



Control Number: 47897



Item Number: 266

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APPLICATION OF FOREST GLEN
UTILITY COMPANY FOR
AUTHORITY TO CHANGE RATES

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PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

This Order addresses the application of Forest Glen Utility Company for authority to change its sewer rates and tariff for the Potranco Ranch subdivision under certificate of convenience and necessity (CCN) number 21070 in Medina County. Forest Glen filed an unopposed agreement that resolves certain issues between the parties in this proceeding. The Commission approves Forest Glen's change in sewer rates and associated tariff, as modified by the agreement and this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Forest Glen is a subchapter S corporation that provides sewer service to the Potranco Ranch subdivision in Castroville, Texas.
2. Earl Holdings, LLC, Hausman Holdings, LTD, and BVRT, LP each own one-third of Forest Glen.
3. Forest Glen is authorized to serve the public in its certificated service area in Medina County, Texas under sewer CCN number 21070.
4. Forest Glen constructs and owns facilities used to collect, transport, and treat sewage.
5. Forest Glen holds Texas Pollutant Discharge Elimination System permit WQ number 1503-0001 and an authorization under 30 Texas Administrative Code (TAC) chapter 210 to produce and provide reclaimed water.
6. Forest Glen served 149 active metered connections on December 31, 2016, and currently serves 269 active metered connections.



7. The plans for the first phase of construction in the Potranco Ranch subdivision include a total of 366 homes.

Application

8. On December 21, 2017, Forest Glen filed a class B application for authority to increase sewer rates and revise the associated tariff for areas it serves in Medina County.
9. The application is based on a historical test year that ended on December 31, 2016.
10. Forest Glen's current rate structure includes a flat rate of \$35 per month and does not include a gallonage charge.
11. Forest Glen proposed a \$30 increase to the flat rate for a total of \$65 per month.
12. The requested rate will generate revenues of \$209,820 per year at Forest Glen's current customer count of 269 connections.
13. When a lot is sold in Potranco Ranch, Forest Glen charges a \$2,950 connection fee to the builder at closing.
14. The application reflects the \$2,950 connection fee as "other revenue" and Forest Glen uses this fee to pay for capital-related costs and to cover operating cost structural deficits.
15. The requested rate will allow Forest Glen to cover all of its costs once Forest Glen is serving 315 connections, and based on the current rate of customer growth, Forest Glen estimates that it will reach this break-even point in 2019 and become profitable in 2020.
16. Forest Glen will use the increased cash flow generated by the \$65 rate, the connection fees collected at closing, infusions of equity and debt, and revenues from the sale of reclaimed water to offset its losses.
17. Forest Glen's existing utility plant has the capacity to serve 366 connections.
18. In Order No. 1 issued on January 3, 2018, the Commission administrative law judge (ALJ) required Commission Staff to comment on the administrative completeness of the application and notice and to propose a procedural schedule, if appropriate.
19. On January 19, 2018, Commission Staff recommended that the application be found administratively incomplete and deficient because Forest Glen failed to (a) include

expenses for the year ending December 31, 2014 on schedule II; (b) provide an explanation why schedule 11-7 was completed as not applicable; (c) provide legible copies of schedule 11-3 and a page of the rate design; (d) complete schedule IV(a); (e) correctly calculate the amount for working cash on schedule 11-2; and (f) provide a copy of its most recently approved tariff. Commission Staff also recommended suspension of the proposed effective date of rates until the Commission finds the application administratively complete.

20. In Order No. 2 issued on January 31, 2018, the Commission ALJ found the application administratively incomplete and deficient, established deadlines and an opportunity to cure for Commission Staff to file a supplemental recommendation on administrative completeness, and suspended the proposed effective date of the rate increase in accordance with 16 TAC § 24.33(a).
21. On February 23, 2018, Forest Glen filed an amended application curing the deficiencies identified by Commission Staff.
22. On February 28, 2018, Forest Glen filed additional information to cure the deficiencies, including confidential customer information.
23. On March 22, 2018, Commission Staff recommended that the application be deemed sufficient, that the proposed effective date remain suspended, and that the docket be referred to the State Office of Administrative Hearings (SOAH) for an evidentiary hearing based upon more than 10% of the affected ratepayers objecting to the proposed rate increase.
24. In Order No. 3 issued on March 27, 2018, the Commission ALJ found the application, as supplemented, administratively complete and continued the suspension of the effective date of the proposed rate increase.

