



Control Number: 51262



Item Number: 1

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DOCKET NO. 51262

APPLICATION OF FOREST GLEN UTILITY §
COMPANY TO ACQUIRE CONTROLLING §
INTEREST IN UTILITY PURSUANT TO §
TEXAS WATER CODE § 13.302 §

PUBLIC UTILITY COMMISSION
OF TEXAS

FOREST GLEN UTILITY COMPANY'S
REQUEST FOR ACQUISITION OF CONTROLLING INTEREST IN UTILITY
PURSUANT TO TWC § 13.302

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DOCKET NO. _____

APPLICATION OF FOREST GLEN UTILITY	§	PUBLIC UTILITY COMMISSION
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FOREST GLEN UTILITY COMPANY'S
REQUEST FOR ACQUISITION OF CONTROLLING INTEREST IN UTILITY
PURSUANT TO TWC § 13.302

Forest Glen Utility Company ("Forest Glen") submits this Request to Acquire Controlling Interest in a Utility pursuant to Texas Water Code § 13.302 and title 16 Texas Administrative Code ("TAC") § 24.243, and in support respectfully shows the following:

I. INTRODUCTION

Forest Glen Utility Company ("Forest Glen") is an investor-owned-utility providing sewer service to the Potranco Ranch Subdivision in Medina County, Texas under Certificate of Convenience and Necessity ("CCN") No. 21070. Forest Glen is a Texas corporation currently owned 50.33% by Hausman Holdings, LLC ("Hausman" or "Seller"). Hausman seeks to transfer all its issued and outstanding shares of stock in Forest Glen to current and minority owner BVRT Utility Holding Company, LLC ("BVRT" or "Purchaser"), such that BVRT will own Forest Glen in its entirety.

II. JURISDICTION

The Texas Water Code defines Forest Glen as a water and sewer utility¹ and is a retail water and sewer utility as defined in Commission rules.² TWC § 13.302 requires anyone acquiring a controlling interest in a utility doing business in Texas to file an application with the Commission not later than the 61st day before the date on which the transaction shall occur.³

¹ TWC § 13.002(23).

² 16 TAC § 24.3(39).

³ TWC § 13.302.

III. PROPOSED STOCK TRANSFER

Seller has entered into a Stock Purchase Agreement (“Agreement”) to transfer all of its stock in Forest Glen to BVRT, which Agreement is attached hereto as Exhibit D. The stock will transfer upon Commission approval of this application, but in no event before the 61st day after the submittal of this application.

According to the Comptroller of Texas, Forest Glen has the right to transact business in Texas.⁴ The CCN and current tariff are attached as Exhibit A, and the CCN maps are attached as Exhibit H. A list of all customer names, addresses, and deposits on account are listed in Exhibit B. Exhibit C includes the PUC Annual Report and Forest Glen’s financial information. Exhibit J includes the Texas Commission on Environmental Quality Inspection Reports of Forest Glen.

Forest Glen does not have any adjudicated compliance issues (including Agreed Orders or Consent Agreements) with any Federal, State, or local regulatory authorities. As shown in Exhibit E, Purchaser, which is already a current but minority owner of Forest Glen, has demonstrated its financial ability. Financial information for Forest Glen generally is attached as Exhibit F.⁵ Purchaser will continue to utilize the existing contract operator and technical staff currently working for Forest Glen. Customers of Forest Glen will not notice any change in service.

IV. REQUEST OF COMMISSION

Hausman, BVRT, and Forest Glen (collectively the “Parties”) respectfully request that the Commission approve the transfer of 100% of the stock pursuant to TWC § 13.302. The Parties anticipate that in the course of this proceeding, they will provide the Commission confidential information, the disclosure of which could place each of the Parties at a competitive disadvantage. Therefore, the Parties propose that the Commission adopt the Protective Order attached as Exhibit K. This Protective Order includes the same terms as the Commission’s standard protective order.

⁴ Texas Comptroller of Accounts, Status of Account (Aug. 21, 2020), attached as Exhibit I.

V. CONCLUSION

For the reasons stated, the Parties respectfully request that the Commission issue an order approving the acquisition of controlling interest in Forest Glen in accordance with TWC § 13.302 and 16 TAC § 24.243 and such other relief as justice may require.

Respectfully submitted,

Randall B. Wilburn
State Bar No. 24033342
Helen S. Gilbert
State Bar No. 00786263
GILBERT WILBURN PLLC
7000 N. MoPac Expwy, Suite 200
Austin, Texas 78731
Telephone: (512) 535-1661
Telecopier: (512) 535-1678



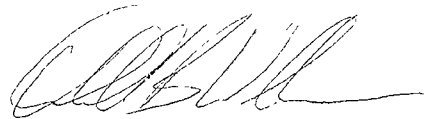
By: _____

Randall B. Wilburn

**ATTORNEYS FOR HILL COUNTRY
UTILITIES, LLC**

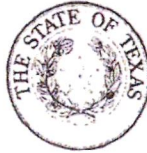
CERTIFICATE OF SERVICE

I hereby certify that I have or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on the 8th day of September 2020.



Randall B. Wilburn

EXHIBIT A - CCN AND TARIFF



Public Utility Commission of Texas

By These Presents Be It Known To All That

Forest Glen Utility Company

having obtained certification to provide sewer 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, Forest Glen Utility Company is entitled to this

Certificate of Convenience and Necessity No. 21070

to provide continuous and adequate sewer utility service to that service area or those service areas in Medina County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 47389 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Forest Glen Utility Company, 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, this 13TH day of FEBRUARY 2018.

