
22. Suburban and YES Prep agree that YES Prep may seek retail water service from Sunbelt in accordance with any orders of the Commission and subject to Sunbelt obtaining any necessary authorization from the Texas Commission on Environmental Quality (TCEQ).

23. YES Prep agrees to submit a written withdrawal from Suburban's pending rate case Docket No. 42859<sup>1</sup> within seven days of the effective date of the Agreement.
24. YES Prep agrees that it will not file suit, join in any pending lawsuits, intervene in any pending lawsuits, or make any other legal claims against Suburban related to the provision of water service to YES Prep's north central campus.
25. In accordance with the settlement agreement, the discontinuance of service to YES Prep's north central campus is either imminent or may occur and would constitute an emergency because of the uncertainty regarding service to YES Prep's north central campus.
26. All parties are in agreement with respect to the need for an emergency order to resolve the dispute between the parties and allow Sunbelt to serve YES Prep's north central campus and ensure the provision of continuous and adequate service.
27. The settlement agreement is a just and reasonable resolution of all the issues it addresses and should be approved, is supported by a preponderance of credible evidence in the record, and is consistent with the relevant Texas Water Code provisions and Commission rules.
28. This emergency order is being issued without a hearing.
29. The need to address the request for emergency relief to ensure continuous and adequate water service to the Yes Prep north central campus presents good cause pursuant to 16 Tex. Admin. Code § 22.5(b) to waive the 20-day notice requirement of 16 Tex. Admin. Code § 22.35(b) and allow this matter to be considered at the Commission's next regularly scheduled open meeting.

## II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Tex. Water Code §§ 13.041 and 13.250.
2. Yes Prep's request for emergency order is subject to the requirements in 16 Tex. Admin. Code §§ 22.294, 24.14, and 24.114.

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<sup>1</sup> *Application of Suburban Utility Company for a Water Rate/Tariff Change Under Certificate of Convenience and Necessity No. 10835 in Harris County, Texas, Docket No. 42859 (pending).*

3. Suburban is a public utility and a retail public utility as defined in chapter 13 of the Texas Water Code.
4. Sunbelt is a retail public utility as defined in chapter 13 of the Texas Water Code.
5. Notice of the application complied with 16 Tex. Admin. Code §§ 22.55 and 22.74.
6. This docket was processed in accordance with the requirements the Texas Water Code and Commission rules.
7. The settlement agreement is supported by a preponderance of credible evidence in the record and is consistent with the relevant provisions of the Texas Water Code and Commission rules.
8. YES Prep's request for an emergency order, as amended, satisfies the application requirements in 16 Tex. Admin. Code § 22.295.
9. Pursuant to Tex. Water Code § 13.041(d) the Commission may issue an emergency order without a hearing.
10. Pursuant to Tex. Water Code § 13.041(f) the Commission is required to set a time and place for a hearing if it issues the emergency order without a hearing.
11. The parties to this docket cannot waive a statutory obligation placed on this Commission.
12. The Commission may issue an emergency order which contains provisions requiring specific utility actions to ensure continuous and adequate utility service and compliance with regulatory requirements.
13. The Commission has authority to issue an emergency order compelling Suburban to provide continuous and adequate service to YES Prep's north central campus.
14. Pursuant to 16 Tex. Admin. Code § 22.5(b), good cause exists to waive the 20-day notice requirement of 16 Tex. Admin. Code § 22.35(b).

## II. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Agreement between Suburban Utility Company and YES Prep Public Schools, Inc. is approved.
2. YES Prep's request for an emergency order, as amended by the Agreement and this emergency order, is granted.
3. Sunbelt is authorized to provide retail water service to YES Prep's north central campus upon receipt of appropriate authorization from the TCEQ and any other local or state regulatory authorities, for a time period not to exceed ninety calendar days from the date of connection.
4. Within seven calendar days of the date of this emergency order, Suburban and YES Prep shall submit an application requesting that YES Prep's north central campus be removed from Suburban's certificated service area.
5. Suburban and YES Prep shall each comply with its obligations in the Agreement.
6. Yes Prep shall file a statement of payment in the instant docket of the amounts described in Finding of Fact No. 20 no later than five calendar days after each payment is made to Suburban.
7. A hearing shall be held on this emergency order at 9:30 a.m. on March 26, 2015 at the offices of the Commission in Austin, Texas.
8. Entry of this emergency order consistent with the Agreement does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this emergency order shall not be regarded as binding precedent as to the appropriateness of any principle or methodology underlying the Agreement.
9. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

**SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of March 2015.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**

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