Referral to SOAH for Hearing—16 TAC §§ 22.121, 24.237

25. On April 3, 2018, the Commission referred this docket to SOAH for assignment of an ALJ to conduct a hearing and issue a proposal for decision, if necessary.

26. In SOAH Order No. 1 issued on April 12, 2018, the SOAH ALJ described jurisdiction, set a date for a prehearing conference, directed Forest Glen to provide notice of the prehearing conference, and provided notice of procedural requirements related to filing and service, motions, and discovery.
27. On May 18, 2018, the SOAH ALJ convened a prehearing conference and entered appearances by Forest Glen, Commission Staff, Fleming Mitchell, Van Johnson, Dennis Brown, and Cecil Perkins.
28. In SOAH Order No. 2 issued on May 21, 2018, the SOAH ALJ memorialized the prehearing conference, adopted a procedural schedule, and provided notice of the hearing on the merits, which was set to begin at 9:00 a.m., October 24, 2018, at SOAH, 300 West 15th Street, 4th floor, Austin, Texas.
29. On June 14, 2018, the Commission issued a preliminary order.
30. In SOAH Order No. 5 issued on September 13, 2018, the SOAH ALJ referred this docket to mediation.
31. On September 13, 2018, Forest Glen, Commission Staff, Dennis Brown, Van Johnson, and Cecil Perkins, on behalf of himself and Fleming Mitchell, participated in mediation.
32. In SOAH Order No. 5 issued on September 17, 2018, the SOAH mediator reported that the parties reached an agreement during mediation and signed a term sheet.
33. On September 17, 2018, the parties filed an agreed motion to abate.
34. In SOAH Order No. 6 issued on September 18, 2018, the SOAH ALJ abated this proceeding and directed the parties to file settlement documents or a status report by October 4, 2018.
35. On October 4, 2018, Commission Staff filed a status update and reported that the parties were continuing to finalize a settlement agreement and requested a deadline of November 1, 2018, to file a status report or an agreement, proposed order, and supporting evidence.

36. In SOAH Order No. 7 issued on October 9, 2018, the SOAH ALJ continued the abatement of this proceeding and directed the parties to file settlement documents or a status report by November 1, 2018.
37. On November 1, 2018, Commission Staff filed a status update and requested a deadline of December 1, 2018, to file a status report or an agreement, proposed order and supporting evidence.
38. In SOAH Order No. 8 issued on November 8, 2018, the SOAH ALJ continued the abatement of this proceeding and directed the parties to file settlement documents or a status report by December 1, 2018.
39. On November 12, 2018, Commission Staff and Forest Glen jointly filed the agreement with attachments, and a motion to admit evidence and remand the proceeding to the Commission. In support of the agreement, Commission Staff filed the affidavit of Fred Bednarski, III and Forest Glen filed the testimony of Steven A. Greenberg.
40. In SOAH Order No. 9 issued on November 26, 2018, the SOAH ALJ admitted evidence, remanded the case to the Commission, and dismissed the case from the SOAH docket.

Notice–TWC § 13.1871(b), 16 TAC § 24.27

41. On December 27, 2017, Forest Glen sent a notice of the proposed rate change to each customer or affected party by the proposed rate increase via United States mail.
42. On January 11, 2018, Forest Glen filed the affidavit of Harry Hausman, Forest Glen's authorized representative, attesting that notice of the proposed rate change was mailed by United States mail to each customer or affected party on December 27, 2017.
43. On April 27, 2018, Forest Glen sent a notice of prehearing conference to each customer via United States mail.
44. On May 2, 2018, Forest Glen filed the affidavit of Harry Hausman, Forest Glen's authorized representative, attesting that notice of the prehearing conference to be conducted by SOAH was mailed by United States mail to each customer on April 27, 2018.

- 45. On May 25, 2018, the Commission ordered Forest Glen to file a revised notice of proposed rate change with a new proposed effective date.
- 46. On June 1, 2018, Forest Glen sent a revised notice of proposed rate change to each customer or affected party by the proposed rate increase via United States mail.
- 47. On June 1, 2018, Forest Glen filed the affidavit of Steven Greenberg, Forest Glen's authorized representative, attesting that notice of the proposed rate change was mailed by United States mail to each customer or affected party on June 1, 2018.