EXHIBIT A - CCN AND TARIFF

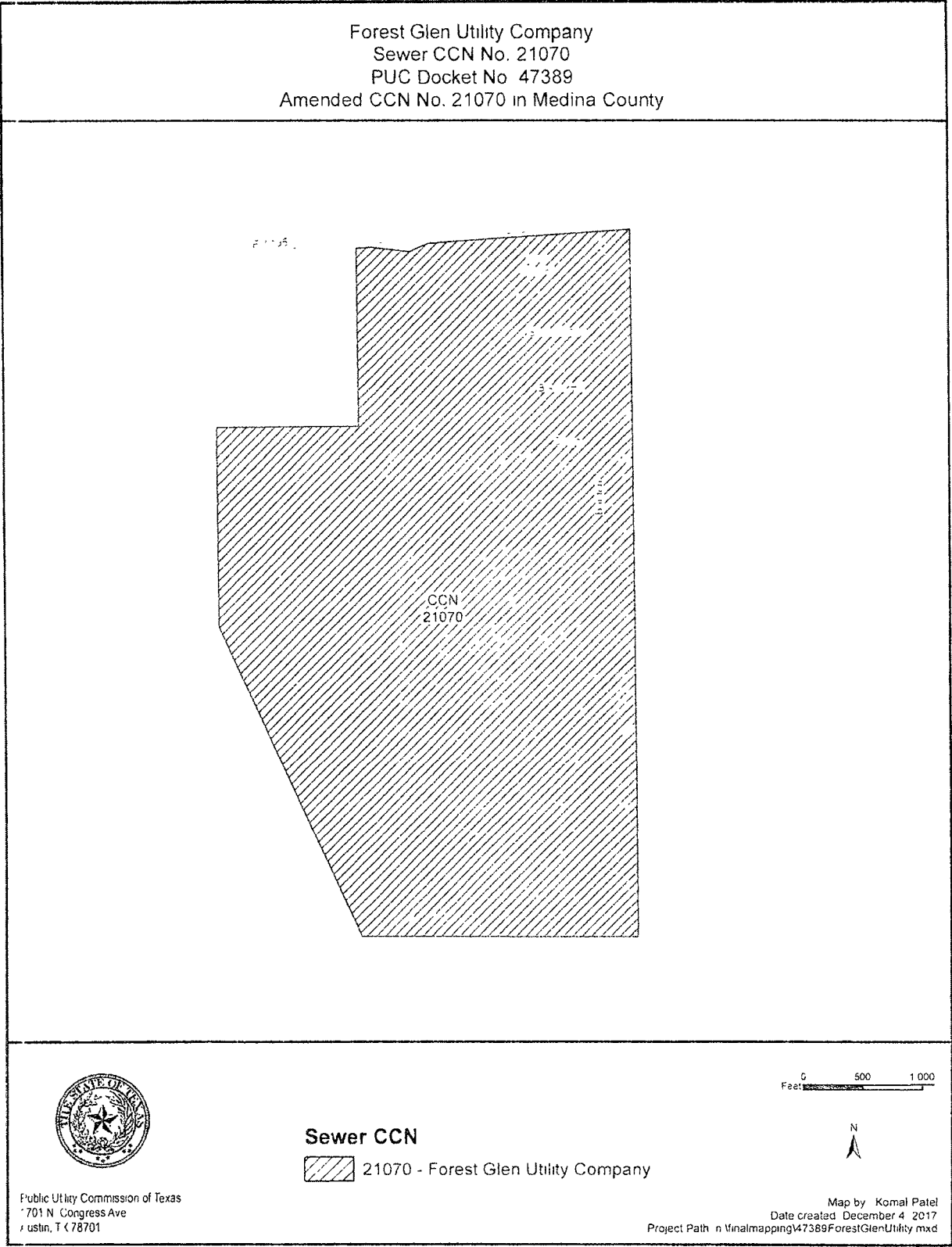


EXHIBIT A - CCN AND TARIFF



SEWER UTILITY TARIFF Docket Number 47897

Forest Glen Utility Company
(Utility Name)

15720 Bandera Road, # 103
(Business Address)

Helotes, Texas 78023
(City, State, Zip Code)

(210) 695-5490
(Area Code/Telephone)

This tariff is effective for utility operations under the following Certificate of Convenience and Necessity:

21070

This tariff is effective in the following county:

Medina

This tariff is effective in the following cities or unincorporated towns (if any):

N/A

This tariff is effective in the following subdivisions or systems:

Potranco Ranch Subdivision (WQ 15030-001)

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The above utility lists the following sections of its tariff (if additional pages are needed for a section, all pages should be numbered consecutively):

SECTION 1.0 -- RATE SCHEDULE	2
SECTION 2.0 -- SERVICE RULES AND POLICIES	4
SECTION 3.0 -- EXTENSION POLICY	9

APPENDIX A -- SAMPLE SERVICE AGREEMENT

EXHIBIT A - CCN AND TARIFF

Forest Glen Utility Company

Sewer Utility Tariff Page No. 2

SECTION 1.0 -- RATE SCHEDULE

Section 1.01 - Rates

The presiding officer has established the following interim rates to be in effect until the final decision on the requested rate change or until another interim rate is established.

Monthly Charge

Flat Rate of \$65.00 per connection.

FORM OF PAYMENT: The utility will accept the following forms of payment:

Cash X, Check X, Money Order X, Credit Card X, Other (specify)

THE UTILITY MAY REQUIRE EXACT CHANGE FOR PAYMENTS AND MAY REFUSE TO ACCEPT PAYMENTS MADE USING MORE THAN \$1.00 IN SMALL COINS. A WRITTEN RECEIPT WILL BE GIVEN FOR CASH PAYMENTS. AT THE CUSTOMER'S OPTION, ANY BILLING TRANSACTION OR COMMUNICATION MAY BE PERFORMED ON THE INTERNET. THIS INCLUDES THE UTILITY SENDING PAPERLESS BILLS BY EMAIL.

REGULATORY ASSESSMENT 1.0%

PUBLIC UTILITY COMMISSION (PUC) RULES REQUIRE THE UTILITY TO COLLECT A FEE OF ONE PERCENT OF THE RETAIL MONTHLY BILL AND TO REMIT FEE TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ).

TAP FEE \$300.00

TAP FEE IS BASED ON THE AVERAGE OF THE UTILITY'S ACTUAL COST FOR MATERIALS AND LABOR FOR STANDARD RESIDENTIAL CONNECTION OF 5/8" METER PLUS UNIQUE COSTS AS PERMITTED BY PUC RULE AT COST.

TAP FEE (Large Connection Tap) Actual Cost

TAP FEE IS BASED ON THE UTILITY'S ACTUAL COST FOR MATERIALS AND LABOR FOR METERS LARGER THAN STANDARD 5/8" METERS.

RECONNECTION FEE

THE RECONNECT FEE MUST BE PAID BEFORE SERVICE CAN BE RESTORED TO A CUSTOMER WHO HAS BEEN DISCONNECTED FOR THE FOLLOWING REASONS (OR OTHER REASONS LISTED UNDER SECTION 2.0 OF THIS TARIFF):

a) Non-payment of bill (Maximum \$25.00) \$25.00

b) Customer's request that service be disconnected \$50.00
or other reasons listed under Section 2.0 of this tariff

TRANSFER FEE \$50.00

THE TRANSFER FEE WILL BE CHARGED FOR CHANGING AN ACCOUNT NAME AT THE SAME SERVICE LOCATION WHEN THE SERVICE IS NOT DISCONNECTED.

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EXHIBIT A - CCN AND TARIFF

Forest Glen Utility Company

Sewer Utility Tariff Page No. 3

SECTION 1 0 -- RATE SCHEDULE (Continued)

LATE CHARGE (Either \$5.00 or 10% of the bill)..... 10%
COMMISSION RULES ALLOW A ONE-TIME PENALTY TO BE CHARGED ON DELINQUENT BILLS. A LATE
CHARGE MAY NOT BE APPLIED TO ANY BALANCE TO WHICH THE PENALTY WAS APPLIED IN A
PREVIOUS BILLING

RETURNED CHECK CHARGE..... \$25.00
RETURNED CHECK CHARGES MUST BE BASED ON THE UTILITY'S DOCUMENTABLE COST

Section 1.02 – Miscellaneous Fees

CUSTOMER DEPOSIT RESIDENTIAL (Maximum \$50) \$50.00

COMMERCIAL AND NON-RESIDENTIAL DEPOSIT..... 1/6TH EST. ANNUAL BILL

GOVERNMENTAL TESTING, INSPECTION AND COSTS SURCHARGE CLAUSE:
WHEN AUTHORIZED IN WRITING BY THE COMMISSION AND AFTER NOTICE TO CUSTOMERS, THE
UTILITY MAY INCREASE RATES TO RECOVER INCREASED COSTS FOR INSPECTION FEES AND WATER
TESTING [16 TAC § 24 25(G)]

LINE EXTENSION AND CONSTRUCTION CHARGES:
REFER TO SECTION 3 0--EXTENSION POLICY FOR TERMS, CONDITIONS, AND CHARGES WHEN NEW
CONSTRUCTION IS NECESSARY TO PROVIDE SERVICE

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EXHIBIT A - CCN AND TARIFF

Forest Glen Utility Company

Sewer Utility Tariff Page No. 4

SECTION 2.0 - SERVICE RULES AND REGULATIONS

The Utility will have the most current Public Utility Commission of Texas (PUC or Commission) Rules, Chapter 24, available at its office for reference purposes. The Rules and this tariff shall be available for public inspection and reproduction at a reasonable cost. The latest Rules or Commission approved changes to the Rules supersede any rules or requirements in this tariff.

Section 2.01 - Application for Sewer Service

All applications for service will be made on the utility's standard application or contract form (attached in the Appendix to this tariff), will be signed by the applicant, any required fees (deposits, reconnect, tap, extension fees, etc. as applicable) will be paid and easements, if required, will be granted before service is provided by the utility. A separate application or contract will be made for each service location.

Section 2.02 – Refusal of Service

The Utility may decline to serve an applicant until the applicant has complied with the regulations of the regulatory agencies (state and municipal regulations) and for the reasons outlined in the commission rules. In the event that the Utility refuses to serve an applicant, the Utility will inform the applicant in writing of the basis of its refusal. The Utility is also required to inform the applicant that a complaint may be filed with the Commission.

