



## Filing Receipt

**Received - 2021-10-15 02:49:32 PM**  
**Control Number - 51870**  
**ItemNumber - 131**

**DOCKET NO. 51870**

<b>APPLICATION OF FOREST GLEN</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>UTILITY COMPANY TO AMEND ITS</b>	<b>§</b>	
<b>SEWER CERTIFICATE OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>MEDINA COUNTY</b>	<b>§</b>	

**COMMISSION STAFF’S REVISED FINAL RECOMMENDATION**

On March 4, 2021, Forest Glen Utility Company (Forest Glen) filed an application to amend sewer certificate of convenience and necessity (CCN) No. 21070 in Medina County. Forest Glen filed supplemental information on March 5, 2021 and revised mapping on June 8, 2021.

On October 4, 2021, the administrative law judge (ALJ) filed Order No. 11, requiring the Staff of the Public Utility Commission (Staff) to file a revised final recommendation on the application on or before October 15, 2021. Therefore, this pleading is timely filed.

**I. FINAL RECOMMENDATION**

As detailed in the attached revised memoranda of Jolie Mathis of the Commission’s Infrastructure Division, and Fred Bednarski III’s previously filed memorandum, Staff has reviewed the application and recommends that it be approved. Staff’s review indicates that Forest Glen meets the applicable technical, managerial, and financial requirements of Chapter 13 of the Texas Water Code (TWC) and Title 16, Chapter 24 of the Texas Administrative Code (TAC), which therefore illustrates that Forest Glen is capable of providing continuous and adequate service. Additionally, Staff’s review suggests that approval of the application is necessary for the service, accommodation, convenience, and safety of the public. Finally, as outlined in Ms. Mathis’s revised memorandum, the twelve complaints relating to Forest Glen are related to a non-potable water system, and therefore is not covered within the definitions of retail public utility, retail water and sewer utility, or water supply or sewer service corporation under Texas Water Code § 13.002(19), (23) – (24).<sup>1</sup>

On or before September 10, 2021, the parties will file joint proposed findings of fact and conclusions of law in accordance with the procedural schedule outlined in Order No. 8.

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<sup>1</sup> See Tex. Water Code (TWC) § 13.002(19); (23)-(24) defining the terms retail public utility, retail water or sewer utility, utility, public utility, and water supply or sewer service corporation all as being limited to those which provide “*potable* water service or sewer service” (emphasis added).

## **II. CONCLUSION**

For the reasons detailed above, Staff respectfully recommends approval of Forest Glen's application.

Dated: October 15, 2021

Respectfully submitted,

### **PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION**

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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on October 15, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kevin R. Bartz  
Kevin R. Bartz

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Kevin Bartz, Attorney  
Legal Division

**FROM:** Jolie Mathis, Utility Engineering Specialist  
Infrastructure Division

**DATE:** October 15, 2021,

**RE:** Docket No. 51870 – *Application of Forest Glen Utility Company to Amend its Sewer Certificate of Convenience and Necessity in Medina County*

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### **1. Application**

On March 4, 2021, Forest Glen Utility Company (Forest Glen) filed with the Public Utility Commission of Texas (Commission) an application to amend its sewer CCN No. 21070 in Medina County, Texas under Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237.

The requested area includes approximately 185 acres of uncertificated area.

The application proposes the addition of approximately 185 acres to CCN No. 21070

### **2. Notice**

The deadline to intervene was June 1, 2021, and there were no protests or opt-out requests received. There were 85 motions to intervene. However, Order No. 3 denied the requests to intervene because the requests came from customers that do not reside in the development that Forest Glen is requesting to add to its new CCN area.

### **3. Factors Considered**

Under TWC §§ 13.241 and 13.246, and 16 TAC §§ 24.11(e) and 24.227, the Commission must consider certain factors when granting or amending a water or sewer CCN. Therefore, the following factors were considered.

