



Control Number: 44322



Item Number: 8

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January 29, 2015

Public Utility Commission
William B. Travis Building
1701 North Congress
Austin, Texas 78701

Re: PUC Docket No. 44322

Request of YES Prep Schools for Emergency Order to Obtain Water Service from Sunbelt Fresh Water Supply District

To the Members of the Public Utility Commission:

I am writing to the Public Utility Commission ("PUC") on behalf of my client Suburban Utility CO. ("Suburban") regarding the request by the YES Prep Schools ("YES Prep") for Emergency Order to obtain water service from Sunbelt Fresh Water Supply District ("Sunbelt."). This letter is being in response to the YES Prep request, and to inform the Commission that Suburban adamantly opposes YES Prep's request, and Suburban requests that this matter be set for a hearing after Suburban is afforded the opportunity to conduct discovery. Suburban would respectfully note to the PUC that any delay in Suburban responding to YES Prep's request for emergency relief is directly due to the fact that its attorney did not provide the undersigned with a copy of the school's first request for emergency relief it filed on January 15, 2015. Although the relief sought by YES Prep is pursuant to the PUC Commission's authority to issue an emergency order under 16 Texas Administrative Code ("PUC") Rule §22.294, PUC Rule 22.74 requires notice to other parties when any pleading is filed with the PUC to be considered for action by the Commission. So, YES Prep and its attorney's failure to timely notify Suburban of the filing of its original request violates the provisions of this rule. Further, YES Prep and its attorneys did not provide Suburban with notice of the amendment to its request for an Emergency Order until the afternoon of January 27, 2015, just three (3) days before the matter is set to be considered by the PUC Commission in its agenda on Friday, January 30, 2015. Suburban and its counsel needed some time to compile information to respond and to oppose YES Prep's request and request. So, any delay in Suburban providing this response is due to the lack of professional courtesy of YES Prep's counsel in timely providing it with a copy of the request and amended request, and due to its direct violation of the PUC rules regarding service.

In response to YES Prep's request and amended request for emergency relief, Suburban would first respectfully submit that YES Prep's attempt to base its request on PUC Rule §24.14, is misplaced and in error. No where in this section of the PUC rules does it permit a customer of a water utility to seek the relief being requested by YES Prep. In addition, the provisions of PUC Rule §24.14(a)(1) provide that the Commission may grant an emergency order to require that a water utility provide continuance and adequate water service only if:

[T]he discontinuance of the service is imminent or has occurred because of the service provider actions or failure to act. (Emphasis added)

At no time has YES Prep shown, nor can it show, that any of the discontinuance of water service is claims has occurred were the result of the actions or inactions of Suburban, and Suburban adamantly denies such. For reference, attached hereto and incorporated herein by reference as Exhibit "A" is a list of water outages that affected the YES Prep school dating back to August, 2014, listing the date of the outage, and the cause. Several of the outages involved were caused by electrical units that failed, which were promptly repaired by Suburban. One of the outages was caused by a truck that drove over a water distribution line; which was clearly not caused by Suburban, and was promptly repaired. In fact, the proposed Emergency Water Supply Agreement offered by YES Prep and Sunbelt as an exhibit to its amended request in §3.04 contains a provision that Sunbelt "shall not be liable" for mechanical failure unless "one of its employees is grossly negligent or engages in willful misconduct." Neither of these claims can be made about Suburban regarding the above-listed outages, and it should be afforded the same waiver of liability that Sunbelt requires of YES Prep in this agreement. In addition, the proposed Sunbelt Emergency Water Supply Agreement with YES Prep contains a Fore Majeure clause that negates liability to it for any unforeseen acts outside its control that may cause an outage, like a truck driving over Suburban's water distribution line. Again, Suburban should be afforded the same exoneration from liability that YES Prep is willing to give to Sunbelt under this agreement.