Section 2.03 – Fees and Charges and Easements Required Before Service Can Be Connected

(A) Customer Deposits

If a residential applicant cannot establish credit to the satisfaction of the Utility, the applicant may be required to pay a deposit as provided for in Section 1.02 – Miscellaneous Fees of this tariff. The Utility will keep records of the deposit and credit interest in accordance with commission rules.

Residential applicants 65 years of age or older may not be required to pay deposits unless the applicant has an outstanding account balance with the Utility or another water or sewer utility that accrued within the last two years.

Nonresidential applicants who cannot establish credit to the satisfaction of the Utility may be required to make a deposit that does not exceed an amount equivalent to one-sixth of the estimated annual billings.

Refund of deposit - If service is not connected, or after disconnection of service, the Utility will promptly refund the customer's deposit plus accrued interest or the balance, if any, in excess of the unpaid bills for service furnished. The Utility may refund the deposit at any time prior to termination of utility service but must refund the deposit plus interest for any residential customer who has paid 18 consecutive billings without being delinquent. Deposits from non-residential customers may be held as long as that customer takes service.

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EXHIBIT A - CCN AND TARIFF

Forest Glen Utility Company

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SECTION 2.0 - SERVICE RULES AND REGULATIONS (Continued)

(B) Tap or Reconnect Fees

A new customer requesting service at a location where service has not previously been provided must pay a tap fee as provided in Section 1. A customer requesting service where service has previously been provided must pay a reconnect fee as provided in Section 1. Any applicant or existing customer required to pay for any costs not specifically set forth in the rate schedule pages of this tariff shall be given a written explanation of such costs prior to request for payment and/or commencement of construction. If the applicant or existing customer does not believe that these costs are reasonable or necessary, the applicant or existing customer shall be informed of their right to appeal such costs to the commission or such other regulatory authority having jurisdiction over the utility's rates in that portion of the utility's service area in which the applicant's or existing customer's property (ies) is (are) located.

Fees in addition to the regular tap fee may be charged to cover unique costs not normally incurred as permitted by 16 TAC § 24 86(a)(1)(C) if they are listed on this approved tariff. For example, a road bore for customers outside a subdivision or residential area could be considered a unique cost

(C) Easement Requirement

Where recorded public utility easements on the service applicant's property do not exist or public road right-of-way easements are not available to access the applicant's property, the utility may require the applicant to provide it with a permanent recorded public utility easement on and across the applicant's real property sufficient to provide service to that applicant. Such easement(s) shall not be used for the construction of production, storage, transmission or pressure facilities unless they are needed for adequate service to that applicant.

Section 2.04 - Utility Response to Applications for Service

After the applicant has met all the requirements, conditions and regulations for service, the utility will install tap and utility cut-off and/or take all necessary actions to initiate service. The utility will serve each qualified applicant for service within 5 working days unless line extensions or new facilities are required. If construction is required to fill the order and if it cannot be completed within 30 days, the utility will provide the applicant with a written explanation of the construction required and an expected date of service.

Except for good cause where service has previously been provided, service will be reconnected within one working day after the applicant has met the requirements for reconnection.

Section 2.05 - Customer Responsibility

The customer will be responsible for furnishing and laying the necessary customer service pipe from the tap location to the place of consumption. Customers will not be allowed to use the utility's cutoff.

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EXHIBIT A - CCN AND TARIFF

Forest Glen Utility Company

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SECTION 2.0 - SERVICE RULES AND REGULATIONS (Continued)

Section 2.06 Access to Customer's Premises

All customers or service applicants shall provide access to utility cutoffs at all times reasonably necessary to conduct ordinary utility business and after normal business hours as needed to protect and preserve the integrity of the public drinking water supply.

Section 2.07 - Back Flow Prevention Devices

No water connection shall be made to any establishment where an actual or potential contamination or system hazard exists without an approved air gap or mechanical backflow prevention assembly. The air gap or backflow prevention assembly shall be installed in accordance with the American Water Works Association (AWWA) standards C510, C511 and AWWA Manual M14 or the University Of Southern California Manual Of Cross-Connection Control, current edition. The backflow assembly installation by a licensed plumber shall occur at the customer's expense.

The back flow assembly shall be tested upon installation by a recognized prevention assembly tester and certified to be operating within specifications. Back flow prevention assemblies which are installed to provide protection against high health hazards must be tested and certified to be operating within specifications at least annually by a recognized back flow prevention device tester. The maintenance and testing of the back flow assembly shall occur at the customer's expense.

Section 2.10 - Billing

(A) Regular Billing

Bills from the utility will be mailed monthly unless otherwise authorized by the Commission. The due date of bills for utility service will be at least sixteen (16) days from the date of issuance. The postmark on the bill or, if there is no postmark on the bill, the recorded date of mailing by the utility will constitute proof of the date of issuance. Payment for utility service is delinquent if full payment, including late fees and the regulatory assessment, is not received at the utility or the utility's authorized payment agency by 5:00 p.m. on the due date. If the due date falls on a holiday or weekend, the due date for payment purposes will be the next workday after the due date.

(B) Late Fees

A late penalty of either \$5.00 or 10.0% will be charged on bills received after the due date. The penalty on delinquent bills will not be applied to any balance to which the penalty was applied in a previous billing. The utility must maintain a record of the date of mailing to charge the late penalty.

(C) Information on Bill

Each bill will provide all information required by the commission rules. For each of the systems it operates, the utility will maintain and note on the monthly bill a local or toll-free telephone number (or numbers) to which customers can direct questions about their utility service.

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EXHIBIT A - CCN AND TARIFF

Forest Glen Utility Company

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SECTION 2.0 - SERVICE RULES AND REGULATIONS (Continued)

(D) Prorated Bills

If service is interrupted or seriously impaired for 24 consecutive hours or more, the utility will prorate the monthly base bill in proportion to the time service was not available to reflect this loss of service.

Section 2.11 - Payments

All payments for utility service shall be delivered or mailed to the utility's business office. If the business office fails to receive payment prior to the time of noticed disconnection for non-payment of a delinquent account, service will be terminated as scheduled. Utility service crews shall not be allowed to collect payments on customer accounts in the field.

Payment of an account by any means that has been dishonored and returned by the payor or payee's bank shall be deemed to be delinquent. All returned payments must be redeemed with cash or valid money order. If a customer has two returned payments within a twelve month period, the customer shall be required to pay a deposit if one has not already been paid.

Section 2.12 - Service Disconnection

(A) With Notice

Utility service may be disconnected if the bill has not been paid in full by the date listed on the termination notice. The termination date must be at least 10 days after the notice is mailed or hand delivered.

The utility is encouraged to offer a deferred payment plan to a customer who cannot pay an outstanding bill in full and is willing to pay the balance in reasonable installments. However, a customer's utility service may be disconnected if a bill has not been paid or a deferred payment agreement entered into within 26 days from the date of issuance of a bill and if proper notice of termination has been given.

Notice of termination must be a separate mailing or hand delivery in accordance with the commission rules.

(B) Without Notice

Utility service may also be disconnected without notice for reasons as described in the commission rules.

Section 2.13 - Reconnection of Service

Utility personnel must be available during normal business hours to accept payments on the day service is disconnected and the following day unless service was disconnected at the customer's request or due to a hazardous condition.

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EXHIBIT A - CCN AND TARIFF

Forest Glen Utility Company

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SECTION 2.0 - SERVICE RULES AND REGULATIONS (Continued)

Service will be reconnected within 24 hours after the past due bill, reconnect fees and any other outstanding charges are paid or the conditions which caused service to be disconnected are corrected.

Section 2.14 - Service Interruptions

The utility will make all reasonable efforts to prevent interruptions of service. If interruptions occur, the utility will re-establish service within the shortest possible time. Except for momentary interruptions due to automatic equipment operations, the utility will keep a complete record of all interruptions, both emergency and scheduled and will notify the Commission in writing of any service interruptions affecting the entire system or any major division of the system lasting more than four hours. The notice will explain the cause of the interruptions.

