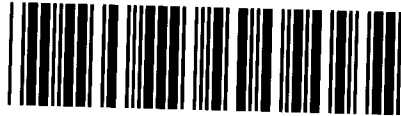


Control Number: 44621



Item Number: 29

Addendum StartPage: 0

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

PUBLIC UTILITY COMMISSION 27

2015 OCT 27 11:00 AM
PUBLIC UTILITY COMMISSION
OF TEXAS
CLERK

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 8 AND FINAL
RECOMMENDATION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Order No. 8 and Final Recommendation.

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 September 18, 2015, the Administrative Law Judge (ALJ) issued Order No. 8 requiring Staff to propose an additional procedural schedule, request a hearing, or file a final recommendation on or before October 27, 2015. Therefore, this response is timely filed.

II. Final Recommendation

Staff conducted the technical review of this application pursuant to Tex. Water Code § 13.254 (TWC) and 16 Tex. Admin. Code § 24.113 (TAC). Pursuant to TWC § 13.254 and 16 TAC § 24.113, the Commission may revoke or amend a CCN with the written consent of the certificate holder or if the certificate holder has failed to provide continuous and adequate service to part of its service area. Suburban, the certificate holder, provided written consent by filing this Application jointly with YES Prep for the proposed area to be decertified pursuant to a settlement

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) (Emergency Order).

agreement.² Further, the Emergency Order issued by the Commission states “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.”³ Based upon the attached memorandum (Attachment A) of Elisabeth English, Engineering Specialist of the Water Utilities Division, Staff recommends approval of YES Prep and Suburban’s Application to decertify YES Prep’s north central campus from Suburban’s CCN.

Approval of the Application results in the decertification of YES Prep’s north central campus from Suburban’s CCN and an amendment to Suburban’s CCN. The infrastructure necessary for Sunbelt to serve YES Prep was in place prior to the Emergency Order request and no further construction is necessary for YES Prep to receive service from Sunbelt. Further, Sunbelt is a district and not required to be certificated by the Commission in order to serve YES Prep. Both YES Prep and Suburban have submitted signed consent forms (Attachment B) evidencing their agreement with the CCN service area map (Attachment C). Suburban’s amended CCN certificate (Attachment D), as revised by Staff, reflects the decertification of YES Prep’s north central campus. Therefore, Staff recommends approval of YES Prep and Suburban’s Application.

III. Conclusion

For the reasons stated herein, Staff recommends that the Application be approved. Consistent with the procedural schedule adopted in Order No. 8, Staff intends to work with the parties to file a proposed notice of approval with findings of fact, conclusions of law, and ordering paragraphs by November 17, 2015.

² *Request of YES Prep Public Schools for Emergency Order to Obtain Water Service from Sunbelt Fresh Water Supply District*, Docket No. 44322, Unopposed Settlement Agreement (Feb. 25, 2015).

³ Emergency Order, Finding of Fact No. 25.

Dated: October 27, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Karen S. Hubbard
Managing Attorney
Legal Division

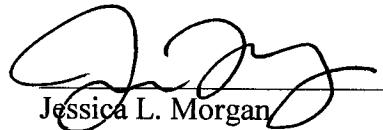


Jessica L. Morgan
Attorney-Legal Division
State Bar No. 24079023
(512) 936-7229
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

DOCKET NO. 44621

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this October 27, 2015 in accordance with 16 TAC § 22.74.



Jessica L. Morgan

Attachment A

Public Utility Commission of Texas

Memorandum

TO: Jessica Morgan, Attorney
Legal Division

FROM: Elisabeth English, Engineering Specialist
Water Utilities Division

THRU: Tammy Benter, Director
Lisa Fuentes, Manager
Water Utilities Division

DATE: October 23, 2015

RE: **Docket No. 44621:** *Joint Application of YES Prep Public Schools and Suburban Utility Co. (Suburban) to Decertify YES Prep's Property From Suburban Water Company's Certificated Service Area*

On April 8, 2015, YES Prep Public Schools (YES Prep) and Suburban Utility Company (Suburban) (collectively called "Applicants") filed an application to decertify a portion of Suburban's water service area, Certificate of Convenience and Necessity (CCN) No. 10835, in Harris County. The application was filed as required by the Emergency Order executed in Docket No. 44322,¹ which permits YES Prep to receive retail water service from a utility other than the utility certificated to provide retail water service, Suburban. The application is being reviewed pursuant to Texas Water Code (TWC) §§ 13.242- 13.250 and 16 Tex. Admin. Code (TAC) §§ 24.101-24.107.