#### **3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1); 16 TAC § 24.227(a) and (e)(1)).***

Forest Glen has a Texas Commission on Environmental Quality (TCEQ) approved public wastewater treatment plant (WWTP) registered as Potranco Ranch Subdivision WWTP, Wastewater Discharge Permit No. WQ-15030-001. Forest Glen does not have any

violations listed in the TCEQ database. No additional construction is necessary for Forest Glen to serve the requested area. In addition, the Commission's complaint records, which go back 3 years, show 12 complaints against Forest Glen.

The customer complaints relate solely to odor and water pressure concerns from the non-potable water system at Potranco Ranch Subdivision, which is an unregulated utility under Texas law. The Potranco Ranch system is **not** a "retail public utility" as defined by the Texas Water Code.

There are no customers in the requested area.

**3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC § 24.227(e)(2)).***

The expansion of the CCN area will facilitate sewer service to 388 new connections on 185 additional acres in Potranco Oaks, Potranco Garden, and a future residential development associated with the Potranco Ranch Subdivision.

**3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC §§ 13.241(b) and 13.246(c)(3), 16 TAC § 24.227(e)(3)).***

Forest Glen will be the certificated entity for the requested area and will be required to provide adequate and continuous service to the requested area.

The landowners in the area will have a sewer provider available when they need to request sewer service.

No other retail public utility provider is within 1 mile of the development. The City of Castroville is approximately 6 miles from the development and lacks capacity to serve. The San Antonio Water System has facilities in Bexar County 1.35 miles from the site; however, SAWS will not serve in Medina County and previously declined requests for service when Forest Glen requested initial authorization.

**3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC § 13.246(c)(4); 16 TAC § 24.227(a) and (e)(4)).***

Forest Glen has a Texas Commission on Environmental Quality (TCEQ) approved public wastewater treatment plant (WWTP) registered as Potranco Ranch Subdivision WWTP, Wastewater Discharge Permit No. WQ-15030-001. Forest Glen does not have any violations listed in the TCEQ database. No additional construction is necessary for Forest Glen to serve the requested area. In addition, the Commission's complaint records, which go back 3 years, show twelve complaints against Forest Glen.

All twelve of the customer complaints relate to odor and water pressure concerns at

a non-potable water system at Potranco Ranch Subdivision, which is an unregulated utility under Texas law. The Commission lacks authority to regulate non-potable water systems. The Potranco Ranch system is **not** a “retail public utility” as defined by the Texas Water Code. The sale of non-potable or reclaimed water does not fall under the jurisdiction of the Commission.

- 3.5. *The applicants’ demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).*

No other retail public utility provider is within 1 mile of the development. The City of Castroville is approximately 6 miles from the development and lacks capacity to serve. The San Antonio Water System has facilities in Bexar County 1.35 miles from the site; however, SAWS will not serve in Medina County and previously declined requests for service when Forest Glen requested initial authorization. Therefore, concerns of regionalization or consolidation do not apply.

- 3.6. *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC § 24.227(e)(5)).*

Forest Glen is currently serving customers in the requested area, has facilities in the requested area to serve any future customers, and has sufficient capacity. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

- 3.7. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC § 13.246(c)(6); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e)).*

**The Rate Regulation Division will be addressing this criterion in a separate memo.**

- 3.8. *Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d); 16 TAC § 24.227(f)).*

**The Rate Regulation Division will be addressing this criterion in a separate memo.**

- 3.9. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC § 24.227(e)(7) and (9)).*

Since the CCN amendment accommodates a growing residential development, environmental integrity will not be impacted or disrupted.

- 3.10. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC § 24.227(e)(8)).*

Forest Glen will continue to provide water service to the existing customers in the area with no change to the cost to customers.

#### **4. Recommendation**

Based on the mapping review by Tracy Montes, Infrastructure Division, the financial and managerial review by Fred Bednarski, Rate Regulation Division, and my technical and managerial review, I recommend that Forest Glen meets all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations, is capable of providing continuous and adequate service. I further recommend that approving this application to amend sewer CCN No. 21070 is necessary for the service, accommodation, convenience and safety of the public.

Forest Glen consented to the attached map, tariff, and certificate on August 25, 2021.