Section 2.15 - Quality of Service

The Utility will plan, furnish, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses. Unless otherwise authorized by the Commission, the Utility will maintain facilities as described in the TCEQ Rules and Regulations for Public Water Systems.

Section 2.16 - Customer Complaints and Disputes

If a customer or applicant for service lodges a complaint, the Utility will promptly make a suitable investigation and advise the complainant of the results. Service will not be disconnected pending completion of the investigation. If the complainant is dissatisfied with the Utility's response, the Utility must advise the complainant that he has recourse through the PUC complaint process. Pending resolution of a complaint, the Commission may require continuation or restoration of service.

The Utility will maintain a record of all complaints which shows the name and address of the complainant, the date and nature of the complaint and the adjustment or disposition thereof, for a period of two years after the final settlement of the complaint.

In the event of a dispute between a customer and a utility regarding any bill for utility service, the utility will conduct an investigation and report the results to the customer. If the dispute is not resolved, the utility will inform the customer that a complaint may be filed with the Commission.

Section 2.17 - Customer Liability

Customer shall be liable for any damage or injury to utility-owned property shown to be caused by the customer.

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EXHIBIT A - CCN AND TARIFF

Forest Glen Utility Company

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SECTION 3.0 - EXTENSION POLICY

Section 3.01 - Standard Extension Requirements

Line Extension and Construction Charges: No Contribution In Aid of Construction may be required of any customer except as provided for in this approved extension policy.

The utility is not required to extend service to any applicant outside of its certified service area and will only do so under terms and conditions mutually agreeable to the utility and the applicant, in compliance with commission rules and policies, and upon extension of the utility's certified service area boundaries by the commission.

The applicant for service will be given an itemized statement of the costs, options such as rebates to the customer, sharing of construction costs between the utility and the customer, or sharing of costs between the customer and other applicants prior to beginning construction.

Section 3.02 - Costs Utilities and Service Applicants Shall Bear

Within its certified area, the utility will pay the cost of the first 200 feet of any water main or distribution line necessary to extend service to an individual residential customer within a platted subdivision.

However, if the residential customer requesting service purchased the property after the developer was notified in writing of the need to provide facilities to the utility, the utility may charge for the first 200 feet. The utility must also be able to document that the developer of the subdivision refused to provide facilities compatible with the utility's facilities in accordance with the utility's approved extension policy after receiving a written request from the utility.

Residential customers will be charged the equivalent of the costs of extending service to their property from the nearest collection line even if that line does not have adequate capacity to serve the customer. However, if the customer places unique, non-standard service demands upon the system, the customer may be charged the additional cost of extending service to and throughout their property, including the cost of all necessary transmission and storage facilities necessary to meet the service demands anticipated to be created by that property.

Unless an exception is granted by the PUC, the residential service applicant shall not be required to pay for costs of main extensions greater than 6" in diameter for gravity wastewater lines.

Exceptions may be granted by the PUC if

- adequate service cannot be provided to the applicant using the maximum line sizes listed due to distance or elevation, in which case, it shall be the utility's burden to justify that a larger diameter pipe is required for adequate service;
- or larger minimum line sizes are required under subdivision platting requirements or building codes of municipalities within whose corporate limits or extraterritorial jurisdiction the point of use is located; or the residential service applicant is located outside the CCN service area.

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EXHIBIT A - CCN AND TARIFF

Forest Glen Utility Company

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SECTION 3.0 - EXTENSION POLICY (continued)

If an exception is granted, the utility shall establish a proportional cost plan for the specific extension or a rebate plan which may be limited to seven years to return the portion of the applicant's costs for oversizing as new customers are added to ensure that future applicants for service on the line pay at least as much as the initial service applicant.

For purposes of determining the costs that service applicants shall pay, commercial customers with service demands greater than residential customer demands in the certified area, industrial, and wholesale customers shall be treated as developers.

If an applicant requires service other than the standard service provided by the utility, such applicant will be required to pay all expenses incurred by the utility in excess of the expenses that would be incurred in providing the standard service and connection beyond 200 feet and throughout his property including the cost of all necessary transmission facilities.

The utility will bear the full cost of any over-sizing of sewer mains necessary to serve other customers in the immediate area. The individual residential customer shall not be charged for any additional treatment facilities. Contributions in aid of construction of individual residential customers for production, storage, treatment or transmission facilities unless otherwise approved by the Commission under this specific extension policy.

Section 3.03 - Contributions in Aid of Construction

Developers may be required to provide contributions in aid of construction in amounts sufficient to furnish the development with all facilities necessary to provide for reasonable local demand requirements and to comply with the TCEQ minimum design criteria for facilities used in the production, collection, transmission, pumping, or treatment of sewage or the TCEQ minimum requirements. For purposes of this subsection, a developer is one who subdivides or requests more than two meters on a piece of property. Commercial, industrial, and wholesale customers will be treated as developers.

Any applicant who places unique or non-standard service demands on the system may be required to provide contributions in aid of construction for the actual costs of any additional facilities required to maintain compliance with the TCEQ minimum design criteria for water production, treatment, pumping, storage and transmission.

Any service extension to a subdivision (recorded or unrecorded) may be subject to the provisions and restrictions of 16 TAC § 24.86(d). When a developer wishes to extend the system to prepare to service multiple new connections, the charge shall be the cost of such extension, plus a pro-rata charge for facilities which must be committed to such extension compliant with the TCEQ minimum design criteria. As provided by 16 TAC § 24.85(e)(3), for purposes of this section, commercial, industrial, and wholesale customers shall be treated as developers.

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EXHIBIT A - CCN AND TARIFF

Forest Glen Utility Company

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SECTION 3.0 - EXTENSION POLICY (Continued)

A utility may only charge a developer standby fees for unrecovered costs of facilities committed to a developer's property under the following circumstances:

- Under a contract and only in accordance with the terms of the contract; or
- if service is not being provided to a lot or lots within two years after installation of facilities necessary to provide service to the lots has been completed and if the standby fees are included on the utilities approved tariff after a rate change application has been filed. The fees cannot be billed to the developer or collected until the standby fees have been approved by the commission or executive director.
- For purposes of this section, a manufactured housing rental community can only be charged standby fees under a contract or if the utility installs the facilities necessary to provide individually metered service to each of the rental lots or spaces in the community.

Section 3.04 - Appealing Connection Costs

The imposition of additional extension costs or charges as provided by Sections 3.0 - Extension Policy of this tariff shall be subject to appeal as provided in this tariff, commission rules, or the rules of such other regulatory authority as may have jurisdiction over the utility's rates and services. Any applicant required to pay for any costs not specifically set forth in the rate schedule pages of this tariff shall be given a written explanation of such costs prior to payment and/or commencement of construction. If the applicant does not believe that these costs are reasonable or necessary, the applicant shall be informed of the right to appeal such costs to the commission or such other regulatory authority having jurisdiction over the utility's rates in that portion of the utility's service area in which the applicant's property(ies) is (are) located.

Section 3.05 - Applying for Service

The utility will provide a written service application form to the applicant for each request for service received by the utility's business offices. A separate application shall be required for each potential service location if more than one service connection is desired by any individual applicant. Service application forms will be available at the utility's business office during normal weekday business hours. Service applications will be sent by prepaid first class United States mail to the address provided by the applicant upon request. Completed applications should be returned by hand delivery in case there are questions which might delay fulfilling the service request. Completed service applications may be submitted by mail if hand delivery is not possible.

Where a new tap or service connection is required, the service applicant shall be required to submit a written service application and request that a tap be made. A diagram, map, plat, or written metes and bounds description of precisely where the applicant desires each tap or service connection is to be made and, if necessary, where the meter is to be installed, along the applicant's property line may also be required with the tap request. The actual point of connection and meter installation must be readily accessible to utility personnel for inspection, servicing, and meter reading while being reasonably secure from damage by vehicles and mowers. If the utility has more than one main adjacent to the service applicant's property, the tap or service connection will be made to the utility's nearest service main with adequate capacity to service the applicant's full potential service demand.