As for the outages caused by a distribution line break, Suburban submits that the cause of these breaks are mainly due to the age of the water lines, plus the fact that YES Prep is far exceeding the demands it makes on these water lines for water service, and it, not Suburban, mostly at fault for causing these outages. Attached hereto and incorporated herein as Exhibit "B" is a copy of an email message between the President of Suburban and the managing director of YES Prep regarding the schools' initial request for water service when it originally became a customer of Suburban in March of 2008. This document clearly shows that when YES Prep approached Suburban for water service, the representatives from Suburban notified YES Prep representatives that when YES Prep gave initial figures for the number of students it planned to have in its school that Suburban's representatives notified the YES Prep officials that they would have to pay the cost of installing a larger water distribution line to address the increase in demand these students would make on Suburban's water system. Further, in response to YES Prep seeking to obtain water service at that time from Sunbelt, as can be seen from Exhibit "B" Suburban notified the officials at YES Prep that they could have their service bought out by Sunbelt, as is standard in the water industry. Alternatively, the school could pay for the installation of a larger water distribution line so that its demand for water service would not make an unacceptable demand on the existing water lines. YES Prep and Sunbelt refused both offers. Further, the number of students that YES Prep informed Suburban would be attending their school has dramatically increased since the school began to receive water service from Suburban, thus making further exorbitant demands on Suburban's water lines which has led to the water distribution lines failing from time to time. Accordingly, as opposed to Suburban being at fault and/or the cause of the water outages that YES Prep is using as the basis for its requests, YES Prep itself is the cause of some if not most of these water outages due to the school not being willing to pay the cost of the installation of a larger water distribution line. By making increasing water use demands on the existing water distribution lines while increasing the number of students in its school, YES Prep is causing the very problem it is complaining about. The remedy for this is for either YES Prep to pay, like all water service customers of any water utility in the state, the cost of installing a larger water distribution line, or it or Sunbelt paying the cost of Suburban losing

the school as a customer. An emergency order for YES Prep to receive temporary water service by Sunbelt is an unreasonable and duplicitous attempt by both YES Prep and by Sunbelt to take a paying water customer from Suburban and give it to Sunbelt without charge. Suburban relies in part upon the charges it makes to YES Prep as a customer to pay for the operations and management of its water systems. This constitutes a property right, and it must be compensated for any loss of this service to YES Prep pursuant to its written service agreement with YES Prep and pursuant to the Texas Constitution.

In response to YES Prep claiming that it should receive an Emergency Order for obtaining water service from Sunbelt, Suburban would note that the school has failed to show the PUC Commission the existence of an emergency, and further, that it cannot show such an emergency exists. In Exhibit "A" attached to YES Prep's amended request, the figures show that as opposed to increasing in frequency, the number of water outages to the school has decreased as opposed to increased over the past year. If the figures contained in YES Prep's Exhibit "A" can be believed, which Suburban is not conceding as the figures appear to be inflated in an attempt to support its request, there were less water service outages for the months of October, November and December in 2014 than in the same months in 2013. Further, there were no water service outages for the months of December, 2013, and January, February, April, June, July and August of 2014. In addition, the State of Texas through the Texas Commission on Environmental Quality ("TCEQ") has begun to test the pressure on Suburban's water service system and its water distribution lines. Attached hereto and incorporated herein by reference as Exhibit "C" for all purposes is a true and correct copy of a pressure reading report obtained from the TCEQ Web site showing that for the eleven (11) day period from January 6 to January 16, 2015, the water pressure in Suburban's water distribution system and lines was more than adequate to provide water service to YES Prep as well as Suburban's other customers. This again, refutes any claim by YES Prep that an emergency exists that would permit it to gain water service, without compensation to Suburban, from Sunbelt. Suburban will continue to provide water service to YES Prep, but the school must finally do what it takes to enable Suburban to provide better and more adequate water service to the school by paying the cost of installing a larger water distribution line to the school.

In addition to the above, attached hereto and incorporated herein by reference as Exhibit "D" is a true and correct copy of emails between a representative of Suburban and one from Sunbelt pertaining to Sunbelt's installation of a water distribution line that would go by the location of the YES Prep school facility. It is clear from this exhibit that as early as 2008 YES Prep and Sunbelt were working together to try to take YES Prep away from Suburban as a customer without having to pay Suburban for losing the school as a customer. Suburban respectfully submits that the current request by YES Prep, aided again by Sunbelt, is nothing more than attempt by both of them to remove YES Prep as one of Suburban's customers without compensating Suburban for the loss in revenue it would receive from YES Prep as a continuing customer. Suburban submits that the PUC Commission should not permit either YES Prep nor Sunbelt from greatly harming Suburban economically by granting the instant request for emergency relief. YES Prep has the necessary funds for the installation of a larger water distribution line so that its greatly increased demand for water service can be adequately provided by Suburban. Further, Sunbelt has the necessary funds to pay Suburban for the taking of one of its largest water customers. Sunbelt appears to be providing YES Prep with assistance in this matter in an attempt to not have to

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pay for the improper taking of Suburban's water service customers, and is trying to misuse the PUC Commission to further this goal. Suburban respectfully submits that the PUC Commission should not award either of these entities for their improper use of the PUC Commission in this matter.