Background

YES Prep is currently in the certificated water service area of Suburban's CCN No. 10835. On January 15, 2015, YES Prep requested that the Commission grant an Emergency Order pursuant to 16 TAC § 24.14 which would allow for an emergency interconnection with a retail public utility other than the certificated provider (Suburban). The Emergency Order request was a result of serious impairment in the water service provided; specifically YES Prep repeatedly experienced water outages that compromised the operation of the school facility. On March 17, 2015, the Commission issued an Emergency Order, without a hearing, approving a Settlement Agreement between Suburban and YES Prep, allowing Sunbelt Fresh Water Supply District ("Sunbelt") to interconnect and provide YES Prep temporary water service. The Emergency Order allows for the provision of temporary water service for no more than 90 days and requires that YES Prep and Suburban apply to the Commission for decertification of the applicable area in order for the interconnection to become permanent. A hearing on the Emergency Order was held on April 17, 2015, from which the Emergency Order remained the same. On October 21, YES Prep notified the Commission that water service from Sunbelt had been initiated at the YES Prep facility on October 16, 2015.

Application, Notice and Maps

Order No. 1, filed April 10, 2015, requested that Staff review the application for administrative completeness and file a recommendation no later than May 8, 2015. The initial staff review found

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 (Mar. 17, 2015).*

that it was deficient in the required mapping information, specifically 16 TAC § 24.105(2). Order No. 2 deemed the application administratively incomplete and subsequently requested that the Applicants cure the specified deficiencies on or before May 15, 2015. Order No. 2 also requested that Staff provide a recommendation regarding the administrative completeness of the application by May 27, 2015.

The Commission deemed the application administratively complete on May 28, 2015, via Order No. 3 and was consequently accepted for filing. Order No. 3 also requested that the Applicant's provide notice to affected parties and return proof of notice to the Commission prior to June 30, 2015. On June 30, 2015, YES Prep filed an affidavit of notice, along with a copy of the notices sent, and an affidavit verifying publication of notice. According to the affidavits, notice was mailed to affected parties on June 16, 2015, and published in *Houston Chronicle* on June 16, 2015 and June 23, 2015. Upon review of the actual notice sent, Staff recommended that the Applicants be ordered to re-notice due to errors in the notice documents, specifically the location description and the acreage to be decertified. Order No. 7 required the Applicants to re-notice the affected parties and waived the requirement to have an amended published notice. On August 20, 2015, YES Prep filed an affidavit of notice, along with a copy of the notices sent. According to the affidavits, notice was mailed to neighboring systems and cities on August 20, 2015.

On September 18, 2015, Commission Staff filed a proposed procedural schedule, which was adopted via Order No. 8. The deadline for intervention was September 21, 2015. The Commission did not receive any requests for a hearing during the 30 day comment period. Staff requested that the Applicants consent to the final map on October 21, 2015. Both Applicants, YES Prep and Suburban, consented to the final maps on October 22, 2015.

Staff was also required, via Order No. 8, to provide a final recommendation or request a hearing, no later than October 27, 2015.

Staff Recommendation

The Commission may revoke or amend any CCN with the authorization of the certificated retail public utility if the Commission finds that the certificate holder has failed to provide continuous and adequate service in part of the area pursuant to TWC § 13.254 and 16 TAC § 24.113. Staff reviewed the above referenced application, and finds that YES Prep and Suburban have met the requirements for a CCN amendment specifically outlined in TWC § 13.254 and 16 TAC § 24.113, as detailed below.