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EXHIBIT A - CCN AND TARIFF

Forest Glen Utility Company

Sewer Utility Tariff Page No. 12

SECTION 3.0 - EXTENSION POLICY (continued)

Beyond the initial 200 feet, the customer shall bear only the equivalent cost of extending from the nearest main. If the tap or service connection cannot be made at the applicant's desired location, it will be made at another location mutually acceptable to the applicant and the utility. If no agreement on location can be made, the applicant may refer the matter to the commission for resolution.

Section 3.06 - Qualified Service Applicant

A "qualified service applicant" is an applicant who has: (1) met all of the utility's requirements for service contained in this tariff, commission rules and/or order, (2) has made payment or made arrangement for payment of tap fees, (3) has provided all easements and rights-of-way required to provide service to the requested location, (4) delivered an executed customer service inspection certificate to the Utility, if applicable, and (5) has executed a customer service application for each location to which service is being requested.

The utility shall serve each qualified service applicant within its certified service area as soon as practical after receiving a completed service application. All service requests will be fulfilled within the time limits prescribed by commission rules once the applicant has met all conditions precedent to achieving "qualified service applicant" status. If a service request cannot be fulfilled within the required period, the applicant shall be notified in writing of the delay, its cause and the anticipated date that service will be available. The commission service dates shall not become applicable until the service applicant has met all conditions precedent to becoming a qualified service applicant as defined by commission rules.

Section 3.07 - Developer Requirements

As a condition of service to a new subdivision, the utility shall require a developer (as defined by PUC rule) to provide permanent recorded public utility easements as a condition of service to any location within the developer's property.

Docket No. 47897

EXHIBIT A - CCN AND TARIFF

APPENDIX A -- SAMPLE SERVICE AGREEMENT From TCEQ Rules, 30 TAC Chapter 290 47(b), Appendix B SERVICE AGREEMENT

- I. **PURPOSE.** The Forest Glen Utility Company is responsible for protecting the drinking water supply from contamination or pollution which could result from improper private water distribution system construction or configuration. The purpose of this service agreement is to notify each customer of the restrictions which are in place to provide this protection. The utility enforces these restrictions to ensure the public health and welfare. Each customer must sign this agreement before the Forest Glen Utility Company will begin service. In addition, when service to an existing connection has been suspended or terminated, the sewer system will not re-establish service unless it has a signed copy of this agreement.
- II. **RESTRICTIONS.** The following unacceptable practices are prohibited by State regulations.
- A. No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device
 - B. No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device
 - C. No connection which allows water to be returned to the public drinking water supply is permitted.
 - D. No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use
 - E. No solder or flux which contains more than 0.2% lead can be used for the installation or repair of plumbing at any connection which provides water for human use.
- III. **SERVICE AGREEMENT.** The following are the terms of the service agreement between the NAME OF SEWER SYSTEM (the Sewer System) and NAME OF CUSTOMER (the Customer).
- A. The Sewer System will maintain a copy of this agreement as long as the Customer and/or the premises are connected to the Sewer System.
 - B. The Customer shall allow his property to be inspected for possible cross-connections and other potential contamination hazards. These inspections shall be conducted by the Sewer System or its designated agent prior to initiating new water service; when there is reason to believe that cross-connections or other potential contamination hazards exist; or after any major changes to the private water distribution facilities. The inspections shall be conducted during the Sewer System's normal business hours.
 - C. The Sewer System shall notify the Customer in writing of any cross-connection or other potential contamination hazard which has been identified during the initial inspection or the periodic re-inspection.
 - D. The Customer shall immediately remove or adequately isolate any potential cross-connections or other potential contamination hazards on his premises
 - E. The Customer shall, at his expense, properly install, test, and maintain any backflow prevention device required by the Sewer System. Copies of all testing and maintenance records shall be provided to the Sewer System
- IV. **ENFORCEMENT.** If the Customer fails to comply with the terms of the Service Agreement, the Sewer System shall, at its option, either terminate service or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement of this agreement shall be billed to the Customer.

Customer's Signature

Date

EXHIBIT G - UTILITY FORMATION INFORMATION

SEP 20 1972

B -- I

4.50

274619

In the name and by the authority of



OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF INCORPORATION OF

FOREST GLEN UTILITY COMPANY
CHARTER NO. 303471

The undersigned, as Secretary of State of the State of Texas, hereby certifies that duplicate originals of Articles of Incorporation for the above corporation duly signed and verified pursuant to the provisions of the Texas Business Corporation Act, have been received in this office and are found to conform to law

ACCORDINGLY the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Incorporation and attaches hereto a duplicate original of the Articles of Incorporation.

Dated March 14, 1972



Bob Bowser
Secretary of State

FILED
MAR 14 1972
FBI - DALLAS

EXHIBIT G - UTILITY FORMATION INFORMATION

ARTICLES OF INCORPORATION
OF
FOREST GLEN UTILITY COMPANY

FILED
In the Office of the
Secretary of State of Texas

MAR 14 1972

Bill Zimmerman

Deputy Director, Corporation Division

VOL 6899 PAGE 954

We, the undersigned, natural persons of the age of twenty-one (21) years or more, at least two of whom are citizens of the State of Texas, acting as incorporators of a corporation under the Texas Business Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE ONE

The name of the corporation is FOREST GLEN UTILITY COMPANY.

ARTICLE TWO

The period of its duration is perpetual.

ARTICLE THREE

The purposes for which the corporation is organized are:

- (1) to supply water for domestic, commercial, industrial and other purposes; and
- (2) to buy, sell, lease, manufacture, process and otherwise deal in and with goods, wares, merchandise and personal property of every kind and character and wheresoever situated in any and all lawful manners.

ARTICLE FOUR

The aggregate number of shares which the corporation shall have authority to issue is ONE MILLION (1,000,000) of the par value of ONE DOLLAR (\$1.00) each.

ARTICLE FIVE

The corporation will not commence business until it has received for the issuance of its shares consideration of the value of ONE THOUSAND DOLLARS (\$1,000.00), consisting of money, labor done, or property actually received.

EXHIBIT G - UTILITY FORMATION INFORMATION

ARTICLE SIX

The post office address of its initial registered office is 8010 Vantage Drive, San Antonio, Bexar County, Texas, and the name of its initial registered agent at such address is Quincy Lee.

ARTICLE SEVEN

The number of directors constituting the initial board of directors is three (3), and the names and addresses of the persons who are to serve as directors until the first annual meeting of the shareholders or until their successors are elected and qualified are:

<u>NAMES</u>	<u>ADDRESSES</u>
Quincy Lee	8010 Vantage Drive San Antonio, Texas 78230
Steven Q. Lee	4161 North Freeway, Suite 121 Houston, Texas 77022
Wayne T. Nance	8010 Vantage Drive San Antonio, Texas 78230

ARTICLE EIGHT

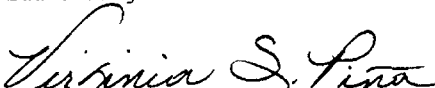
The names and addresses of the incorporators are:

<u>NAMES</u>	<u>ADDRESSES</u>
Pat H. Gardner	1800 Milam Building San Antonio, Texas 78205
Eddie Burge	1800 Milam Building San Antonio, Texas 78205
Virginia S. Pina	1800 Milam Building San Antonio, Texas 78205

IN WITNESS WHEREOF, we have hereunto set our hands, this
13th day of March, 1972.