Given the above, it is clear that YES Prep is not able to utilize PUC §24.14 to seek the emergency relief it requests, because Suburban has not caused the water outages the school complains of, and/or Suburban has not failed to act to remedy each incidence when a water outage has occurred, and further, no emergency exists. Suburban respectfully requests that the PUC Commission deny YES Prep its requested emergency relief, and that this matter be set for hearing so Suburban can conduct needed discovery.

Sincerely,



Les Romo

LDR/sler

cc: Ty Embrey, attorney for YES Prep Public Schools, Inc.

Radcliffe Bobbitt Adams Polley, PLLC, attorneys for Sunbelt Fresh Water Supply District

Attachments.

EXHIBIT "A"

Attachment No. 1: List of water outages at Castlewood over the last six months

Date of Outage	Location of Outage	Reason for Outage
8/26/2015	Water Plant	Electrical issue at well control
10/12/2014	Water Plant	Pipe fitting failure a water plant
10/26/2014	Woodgate Avenue	Distribution line break
11/4/2014	Water Plant	Electrical Fuse at well head burntout
11/5/2014	Lauder Road	Truck drove over distribution line
11/14/2014	Toyata Avenue	Distribution line break
12/10/2014	Systemwide	Isolation valves installed
12/11/2014	Balmorhea Avenue	New line under driveway installed
12/19/2014	Woodgate Avenue	Distribution line break
12/21/2014	Rosebury Drive	Distribution line break
12/22/2014	Water Plant	Electrical controls at plant

Please forward me a copy of the construction drawings for this project and I will have them marked to indicate the location of Suburban's water lines along Lauder Road and returned to you.
Thanks,
Mitch"

Note: forwarded message attached.

Forwarded Message

From: "Glenn W. McDowell" <glennm@brooksandsparks.com>
To: "Mitchellmartinjr@martinutility.com" <Mitchellmartinjr@martinutility.com>
CC: "Miguel Garcia" <mgarcia@linbeck.com>
Date: Wed, 26 Mar 2008 09:15:43 -0500
Subject: Plans for Suburban Water Lines along Lauder Road

HTML Attachment

Mitch: We are designing the waterline extension along Lauder Road from Sun Belt FWSD to Aldine Westfield to serve the Yes Academy. We need a block map or whatever plans you have for Suburban's water system along Lauder.
Thanks for your cooperation. Please call if you have any questions.

Glenn W. McDowell
Associate Principal
Brooks & Sparks Inc.
21020 Park Row
Katy, TX 77449
Phone: 281-578-9595
Fax: 281-578-9686

EXHIBIT "B"

EXHIBIT "C"