Protests, Intervenors, and Intervenor Alignment—TWC § 13.1871(i), 16 TAC §§ 22.103–22.105

- 48. Commission Staff participated in this docket.
- 49. More than 10% of the ratepayers of Forest Glen filed protests against the rate change.
- 50. On January 10, 2018, Fleming Mitchell and Van Johnson each filed a motion to intervene.
- 51. In Order No. 3 issued on February 2, 2018, the Commission ALJ granted the intervention of Fleming Mitchell and Van Johnson.
- 52. On May 18, 2018, Dennis Brown and Cecil Perkins each requested to intervene.
- 53. In SOAH Order No. 2 issued on May 21, 2018, the SOAH ALJ granted the intervention of Dennis Brown and Cecil Perkins.
- 54. On June 18, 2018, Forest Glen filed a motion to align intervenors and require electronic service.
- 55. On June 22, 2018, the intervenors jointly filed a response opposing Forest Glen's request to align the intervenors.
- 56. On June 28, 2018, Commission Staff filed a request for additional intervention date.
- 57. On July 6, 2018, Forest Glen filed a response opposing Commission Staff's request for an additional intervention date.
- 58. In SOAH Order No. 4 issued on August 2, 2018, the SOAH ALJ denied Commission Staff's request for an additional intervention date, and denied Forest Glen's request to align the intervenors.

Statements of Position and Pre-filed Testimony—16 TAC §§ 22.124, 22.225

59. On July 18, 2018, Forest Glen filed the direct testimonies and exhibits of Steven A. Greenberg and Jimmy Alan Hall.
60. On August 9, 2018, Fleming Mitchell filed his direct testimony and exhibits.
61. On August 10, 2018, Cecil Perkins, Van Johnson, and Dennis Brown, residents of the Potranco Ranch subdivision, filed direct testimony and exhibits.
62. On August 23, 2018, Commission Staff filed the direct testimonies and attachments of Andrew Novak, Fred Bednarski, III, Debi Loockerman, and Greg Charles.
63. On August 23, 2018, Commission Staff filed the workpapers to the direct testimonies of Andrew Novak and Fred Bednarski, III.
64. On September 10, 2018, Forest Glen filed the rebuttal testimony and exhibits of Steven A. Greenberg.

Description of the Agreement

65. On November 12, 2018, Forest Glen and Commission Staff jointly filed an agreement with an attached proposed order and agreed tariff.
66. On November 12, 2018, Commission Staff filed the affidavit of Fred Bednarski, III of the Commission's Water Utility Regulation Division in support of the agreement.
67. On November 12, 2018, Forest Glen filed the testimony of Steven A. Greenberg in support of the agreement.
68. The intervenors are unopposed to the agreement.
69. Under the agreement, Forest Glen is authorized to charge a flat rate of \$65 per connection per month as shown in the revised tariff for sewer CCN No. 21070 attached to the agreement as exhibit B.
70. The effective date of the rate increase is July 6, 2018, which is the effective date of Forest Glen's interim rate of \$65 per month under SOAH Order No. 4.

71. Under the agreement, Forest Glen will record the \$2,950 connection fee collected at closing as a contribution in aid of construction beginning with the sale of the 257th lot and will continue this accounting practice through the sale of the 366th lot.
72. Forest Glen will provide customers with a minimum of 60-days' notice of any future proposed rate change.
73. Forest Glen will not seek to recover any revenue shortfall it incurs while the \$65 rate is in effect in a future base rate proceeding.
74. Until construction is complete on all homes that will receive sewer service from Forest Glen, including any development made possible by a future amendment to CCN number 21070, Forest Glen will provide customers with a quarterly newsletter that will include one-time per year a copy of the annual report that Forest Glen files with the Commission as required by Texas Water Code (TWC) § 13.136.
75. Until construction is complete on all homes that will receive sewer service from Forest Glen, including any development made possible by a future amendment to CCN number 21070, Forest Glen will send a representative to all regular meetings of the Potranco Ranch Home Owners' Association for the purpose of updating residents on the utility's recent activities and future plans related to the provision of sewer or other service provided by Forest Glen.
76. The parties agreed that the rates, terms, and conditions of the tariff resulting from the agreement are just and reasonable and are not unreasonable, preferential, prejudicial, or discriminatory; and are sufficient, equitable, and consistent in application to each class of customers.