Pat H. Gardner


Eddie Burge


Virginia S. Pina

FILED 6899 PAGE 955

EXHIBIT G - UTILITY FORMATION INFORMATION

STATE OF TEXAS X
 X
COUNTY OF BEXAR X

I, the undersigned authority, a notary public, do hereby certify that on this 13th day of March, 1972, personally appeared before me PAT H. GARDNER, EDDIE BURGE AND VIRGINIA S. PINA, who each being by me first duly sworn, severally declared that they are the persons who signed the foregoing document as incorporators, and that the statements therein contained are



Patricia D. Shinski

Notary Public in and for
Bexar County, Texas

PATRICIA D. SHINSKI
Notary Public, Bexar County, Texas

VOL 6899 PAGE 955

P.O. Box 13160
S.A. 78213

EXHIBIT H - CCN MAP

Forest Glen Utility Company
Sewer CCN No. 21070
PUC Docket No. 47389
Amended CCN No. 21070 in Medina County



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Sewer CCN

 21070 - Forest Glen Utility Company

0 500 1,000
Feet



Map by: Komal Patel
Date created: December 4, 2017
Project Path: n:\finalmapping\47389ForestGlenUtility.mxd

EXHIBIT I - CERTIFICATE OF ACCOUNT STATUS

Franchise Search Results

8/21/20, 10:56 AM



Franchise Tax Account Status


As of : 08/21/2020 10:56:00

This page is valid for most business transactions but is not sufficient for filings with the Secretary of State

FOREST GLEN UTILITY COMPANY

Texas Taxpayer Number 17417690355

Mailing Address 15720 BANDERA RD STE 103 HELOTES, TX 78023-3876

 Right to Transact Business in Texas ACTIVE

State of Formation TX

Effective SOS Registration Date 03/14/1972

Texas SOS File Number 0030347100

Registered Agent Name HARRY L. HAUSMAN

Registered Office Street Address 15720 BANDERA RD. SUITE 103 HELOTES, TX 78023

about:blank

Page 1 of 1

EXHIBIT J - TCEQ INSPECTIONS

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 8, 2017

Mr. Michael Ingersoll
Forest Glen Utility Company
15720 Bandera Road, #103
Helotes, Texas 78023

Re: Notice of Compliance with Notice of Violation (NOV) dated September 2, 2015
Forest Glen Utility Company Potranco Ranch Subdivision Wastewater Treatment Facility
located 3.54 miles west of State Highway 211 on the south side of Farm-to-Market Road
1957 (Potranco Road) in Medina County, Texas
RN106339385, TCEQ Additional ID: WQ0015030001, Investigation No. 1417007

Dear Mr. Ingersoll:

This letter is to inform you that the Texas Commission on Environmental Quality (TCEQ) San Antonio Regional Office has received adequate compliance documentation on September 28, 2015, to resolve the alleged violations documented during the investigation of the above-referenced regulated entity conducted on June 29, 2015. Based on the information submitted, no further action is required concerning this investigation.

The Texas Commission on Environmental Quality appreciates your assistance in this matter and your compliance efforts to ensure protection of the State's environment. If you or members of your staff have any questions, please feel free to contact Chris Dziuk at the San Antonio Regional Office at (210) 490-3096.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lynn Bumguardner".

Lynn Bumguardner
Water Section Manager
San Antonio Region Office

LB/RB/adj

EXHIBIT J - TCEQ INSPECTIONS

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 2, 2015

CERTIFIED MAIL 91 7199 9991 7035 6453 0159
RETURN RECEIPT REQUESTED

Mr. Michael Ingersoll
Forest Glen Utility Company
15720 Bandera Road, #103
Helotes, Texas 78023

Re: Notice of Violation for Compliance Evaluation Investigation at: Forest Glen Utility Company Potranco Ranch Wastewater Treatment Facility located 3.54 miles west of State Highway 211 on south side of Farm-to-Market Road 1957 (Potranco Road) in Medina County, Texas 78009
Regulated Entity No.: RN106339385, TCEQ ID No. WQ0015030001, EPA ID No. TX0133442

Dear Mr. Ingersoll:

On June 29, 2015 and July 1, 2015, Chris Dziuk of the Texas Commission on Environmental Quality (TCEQ) San Antonio Region Office conducted an investigation of the above-referenced regulated entity to evaluate compliance with applicable requirements for wastewater treatment. Enclosed is a summary which lists the investigation findings. During the investigation outstanding alleged violations were identified for which compliance documentation is required. Please submit to this office by October 1, 2015 a written description of corrective action taken and the required documentation demonstrating that compliance has been achieved for the outstanding alleged violations. Also included in the summary are Additional Issues which also require additional documentation at this time.

In the listing of the alleged violations, we have cited applicable requirements, including TCEQ rules. Please note that both the rules themselves and the agency brochure entitled *Obtaining TCEQ Rules* (GI 032) are located on our agency website at <http://www.tceq.state.tx.us> for your reference. If you would like a hard copy of this brochure mailed to you, you may call and request one from either the San Antonio Region Office at (210) 490-3096 or the Central Office Publications Ordering Team at (512) 239-0028.

The TCEQ appreciates your assistance in this matter. Please note that the Legislature has granted TCEQ enforcement powers which we may exercise to ensure compliance with environmental regulatory requirements. Self-reported violations may be subject to enforcement, including penalties, upon review by the Enforcement Division. We anticipate that you will resolve the alleged violations as required in order to protect the State's environment. If you have additional information that we are unaware of, you have the opportunity to contest the violation documented in this notice. Should you choose to do so, you must notify the San Antonio Region Office within 21 days from the date of this letter. At that time, Ms. Lynn Bumguardner, Water Program Manager, will schedule a violation review meeting to be conducted within 21 days from

TCEQ Region 13 • 14250 Judson Rd. • San Antonio, Texas 78233-4480 • 210-490-3096 • Fax 210-545-4329

Austin Headquarters: 512-239-1000 • tceq.texas.gov • How is our customer service? tceq.texas.gov/customersurvey
printed on recycled paper

EXHIBIT J - TCEQ INSPECTIONS

Mr. Michael Ingersoll
Page 2
September 2, 2015

the date of this letter. However, please be advised that if you decide to participate in the violation review process, the TCEQ may still require you to adhere to the compliance schedule included in the enclosed Summary of Investigation Findings until an official decision is made regarding the status of the contested violations.

If you or members of your staff have any questions, please feel free to contact Mr. Chris Dziuk in the San Antonio Region Office at (210) 403-4027.

Sincerely,

A handwritten signature in black ink, appearing to read "Joy D. Cook".

Joy Thurston-Cook, Water Program Team Leader
San Antonio Region Office
Texas Commission on Environmental Quality

JTC/CD/adj

Enclosure: Summary of Investigation Findings

EXHIBIT J - TCEQ INSPECTIONS

Summary of Investigation Findings

POTRANCO RANCH SUBDIVISION WWTP

Investigation #

1259384

Investigation Date: 06/29/2015

, MEDINA COUNTY,

Additional ID(s): WQ0015030001
R15030001
TX0133442

OUTSTANDING ALLEGED VIOLATION(S) ASSOCIATED TO A NOTICE OF VIOLATION

Track No: 581705 Compliance Due Date: 10/01/2015

30 TAC Chapter 305.125(5)

PERMIT Operational Requirements 4

The permittee is responsible for installing prior to plant start up, and subsequently monitoring, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

Alleged Violation:

Investigation: 1259384

Comment Date: 08/24/2015

Failed to provide and maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electric power failures. Specifically, the WWTF does not have an emergency backup generator.

Recommended Corrective Action: The permittee is responsible for installing prior to plant start up, and subsequently monitoring, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater. Submit documentation indicating that an auxiliary power source or an acceptable alternative has been installed at the wastewater treatment plant.

Track No: 581741 Compliance Due Date: 10/01/2015

30 TAC Chapter 210.33

30 TAC Chapter 210.33(1)

30 TAC Chapter 210.33(2)

30 TAC Chapter 210.33(2)(A)

30 TAC Chapter 210.33(2)(B)

AUTHORIZAT R15030001, Reclaimed Water Authorization III(c)(2)

Failed to maintain compliance with the permitted Reclaimed Water Authorization limits. Specifically, during the months of May 2015 and June 2015 the facility failed to comply with Reclaimed Water Authorization R15030-001 E.coli single grab limits of 75/100 ml, and 30-day geometric mean limits of 20/100 ml.

