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DOCKET NO. 44621

RECEIVED

JOINT APPLICATION OF YES PREP §
PUBLIC SCHOOLS AND SUBURBAN §
UTILITY COMPANY TO §
DECERTIFY YES PREP PROPERTY §
FROM SUBURBAN WATER §
COMPANY'S CERTIFIED SERVICE §
AREA §

2015 AUG 6 AM 11:43
PUBLIC UTILITY COMMISSION
OF TEXAS
OFFICE CLERK

**COMMISSION STAFF'S MOTION FOR RULING ON SUFFICIENCY OF NOTICE
AND TO AMEND THE PROCEDURAL SCHEUDLE**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Motion for Ruling on Sufficiency of Notice and to Amend the Procedural Schedule.

I. Background

On April 8, 2015, YES Prep Public Schools (YES Prep) and Suburban Utility Company (Suburban) filed a Joint Application for Decertification of YES Prep Property from Suburban's Retail Water Certificated Service Area (Application). The Application seeks to decertify YES Prep's property from Suburban's service area Certificate of Convenience and Necessity (CCN) No. 10835. This Application was filed pursuant to the Emergency Order issued by the Commission in Docket No. 44322.¹

On May 28, 2015, the Administrative Law Judge (ALJ) issued Order No. 3 requiring Staff to file an updated procedural schedule thirty (30) days after the provision of notice. YES Prep mailed notice on June 16, 2015 and published notice in the Houston Chronicle on June 16, 2015 and June 23, 2015. On July 23, 2015, Staff filed a proposed procedural schedule. On July 27, 2015, the ALJ issued Order No. 5 adopting Staff's proposed procedural schedule.

II. Motion for Ruling on Sufficiency of Notice

Staff respectfully requests the ALJ rule on the sufficiency of the notices mailed and published by YES Prep on June 16 and 23, 2015. Staff recommends both the mailed and published

¹ Request of YES Prep Public Schools for Emergency Order to Obtain Water Service from Sunbelt Fresh Water Supply District, Docket No. 44322, Emergency Order at 6 (Mar. 17, 2015).

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notices be found insufficient because both notices are inconsistent with Order No. 3 which required YES Prep to use the notice forms attached to Staff's Response to Order No. 2.²

Pursuant to Texas Water Code § 13.246(a) (TWC) and 16 Tex. Admin. Code § 24.106 (TAC), an applicant is required to provide mailed and published notice of the application to affected parties. In Order No. 3, YES Prep was directed to "send the notice as specifically described in Commission Staff's May 27, 2015 filing and the attached memorandum of Elisabeth English and Suzanne Burt of the Commission's Water Utility Regulation Division."³ Order No. 3 requires YES Prep to "provide notice as directed by Commission Staff using the forms attached to Commission Staff's memorandum."⁴

During the review of the notice documents YES Prep filed with the Commission, Staff identified several inaccuracies in the copies of the mailed and published notices filed with YES Prep's affidavits of notice. . It does not appear YES Prep used the Commission approved form that it was required to use in Order No. 3. Specifically, the Notice to Neighboring Systems, Customers and Cities provided by YES Prep describes the area to be decertified as located *approximately 2 miles southeast of downtown Aldine, Texas*. Staff's recommended Notice to Neighboring Systems, Customers and Cities form attached to Staff's Response to Order No. 2 describes the area to be decertified as *approximately 10.8 miles North of downtown Houston, Texas*. The published notice includes the same discrepancies in describing the area to be decertified. Additionally, the mailed and published notices included with YES Prep's affidavits identify the total area at issue as being 18 acres. Staff's recommended notice forms for mailed and published notice identify the total area at issue as being 13 acres.

The mailed and published notices provided by YES Prep also omit the following language that was provided in Staff's recommended forms for mailed and published notice:

"The proposed amendment affects customers and /or areas located in the following area:
YES Prep Public School North-Central Houston Campus

² *Joint Application of YES Prep Public Schools and Suburban Utility Company. to Decertify YES Prep Property From Suburban Water Company's Certificated Service Area, Docket 44621, Commission Staff's Response to Order No. 2 (May 27, 2015).*

³ *Joint Application of YES Prep Public Schools and Suburban Utility Company. to Decertify YES Prep Property From Suburban Water Company's Certificated Service Area, Docket 44621, Order No. 3, pg. 1 (May 28, 2015).*

⁴ *Id.* at 2.

A copy of the proposed service area map is available at:
YES Prep Public Schools, Inc., 6201 Bonhomme, Ste 168N, Houston, TX 77036
Phone: (713) 967-9000"

The differences in the descriptions of the area to be decertified and omission of specific language recommended by Staff are insufficient to satisfy the notice requirements of TWC § 13.246(a) and 16 TAC § 24.106 because the notices do not adequately put affected parties on notice of the full extent and potential effects of the application.

Therefore, Staff recommends the mailed and published notice be deemed insufficient pursuant to 16 TAC § 24.106 because YES Prep's notices were not in the form required by the ALJ in Order No. 3. Staff respectfully requests YES Prep be required to mail and publish corrected notices consistent with the notices attached to Staff's Response to Order No. 2 and required by Order No. 3 and to file proof of notice with the Commission.

III. Motion to Amend the Procedural Schedule

Staff respectfully moves to amend to the procedural schedule established in Order No. 5. If YES Prep is directed to provide the corrected notices, as recommended, then the deadline for intervention and further processing of the Application by Staff should be delayed. Pursuant to 16 TAC § 24.107(b), the Commission may take action on an application without a public hearing if no hearing is requested thirty (30) days after the required mailed or published notice, whichever occurs later. As detailed above, the mailed and published notices contained inaccurate descriptions of the area to be decertified and therefore the thirty-day intervention period has not started. Staff is unable to make a recommendation on processing the Application until the intervention period has ended. Therefore, Staff respectfully requests the ALJ amend the procedural schedule established in Order No. 5.

IV. Conclusion

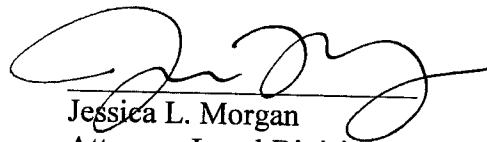
Staff respectfully requests that the ALJ issue an order requiring YES Prep to mail and publish corrected notices in the form consistent with Order No. 3. Staff also respectfully moves for the ALJ to amend the procedural schedule established in Order No. 5.

Dated: August 6, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Karen S. Hubbard
Managing Attorney
Legal Division

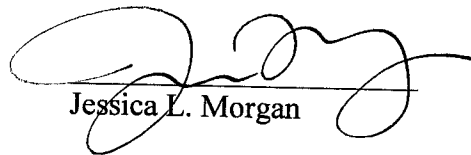


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this August 6, 2015 in accordance with 16 TAC § 22.74.



Jessica L. Morgan