Evidentiary Record

77. In SOAH Order No. 9 issued on November 26, 2018, the SOAH ALJ admitted the following evidence into the record:
 - a. Application of Forest Glen Utility Company for authority to change rates filed December 21, 2017;
 - b. Notice of proposed rate change filed January 11, 2018;

- c. Forest Glen response to oral comments filed February 23, 2018;
- d. Proof of notice of prehearing conference filed May 2, 2018;
- e. Proof of second notice of proposed rate change filed June 1, 2018;
- f. Direct testimony and exhibits of Forest Glen witness Steven A. Greenberg filed July 18, 2018;
- g. Direct testimony and exhibits of Forest Glen witness Jimmy Alan Hall filed July 18, 2018;
- h. Direct testimony and exhibits of intervenor Fleming D. Mitchell filed August 9, 2018;
- i. Direct testimony and exhibits of intervenor Cecil Perkins filed August 10, 2018;
- j. Direct testimony and exhibits of intervenor Van Johnson filed August 10, 2018;
- k. Direct testimony and attachments of intervenor Dennis M. Brown filed August 10, 2018;
- l. Direct testimony and attachments of Commission Staff witness Debi Loockerman filed August 23, 2018;
- m. Direct testimony and attachments of Commission Staff witness Greg Charles filed August 23, 2018;
- n. Direct testimony and attachments of Commission Staff witness Andrew Novak filed August 23, 2018;
- o. Direct testimony and attachments of Commission Staff witness Fred Bednarski, III filed August 23, 2018;
- p. Settlement agreement and attachments filed November 12, 2018;
- q. Affidavit of Fred Bednarski, III in support of the settlement agreement filed November 12, 2018; and
- r. Testimony of Steven A. Greenberg in support of the settlement agreement filed November 12, 2018.

Interim Rates–16 TAC §§ 24.37, 24.75

78. On June 15, 2018, Forest Glen filed a motion for interim rates.
79. On June 22, 2018, Commission Staff filed a response stating it was unopposed to Forest Glen's request for interim rates.
80. In SOAH Order No. 4 issued on August 2, 2018, the SOAH ALJ granted Forest Glen's request for interim rates and established July 6, 2018, as the effective date.
81. On October 25, 2018, Commission Staff filed a copy of the tariff including the interim rates that was stamped approved and placed in the Commission's tariff book.

Revenue Requirement–TWC § 13.183(a), 16 TAC § 24.41(b)

82. Forest Glen's application reflects a revenue requirement of \$309,571.
83. The rates approved in this Order will recover a revenue requirement of \$209,820 at the current customer count of 269 connections.

Operation, Maintenance, and Administrative Expenses–16 TAC § 24.75(c)(2)(A)

84. Commission Staff determined that the total amount of operation and maintenance expenses shown by Forest Glen's financials is \$101,007.
85. Forest Glen determined that the total amount of operation and maintenance expenses is \$141,945.
86. Forest Glen's schedule I-1 reflects that the total amount of administrative and general expenses in the test year was \$38,785.

Depreciation Expense–16 TAC § 24.75(c)(2)(B)

87. Commission Staff determined that the total amount of depreciation shown by Forest Glen's financials is \$68,679.
88. Forest Glen's schedule I-1 reflects that the total amount of depreciation in the test year was \$75,419.

Debt Service–16 TAC § 24.75(c)(2)(C)

89. Forest Glen does not have any loan arrangements or other debt instruments.

Rate-Case Expenses

90. The parties to the settlement agreed that Forest Glen be allowed to recover rate-case expenses over a period of no longer than 24 consecutive months up to a maximum of \$46,080.

Refund or Surcharge

91. The surcharge will be collected as follows: a \$5 surcharge per connection per month beginning on July 6, 2019; and a \$10 surcharge per connection per month beginning on July 6, 2020.
92. If the number of connections exceeds 269 at any time after July 6, 2019, the parties to the settlement agreed that Forest Glen will collect no more than \$46,080 in total rate-case expenses from the above surcharges.