Alleged Violation:

Investigation: 1259384

Comment Date: 08/25/2015

Failed to maintain compliance with the permitted Reclaimed Water Authorization limits. Specifically, during the months of October 2014 thru August 2015 the facility failed to comply with Reclaimed Water Authorization R15030-001 E.coli single grab limits of 75/100 ml five times, and 30-day geometric mean limit of 20/100 ml twice. The permittee also failed to comply with the BOD(5) 30-day average of 5 mg/l nine times during the same timeperiod.

Recommended Corrective Action: Compliance with the effluent limits must be maintained. Submit to the TCEQ San Antonio Region Office a plan of action that documents how the Authorized Type 1 reclaimed water limits are being met. Include a description of why previous limits were not being met and how limits will be met in the future.

Track No: 582489 Compliance Due Date: 10/01/2015

Summary of Investigation Findings

Page 1 of 2

EXHIBIT J - TCEQ INSPECTIONS

POTRANCO RANCH SUBDIVISION WWTP

Investigation # 1259384

30 TAC Chapter 210.34(1)

AUTHORIZATION R15030001, General Requirements IV. (C)

Failure of the Permittee to analyze the reclaimed water at the required twice per week frequency specified in Reclaimed Water Authorization R15030-001.

Alleged Violation:

Investigation: 1259384

Comment Date: 08/28/2015

Failure of the Permittee to analyze the reclaimed water at the required twice per week frequency specified in Reclaimed Water Authorization R15030-001.

Recommended Corrective Action: Samples shall be taken and measurements shall be made at the minimum frequencies specified in the permit for each parameter. Submit a standard operating procedure for the collection and analysis of required Reclaimed Water samples. Submit compliance documentation to the TCEQ San Antonio Regional Office by the compliance due date.

ADDITIONAL ISSUES

Description

Building and grounds maintenance?

Additional Comments

The investigator noted that some areas of erosion were present under the fencing surrounding the WWTF. It was also noted that a couple of tree limbs were extending over the fence as well. These issues were addressed by permittee and operator. Photographic documentation was submitted to the region office to verify that the eroded areas were addressed. *Done*

Does the regulated entity accurately measure the flow according to the permit requirement (sample type)?

The investigator noted that the wastewater treatment facility only has an in-line flow measuring meter. Title 30 Texas Administrative Code (TAC) Chapter 217.33(c) states "Flow measurement must use a combination of primary and secondary devices." In review of the wastewater application for the Potranco Ranch Subdivision Wastewater Treatment Facility the investigator was unable to determine if this was submitted for approval as the sole flow measurement device. The permittee shall provide written documentation to the TCEQ San Antonio Regional Office by October 1, 2015 which verifies that the use of this primary flow measuring device has been approved by the TCEQ Wastewater Permit Application Team. *Don't we take care of it*

Does the reclaimed water provider submit monthly forms, provided by the TCEQ, by the 20th day of the month following the reporting period, which provide the volume of reclaimed water delivered and the quality of reclaimed water delivered?

The permittee has tried repeatedly to obtain the correct forms to report Reclaimed Water quantity and quality as stated in Section V. C of the Reclaimed Water Authorization R15030-001. No direct answer for why the appropriate forms were not sent to the permittee was available when the investigator contacted the TCEQ Central Office representative for assistance. Since the investigation the permittee has been forwarded to a web site where generic forms can be printed from. The permittee must submit all delinquent monthly effluent reports (MER's) to MC 224. *was this done*

EXHIBIT K - DRAFT PROTECTIVE ORDER

DOCKET NO.

APPLICATION BY FOREST GLEN	§	PUBLIC UTILITY COMMISSION
UTILITY COMPANY TO	§	
TRANSFER MEMBERSHIP	§	OF TEXAS
INTERESTS PURSUANT TO	§	
TEXAS WATER CODE § 13.302		

PROTECTIVE ORDER

This Protective Order governs the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials), including information whose confidentiality is currently under dispute, by a party providing information to the Public Utility Commission of Texas (Commission) or to any other party to this proceeding

It is ORDERED that

1. **Designation of Protected Materials** Upon producing or filing a document, including, but not limited to, records on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face "PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. ____" (or words to this effect) and consecutively Bates Stamping each page Protected Materials and Highly Sensitive Protected Materials include the documents so designated, as well as the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.
2. **Materials Excluded from Protected Materials Designation.** Protected Materials must not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the Public Information Act.¹ Protected Materials also must not include documents or information which at the time of, or prior to disclosure in, a proceeding is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order

¹ Tex. Gov't Code Ann. § 552.001-353 (West 2012 & Supp. 2017)

EXHIBIT K - DRAFT PROTECTIVE ORDER

Docket No. _____

Protective Order

Page 2 of 15

3. **Reviewing Party.** For the purposes of this Protective Order, a “Reviewing Party” is any party to this docket
4. **Procedures for Designation of Protected Materials** On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party is required to file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating (a) any exemptions to the Public Information Act claimed to apply to the alleged Protected Materials; (b) the reasons supporting the producing party’s claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (c) that counsel for the producing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.
5. **Persons Permitted Access to Protected Materials.** Except as otherwise provided in this Protective Order, a Reviewing Party may access Protected Materials only through its “Reviewing Representatives” who have signed the Protective Order Certification Form (see Attachment A). Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding. At the request of the PUC Commissioners, copies of Protected Materials may be produced by Commission Staff. The Commissioners and their staff must be informed of the existence and coverage of this Protective Order and will observe the restrictions of the Protective Order.
6. **Highly Sensitive Protected Material Described** The term “Highly Sensitive Protected Materials” is a subset of Protected Materials and refers to documents or information that a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as specified herein) would expose a producing party to unreasonable risk of harm. Highly Sensitive Protected Materials include but are not limited to (a) customer-specific information protected by Texas Utilities Code § 182.052, (b)

EXHIBIT K - DRAFT PROTECTIVE ORDER

Docket No. ____

Protective Order

Page 3 of 15

contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party, and (c) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party must bear the designation "HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. 49225" (or words to this effect) and must be consecutively Bates Stamped. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party's designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

7 **Restrictions on Copying and Inspection of Highly Sensitive Protected Material.**

Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. The Reviewing Party is required to maintain a record of all copies made of Highly Sensitive Protected Material and must send a duplicate of the record to the producing party when the copy or copies are made. The record must specify the location and the person possessing the copy. Highly Sensitive Protected Material must be made available for inspection only at the location or locations provided by the producing party, except as specified by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes must themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

8 **Restricting Persons Who May Have Access to Highly Sensitive Protected Material.**

With the exception of Commission Staff, the Office of the Attorney General (OAG), and the Office of Public Utility Counsel (OPC), and except as provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are (a) outside counsel for the Reviewing Party, (b) outside consultants for

EXHIBIT K - DRAFT PROTECTIVE ORDER

Docket No. ____

Protective Order

Page 4 of 15

the Reviewing Party working under the direction of Reviewing Party's counsel, or (c) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party must limit the number of Reviewing Representatives that review Highly Sensitive Protected Materials to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for Commission Staff, OAG, and OPC, for the purpose of access to Highly Sensitive Protected Materials, must consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

9. **Copies Provided of Highly Sensitive Protected Material.** A producing party is required to provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8. Representatives of the Reviewing Party who are authorized to view Highly Sensitive Protected Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Any Highly Sensitive Protected Materials provided to a Reviewing Party may not be copied except as provided in Paragraph 7. The restrictions contained herein do not apply to Commission Staff, OPC, and the OAG when the OAG is representing a party to the proceeding.
10. **Procedures in Paragraphs 10-14 Apply to Commission Staff, OPC, and the OAG and Control in the Event of Conflict.** The procedures in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs control.

EXHIBIT K - DRAFT PROTECTIVE ORDER

Docket No. ____

Protective Order

Page 5 of 15

11. **Copy of Highly Sensitive Protected Material to be Provided to Commission Staff, OPC and the OAG.** When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party is required to also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPC (if OPC is a party) and the OAG (if the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures specified herein
12. **Delivery of the Copy of Highly Sensitive Protected Material to Commission Staff and Outside Consultants.** The Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification specified by Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification in Attachment A
13. **Restriction on Copying by Commission Staff, OPC and the OAG.** Except as allowed by Paragraph 7, Commission Staff, OPC and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the presiding officer directs otherwise. Commission Staff, OPC, and the OAG may make limited notes of Highly Sensitive Protected Materials furnished to them, and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.

