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DOCKET NO. 47897

RECEIVED

APPLICATION OF FOREST GLEN  
UTILITY COMPANY FOR  
AUTHORITY TO CHANGE RATES

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PUBLIC UTILITY COMMISSION

2018 MAR 22 AM 10

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**COMMISSION STAFF'S SUPPLEMENTAL RECOMMENDATION ON  
ADMINISTRATIVE COMPLETENESS AND SUSPENSION OF RATES AND  
REQUEST FOR REFERRAL TO THE STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Supplemental Recommendation on Administrative Completeness and Suspension of Rates and Request for Referral to the State Office of Administrative Hearings in response to Order No. 2. In support thereof, Staff shows the following:

**I. BACKGROUND**

On December 21, 2017, Forest Glen Utility Company (Forest Glen) filed an application with the Public Utility Commission of Texas (Commission) for a rate/tariff change under sewer Certificate of Convenience and Necessity (CCN) No. 21070 in Medina County, Texas pursuant to Tex. Water Code Ann. (TWC) § 13.1871 and 16 Tex. Admin. Code (TAC) § 24.22. The proposed increase had an effective date of February 1, 2018.

On January 31, 2018, Order No. 2 was issued, deeming Forest Glen's application administratively incomplete based on deficiencies identified by Staff. Additionally, Order No. 2 effectively suspended the proposed effective date of the rate increase. Order No. 2 set February 21, 2018, as Forest Glen's deadline to cure the deficiencies and March 22, 2018 as the deadline for Staff to file a supplemental recommendation on administrative completeness. Therefore, this pleading is timely filed.

On February 23, 2018, Forest Glen filed a revised application and additional information with the Commission. On February 28, 2018, Forest Glen filed further information in response to the identified deficiencies.

## **II. RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS**

Staff has reviewed the additional information filed by Forest Glen and, as detailed in the attached memorandum from Fred Bednarski III and Gregory Charles of the Commission's Water Utility Regulation Division, recommends that the application and notice be found administratively complete.

## **III. RECOMMENDATION ON SUSPENSION OF RATES**

Under TWC § 13.1871(e) and 16 TAC § 24.26(b)(1), if the Commission deems an application filed pursuant to TWC § 13.1871 as administratively incomplete, it may suspend the effective date of the rate change until a properly completed request to change rates is accepted by the Commission. On January 31, 2018, Order No. 2 suspended the proposed effective date of the rate increase pursuant to TWC § 13.1871(e).

In addition, pursuant to TWC § 13.1871(g) and 16 TAC § 24.26(a)(2), the Commission is permitted to suspend the effective date of a rate change, after written notice to the utility, for up to two hundred sixty-five (265) days from the date the proposed rates would otherwise be effective for an application filed pursuant to TWC § 13.1871. Under 16 TAC § 24.21(h), the effective date of a proposed rate increase for an application filed under TWC § 13.1871 is the proposed date on the notice to customers and the Commission, *unless* suspended by the Commission.

Staff recommends that the effective date of Forest Glen's rate increase remain suspended pursuant to 16 TAC § 24.26(a)(2). Staff bases its recommendation on the significant number of protests that have already been filed in this docket. Additionally, 16 TAC § 24.29(b) provides Forest Glen an opportunity to request interim rates, if needed. Forest Glen's notice lists an effective date of February 1, 2018 for the proposed rate increase. Order No. 2 suspended the effective date of the rate change due to the application being found administratively incomplete. Therefore, Staff recommends that Forest Glen's proposed rates remained suspended until the earlier of the date established under 16 TAC § 24.26(a)(2)<sup>1</sup> or the issuance of an order setting interim or final rates.

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<sup>1</sup> In this instance, the proposed rates would otherwise be effective, and the two hundred sixty-five (265) days count would begin, as of the date the application is deemed administratively complete by the administrative law judge.

#### **IV. REQUEST FOR REFERRAL TO THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

Under TWC § 13.1871 and 16 TAC § 24.28(c)(2), the Commission shall set an application filed under TWC § 13.1871 for hearing if it receives protests from the lesser of one thousand (1,000) or ten percent (10%) of the affected ratepayers before the 91<sup>st</sup> day after the effective date of the rate change. The effective date of Forest Glen's rate change is February 1, 2018, and ninety (90) days after that date is May 2, 2018. Staff has already received approximately seventy-nine (79) protests in this case, and Forest Glen serves one hundred forty-nine (149) active connections.<sup>2</sup> Staff has reviewed the protests and determined that greater than ten percent (10%) of Forest Glen's ratepayers affected by the proposed rate increase have timely filed protests. Therefore, Staff requests that the Commission refer the matter to the State Office of Administrative Hearings (SOAH) for an evidentiary hearing pursuant to 16 TAC § 24.28(c)(2).

Alternatively, the Commission may set the matter for hearing on its own motion under 16 TAC § 24.28(c)(1) at any time before one hundred twenty (120) days after the effective date of the rate change. As noted above, the effective date of the rate change is February 1, 2018, unless suspended by the Commission. The deadline to refer to SOAH has not passed, and Staff requests that the matter be referred to SOAH for an evidentiary hearing on the Commission's own motion in the public interest. Accordingly, Staff proposes no procedural schedule at this time.

#### **V. CONCLUSION**

For the reasons detailed above, Staff recommends that the application be found administratively complete. Staff also recommends that the effective date of Forest Glen's proposed rate increase remain suspended until the earlier of the date established under 16 TAC § 24.26(a)(2) or the issuance of an order setting interim or final rates. In addition, Staff recommends that the matter be referred to SOAH for an evidentiary hearing, and respectfully requests that an order be issued consistent with the above recommendations.

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<sup>2</sup> See Application at 9 (February 23, 2018).

**DATED:** March 22, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Margaret Uhlig Pemberton  
Division Director

Karen S. Hubbard  
Managing Attorney



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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on March 22, 2018 in accordance with 16 TAC § 22.74.



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Richard A. Nemer

**Public Utility Commission of Texas**

**Memorandum**

**TO:** Richard Nemer, Attorney  
Legal Division

**THRU:** Debi Loockerman, Financial Manager  
Water Utility Regulation Division

**FROM:** Gregory Charles, Engineer  
Fred Bednarski III, Financial Examiner  
Water Utility Regulation Division

**DATE:** ~~March~~ 22, 2018

**SUBJECT:** *Docket No. 47897, Application of Forest Glen Utility Company for Authority to Change Rates*

On December 21, 2017, Forest Glen Utility Company (Forest Glen or Applicant), Sewer Certificate of Convenience and Necessity No. 21070, filed an application with the Public Utility Commission of Texas (Commission) for a sewer rate/tariff change in Medina County, Texas. Staff has completed an administrative review pursuant to Texas Water Code (TWC) § 13.1871 and 16 Tex. Admin. Code (TAC) §§ 24.8 and 24.22.

Pursuant to TWC §§ 13.002(4-c) and 13.1872(c)(2), Forest Glen is a Class C sewer utility complying with the procedures to change rates described by TWC § 13.1871, which allows the Applicant to request a larger increase through the Class B rate/tariff change process. Forest Glen currently provides retail sewer utility service with one public sewer system to approximately 149 active connections.

Staff initially found the application insufficient for filing and suspended the rates on January 22, 2018. Based on the supplemental information received on February 23, 2018, Staff recommends the application be found sufficient for filing and administratively complete. Staff additionally recommends that the rates remain suspended unless interim rates are approved by the Commission.

A sufficient number of protests have been filed in Docket No. 47897 to request a referral to the State Office of Administrative Hearings.