Good Cause Exceptions—16 TAC § 22.5(b)

93. No party sought a good cause exception.
94. It is appropriate to consider this Order at the earliest open meeting available; therefore good cause exists to waive the requirement in 16 TAC § 22.35(b)(2) that a proposed order be served on the parties 20 days before the Commission is scheduled to consider an application in an open meeting.

Informal Disposition—16 TAC § 22.35(a)

95. More than 15 days have passed since completion of the notice provided in this docket.
96. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction to consider Forest Glen's application for a sewer rate increase under TWC §§ 13.041, 13.181 through 13.185, and 13.1871 and 16 TAC §§ 24.12 through 24.49.
2. Forest Glen is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(59).

3. Forest Glen is a class C utility as defined in TWC § 13.002(4-c) and 16 TAC § 24.3(17).
4. Under 16 TAC § 24.12, Forest Glen bears the burden of proof to establish that the proposed rates are just and reasonable.
5. SOAH had authority over this proceeding under Texas Government Code § 2003.049.¹
6. Forest Glen provided notice of the application in accordance with the requirements of TWC § 13.1871 and 16 TAC §§ 24.27 and 24.35.
7. This docket was processed in accordance with the requirements of the TWC, Administrative Procedure Act,² and Commission Rules.
8. The Commission is required in setting rates to establish a revenue requirement. TWC § 13.183(a).
9. Forest Glen's overall revenues will permit Forest Glen a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public over and above its reasonable and necessary operating expenses and will preserve Forest Glen's financial integrity.
10. The rates approved in this proceeding are just and reasonable as required by TWC § 13.182(a).
11. The rates established by this Order are just and reasonable; not unreasonable, preferential, prejudicial, or discriminatory; and are sufficient, equitable, and consistent in application to each class of customers as required by TWC § 13.182(b).
12. The recoverable rate-case expenses are just, reasonable, necessary, and in the public interest as required by 16 TAC § 24.44(a).
13. Under 16 TAC § 22.5(b), there is good cause to waive the 20-day requirement in 16 TAC § 22.35(b)(2).

¹ Tex. Gov't Code § 2003.049.

² Tex. Admin. Code §§ 2001.001–.902.

14. This application does not constitute a major rate proceeding, as defined by 16 TAC § 22.2(27).
15. 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 approves Forest Glen's change in sewer rates, as modified by the agreement, to the extent provided in this Order.
2. The Commission approves the tariffs attached to the agreement as exhibit B filed on November 12, 2018.
3. All parties to the agreement must comply with the terms of that agreement, except as modified by this Order.
4. Forest Glen must record each connection fee it receives as a contribution in aid of construction in the amount of the connection fee.
5. In its next rate-case application, Forest Glen must propose two rate designs. One rate design will include both a fixed charge and a variable rate, and one will include a fixed rate.
6. Forest Glen must file a rate-case application based on a 2020 test year no later than May 1, 2021.
7. Forest Glen may not recover more than \$46,080 in rate-case expenses through the surcharge approved in this Order.
8. Forest Glen may not seek to recover rate-case expenses other than those approved in this Order.
9. Within 30 days from the end of the 24-month period in which the surcharge described in findings of fact 93 and 94 is in effect, Forest Glen must file a report showing the total amount that has been collected through the surcharge. The report will be filed in Docket

No. 49413, *Compliance Filing of Forest Glen Utility Company Regarding Surcharge for Rate-Case Expenses Incurred in Docket No. 47897*. Within 15 days of the filing of the report, Commission Staff must file comments on whether Forest Glen has complied with this Order with respect to the rate-case surcharge.

10. Within ten days of the issuance of this Order, Commission Staff must provide a clean copy of the tariff approved by this Order to central records to be marked *Approved* and filed in the Commission's tariff books.
11. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.
12. 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 5th day of April 2019.

PUBLIC UTILITY COMMISSION OF TEXAS


DEANN T. WALKER, CHAIRMAN


ARTHUR C. D'ANDREA, COMMISSIONER


SHELLY BOTKIN, COMMISSIONER