1. The certificate holder, Suburban, is a joint applicant for the CCN amendment therefore providing consent for the requested action;
2. As supported by Docket No. 44322, the certificated retail public utility failed to provide continuous and adequate service to the YES Prep campus which ultimately resulted in an emergency interconnection with an alternative retail public utility, Sunbelt.

The YES Prep campus, the area to be decertified, is currently receiving water service from Sunbelt. The infrastructure necessary to serve the area was in place prior to the Emergency Order request, and no further construction is necessary for YES Prep to be connected to the applicable water distribution system. Sunbelt is a district and is not required to be certificated or approved to serve the area by the Commission following the decertification.

Approval of the application will result in the discontinuation of the Suburban's water service to the YES Prep campus and an amendment of the CCN No. 10835. Suburban's amended certificate and the final CCN map are attached to this recommendation. Accordingly, Staff recommends

approval of the application. Staff also recommends that Suburban file certified copies of the CCN map along with a written description of the CCN service area in the county clerk's office pursuant to TWC § 13.257 (r) and (s).

Attachment B

CONSENT FORM

Applicant's Name: Suburban Utility Co. Inc
Docket No.: 44621

- ☒ I concur with the map and certificate transmitted by e-mail on **October 21, 2015.**
- ☐ I do not concur with the map and certificate transmitted by e-mail on **October 21, 2015.** I understand that I have 14 days from the date of this email to provide my response.

I am authorized by Suburban Utility Co. Inc., to sign this form.

Signature: Mitchell M. Martin Jr.

Printed Name: Mitchell M. Martin, Jr.

Relationship to Applicant: PRESIDENT

Date signed: 10-22-2015

Please mail the original and 7 copies to:

Public Utility Commission of Texas
Central Records
1701 N. Congress P.O. Box 13326
Austin, Texas 78711-3326

or for Shipping/Overnight Delivery:
Public Utility Commission of Texas
Central Records
1701 N. Congress, Suite 8-100
Austin, Texas 78701

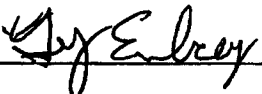
CONSENT FORM

Applicant's Name: YES Prep Public Schools, Inc
Docket No.: 44621

RECEIVED
2015 OCT 22 AM 11:58
PUBLIC UTILITY COMMISSION
FILING CLERK

- ☒ I concur with the map and certificate transmitted by e-mail on
October 21, 2015.
- ☐ I do not concur with the map and certificate transmitted by e-mail on
October 21, 2015. I understand that I have 14 days from the date of
this email to provide my response.

I am authorized by YES Prep Public Schools Inc., to sign this form.

Signature: 

Printed Name: Ty Embrey

Relationship to Applicant: Attorney for YES Prep Public Schools, Inc.

Date signed: October 21, 2015

Please mail the original and 7 copies to:

Public Utility Commission of Texas
Central Records
1701 N. Congress P.O. Box 13326
Austin, Texas 78711-3326




or for Shipping/Overnight Delivery:
Public Utility Commission of Texas
Central Records
1701 N. Congress, Suite 8-100
Austin, Texas 78701

Attachment C

Suburban Utility CO.
 Water Service Area
 CCN No. 10835
 PUC Docket No. 44621
 Decertified a Portion of Suburban Utility CO. in Harris County



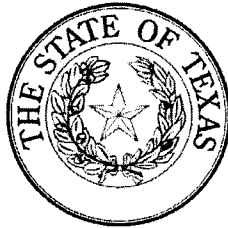
Water CCN Service Areas

-  10835 - Suburban Utility CO.
-  N0062 - Aldine ISD Grace Raymond Elementary School
-  10972 - Champ's Water Company Inc.

0 400 800
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Attachment D



Public Utility Commission of Texas

By These Presents Be It Known To All That

Suburban Utility Co.

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 10835

to provide continuous and adequate water utility service to that service area or those service areas in Harris County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 44621 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Suburban Utility Co. to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, the _____ day of _____ 2015.