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14. **Public Information Requests** In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the Commission, OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.
15. **Required Certification** Each person who inspects the Protected Materials must, before such inspection, agree in writing to the following certification found in Attachment A to this Protective Order

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials must not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC will be used only for the purpose of the proceeding in Docket No. 49225. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein must not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order must, before inspection of such material, agree in writing to the following certification found in Attachment A to this Protective Order

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket

The Reviewing Party is required to provide a copy of each signed certification to Counsel for the producing party and serve a copy upon all parties of record.

16. **Disclosures between Reviewing Representatives and Continuation of Disclosure Restrictions after a Person is no Longer Engaged in the Proceeding** Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected

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Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification must be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person must be terminated and all notes, memoranda, or other information derived from the protected material must either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification is required to continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.

17. **Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials.** Except for Highly Sensitive Protected Materials, which must be provided to the Reviewing Parties under Paragraph 9, and voluminous Protected Materials, the producing party is required to provide a Reviewing Party one copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding according to this Protective Order, but a record must be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party is required to provide the party asserting confidentiality with a copy of that record.
18. **Procedures Regarding Voluminous Protected Materials** 16 Texas Administrative Code (TAC) § 22.144(h) will govern production of voluminous Protected Materials. Voluminous Protected Materials will be made available in the producing party's voluminous room, in Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.

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19. **Reviewing Period Defined** The Protected Materials may be reviewed only during the Reviewing Period, which will commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period will reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.
20. **Procedures for Making Copies of Voluminous Protected Materials** Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical or electronic copies of the Protected Materials, subject to the conditions in this Protective Order; provided, however, that before photographic, mechanical or electronic copies may be made, the Reviewing Party seeking photographic, mechanical or electronic copies must provide written confirmation of the receipt of copies listed on Attachment B of this Protective Order identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.
21. **Protected Materials to be Used Solely for the Purposes of These Proceedings** All Protected Materials must be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (a) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (b) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPC.
22. **Procedures for Confidential Treatment of Protected Materials and Information Derived from Those Materials** Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and must not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order.

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Information derived from or describing the Protected Materials must be maintained in a secure place and must not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.

23. **Procedures for Submission of Protected Materials** If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission must be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents must be marked "PROTECTED MATERIAL" and must be filed under seal with the presiding officer and served under seal to the counsel of record for the Reviewing Parties. The presiding officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party (a) must notify the party which provided the information within sufficient time so that the producing party may seek a temporary sealing order, and (b) must otherwise follow the procedures in Rule 76a, Texas Rules of Civil Procedure.
24. **Maintenance of Protected Status of Materials during Pendency of Appeal of Order Holding Materials are not Protected Materials** In the event that the presiding officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected Materials are only Protected Materials, those materials will nevertheless be subject to the protection afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the presiding officer's order. Such notification will be by written communication. This provision establishes a

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deadline for appeal of a presiding officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days from notice, the Protected Materials must be afforded the confidential treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.

25. **Notice of Intent to Use Protected Materials or Change Materials Designation.** Parties intending to use Protected Materials must notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of Docket No. 49225 at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party must first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party will at any time be able to file a written motion to challenge the designation of information as Protected Materials.
26. **Procedures to Contest Disclosure or Change in Designation.** In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality must file with the appropriate presiding officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period will be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response must include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and, without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or that the party

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asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it must do so no later than five (5) working days after the party challenging confidentiality has made its written filing.

27 **Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation.** If the party asserting confidentiality files an objection, the appropriate presiding officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or Reviewing Party or upon the presiding officer's own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the presiding officer determines that such proposed disclosure or change in designation should be made, disclosure must not take place earlier than three (3) full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such presiding officer's ruling.

28 **Maintenance of Protected Status during Periods Specified for Challenging Various Orders.** Any party electing to challenge, in the courts of this state, a Commission or presiding officer determination allowing disclosure or a change in designation will have a period of ten (10) days from: (a) the date of an unfavorable Commission order, or (b) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation will have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation will have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials must be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this paragraph. For purposes of this paragraph, a favorable ruling of a state district court,

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state appeals court, Supreme Court or other appellate court includes any order extending the deadlines in this paragraph

29. **Other Grounds for Objection to Use of Protected Materials Remain Applicable.**

Nothing in this Protective Order precludes any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless the Commission or a court orders such additional disclosure, all parties will abide by the restrictions imposed by the Protective Order.

30. **Protection of Materials from Unauthorized Disclosure.** All notices, applications, responses or other correspondence must be made in a manner which protects Protected Materials from unauthorized disclosure.

31. **Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials**

Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand proceeding, then the "conclusion of these proceedings" is extended by the remand to the exhaustion of available appeals of the remand, or the running of the time for making such appeals of the remand, as provided by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding

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them of their obligations under this Paragraph. Nothing in this Paragraph prohibits counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel will remain subject to the provisions of this Protective Order.

- 32 **Applicability of Other Law.** This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act,² the Texas Securities Act³ and any other applicable law, provided that parties subject to those acts will notify the party asserting confidentiality, if possible under those acts, prior to disclosure pursuant to those acts. Such notice is not required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
- 33 **Procedures for Release of Information under Order.** If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order, provided, however, that: (a) the Reviewing Party must notify the producing party of the order requiring the release of such information within five (5) calendar days of the date the Reviewing Party has notice of the order; (b) the Reviewing Party must notify the producing party at least five (5) calendar days in advance of the release of the information to allow the producing party to contest any release of the confidential information; and (c) the Reviewing Party must use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein. The notice specified in this section is not required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates

² Tex. Gov't Code Ann. § 551.001-146 (West 2017 & Supp. 2017).

³ Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-43 (West 2010 & Supp. 2016).

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to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

34. **Best Efforts Defined** The term “best efforts” as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body, the written opinion of the Texas Attorney General sought in compliance with the Public Information Act, or the request of governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the Public Information Act, or intends to comply with the final governmental or court order. Provided, however, that no notice is required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials
35. **Notify Defined** “Notify” for purposes of Paragraphs 32, 33 and 34 means written notice to the party asserting confidentiality at least five (5) calendar days prior to release, including when a Reviewing Party receives a request under the Public Information Act. However, the Commission, OAG, or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
36. **Requests for Non-Disclosure** If the producing party asserts that the requested information should not be disclosed at all, or should not be disclosed to certain parties under the protection afforded by this Protective Order, the producing party must tender the information for in camera review to the presiding officer within ten (10) calendar days of the request. At the same time, the producing party is required to file and serve on all parties its argument, including any supporting affidavits, in support of its position of non-

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disclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party must serve a copy of the information under the classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information

Parties wishing to respond to the producing party's argument for non-disclosure must do so within five working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer will stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the Commission.

37. **Sanctions Available for Abuse of Designation** If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to Paragraph 36, the presiding officer may sanction the producing party pursuant to 16 TAC § 22.161
38. **Modification of Protective Order** Each party will have the right to seek changes in this Protective Order as appropriate from the presiding officer.
39. **Breach of Protective Order** In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, will be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party will not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party will be entitled to pursue any other form of relief to which it is entitled

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ATTACHMENT A

Protective Order Certification

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket and that I have received a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials must not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC will be used only for the purpose of the proceeding in Docket No. _____. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated here will not apply.

Signature

Party Represented

Printed Name

Date

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket

Signature

Party Represented

Printed Name

Date

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ATTACHMENT B

I request to view/copy the following documents:

Document Requested	# of Copies	Non-Confidential	Protected Materials and/or Highly Sensitive Protected Materials

Signature

Party Represented

Printed Name

Date