Downloaded Data - Friday, January 16, 2015

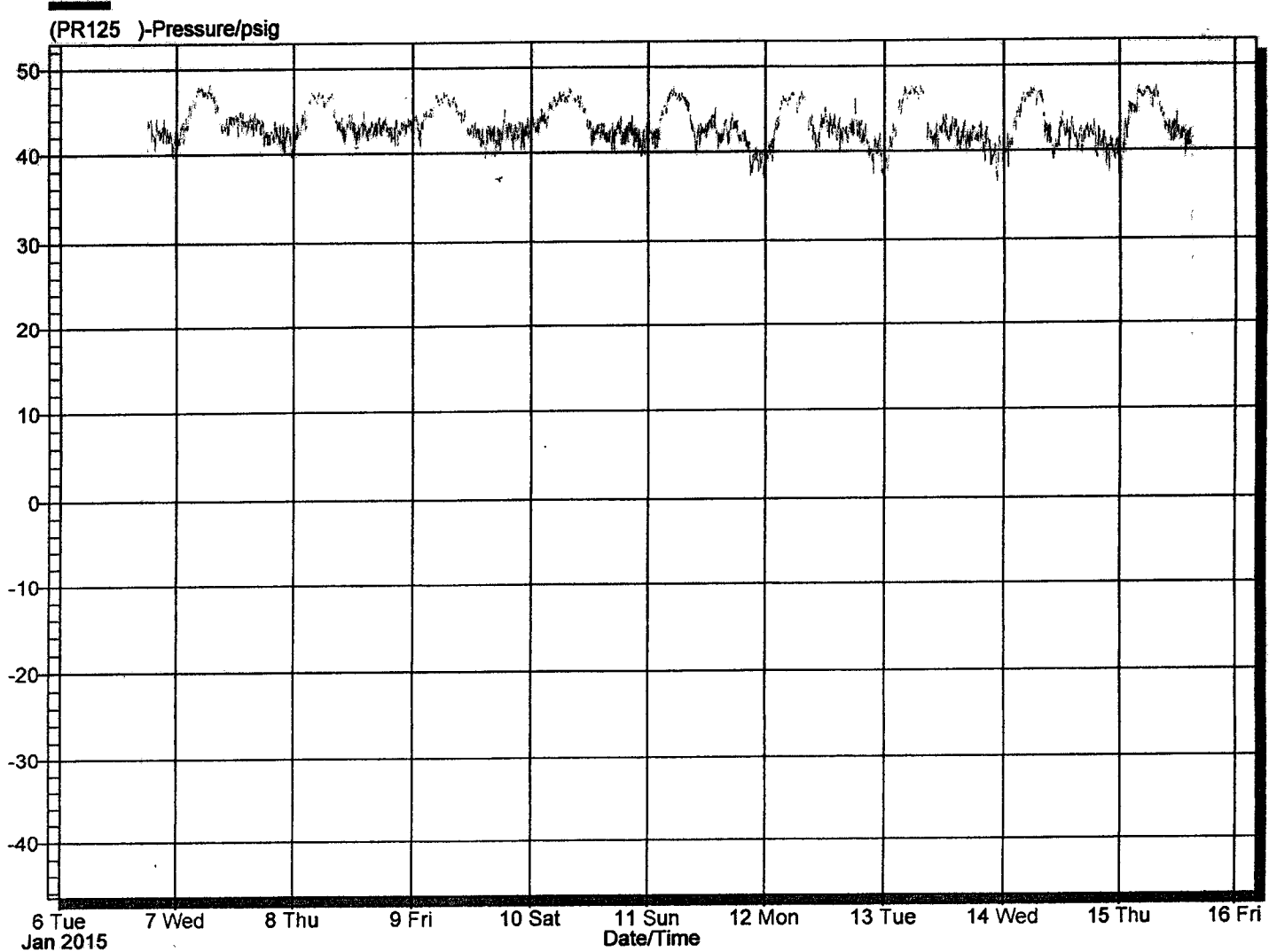


EXHIBIT "D"

Bryan:

Here is the information you have been waiting for:

Option 1: Cost = \$58,000.00.

After speaking with our engineer, he informs us that standard practice in the industry for releasing a customer to another water company is through the use of a buy out equal to ten (10) years worth of lost income. The average water use at the existing facility over the past year comes to 125,000 gallons per month or \$5,800.00 in annual income. Ten years @ \$5,800.00 equals \$58,000.00 in lost income to the water utility if you choose to go with an alternate water provider.

Option 2: Cost = \$195,000.00.

Linebeck runs an eight inch (8") water main from the building site to our water plant (approximately 4,700 feet), and Yes Prep pays \$195,000.00 to Suburban Utility for improvements at our existing water plant. Suburban Utility to own all improvements, including the water line from our plant to the Yes Prep location.

Option 3: Cost = \$315,000.00.

Yes Prep pays Suburban Utility for improvements at our existing water plant and also for extending an 8" water main from our plant to the Yes Prep property. Suburban Utility to own all facility improvements and water lines.

Option 2 and 3 would depend on obtaining an initial increase in well production capacity in the existing well until a permit for a new well can be obtained. Due to the location of the existing plant site, this would likely be a lengthy process.

Option 4: Cost = \$265,000.00.

Yes Prep provides a 100' by 100' (0.23 acres) site for a new water plant on their property (located adjacent to a paved roadway and <=1000 feet from the new building along a paved roadway) with a sanitary control easement extending a minimum of 150' radius from the location of the water well. Yes prep pays for the cost of developing the water plant to meet their needs. Suburban Utility to own the facility and all water lines.

This option would be the best scenario for coming online within the required time frame. Basically, this would create a second water plant for Suburban's water system so there is no need to pursue a separate CCN for Yes Prep, and since there would be a completed sanitary control easement, obtaining permission to drill a new well should also become a much easier process.

Thanks for your patience.
Mitch Martin, Jr.

3/11/00

Agreement do not have \$ for ~~this~~ These options
meeting with Attorneys for Yes.

713-579-0068
Miguel Garcia