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DOCKET NO. 54488

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

COMMISSION STAFF'S FINAL RECOMMENDATION

I. INTRODUCTION

On December 16, 2022, Forest Glen Utility Company (Forest Glen) filed an application to amend its sewer certificate of convenience and necessity (CCN) number 21070 in Medina County, Texas under Texas Water Code (TWC) §§ 13.242 through 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 through 24.237.

On February 5, 2024, the administrative law judge (ALJ) filed Order No. 13, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a final recommendation on the application by March 4, 2024. Therefore, this pleading is timely filed.

II. FINAL RECOMMENDATION

While developer agreements do not exist for the Medina Estates, Stinson, or Potranco Oaks 2 developments, Forest Glen has nonetheless demonstrated that it meets the requirements of TWC §§ 13.244 and 246. Forest Glen submitted emails from the developer requesting service for each of the six proposed developments.¹ Furthermore, Forest Glen and/or its parent company, BVRT Utility Holding Company, is either investing in or guaranteeing financing of the construction of the wastewater treatment plants necessary to provide service to the entire proposed area,² which obviates the need for executed developer agreements for the three above-mentioned developments. Thus, it is Staff's position that the requests for service Forest Glen submitted with its application on December 16, 2022 meet the requirements of TWC §§ 13.244 and 246.

Staff has reviewed the application and supplemental information and, as detailed in the attached memoranda from Jaspinder Singh of the Infrastructure Division and Fred Bednarski III of the Rate Regulation Division, recommends approval of the application. Staff's review indicates

¹ Application, Att. 9 at 15-22 (Dec. 16, 2022).

² Application at 6.

that Forest Glen meets the applicable technical, managerial, and financial requirements of Chapter 13 of the Texas Water Code and Title 16, Chapter 24 of the Texas Administrative Code and, therefore, 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.

III. CONCLUSION

For the reasons detailed above, Staff respectfully requests that Forest Glen's application be approved.

Dated: March 4, 2024

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Marisa Lopez Wagley
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/s/ Cheri Hasz
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DOCKET NO. 54488

CERTIFICATE OF SERVICE

I certify that unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on March 4, 2024 in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Cheri Hasz
Cheri Hasz

Public Utility Commission of Texas

Memorandum

TO: Cheri Hasz, Attorney
Legal Division

FROM: Jaspinder Singh, Engineering Specialist
Infrastructure Division

DATE: March 4, 2024

RE: Docket No. 54488 – *Application of Forest Glen Utility Company to Amend Its Certificate of Convenience and Necessity in Medina County*

1. Application

On December 16, 2022, Forest Glen Utility Company (Forest Glen) filed with the Public Utility Commission of Texas (Commission) an application to amend its sewer Certificate of Convenience and Necessity (CCN) No. 21070 in Medina County, Texas under Texas Water Code (TWC) §§ 13.242 through 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 through 24.237.

Based on the mapping review by Dave Babicki, Infrastructure Division:

Requested Area 1 – Medina Estates, Megan's Landing, and Microsoft Subdivisions:

- The requested area includes 0 customer connections and approximately 496.5 acres, comprised of uncertificated area.

Requested Area 2 – Potranco West Subdivision:

- The requested area includes 0 customer connections and approximately 41.3 acres, comprised of uncertificated area.

Requested Area 3 – Potranco Oaks 2 Subdivision:

- The requested area includes 0 customer connections and approximately 218.8 acres, comprised of uncertificated area.

Requested Area 4 – Stinson Property Subdivision:

- The requested area includes 0 customer connections and approximately 293.7 acres, comprised of uncertificated area.

The *total requested area* includes 0 customer connections and includes approximately 1,050.3 acres comprised of uncertificated area.

- The application proposes the addition of approximately 1,050.3 acres to CCN No. 21070.

2. Notice

On October 4, 2023, an affidavit was provided affirming that notices were submitted to customers, cities, districts, neighboring retail public utilities, the county judge, groundwater conservation districts, and that there are 8 landowners in the requested area. A map indicating the location of each landowner was also provided. On August 28, 2023, Forest Glen provided a publisher's affidavit attesting that notice was published.

The deadline to intervene was November 9, 2023; there were no motions to intervene, protests, or opt-out requests received.

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)).*

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)).*

There are currently zero existing customers in the requested areas. The requested areas will be developed and therefore, there is a need for service.

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 areas and will be required to provide continuous and adequate service to the requested areas.

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

There will be no effect on any retail public utility servicing the proximate areas. All retail public utilities in the proximate areas were provided notice of the CCN amendment requested in this application and did not request to intervene.

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)).*

TCEQ rule, 30 TAC §30.331(b), Wastewater Operators and Operations Companies, requires the operators of a domestic wastewater treatment facility to have a valid license issued by the TCEQ executive director. Forest Glen will have qualified TCEQ licensed operators licensed in wastewater treatment to run the acquired systems.

Forest Glen will have licensed operators to run the system operations. A total of four operators with Class A, B, and C licenses will be responsible for the system.

Forest Glen has two Texas Commission on Environmental Quality (TCEQ) approved wastewater treatment plants (WWTP) registered as Potranco Ranch Subdivision WWTP, Wastewater Discharge Permit No. WQ0015030001, and FGU-WRRF2, Wastewater Discharge Permit No. WQ0016192001. Forest Glen has two violations listed in the TCEQ database. According to the TCEQ database, the violations have been resolved and are closed. The Commission's complaint records, which go back 5 years, show thirteen complaints against Forest Glen. The complaints have been reviewed and closed by the Commission's Consumer Protection Division

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)).*

There are no existing retail sewer utilities located within one-half mile of the requested area.

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)).*

Currently, there are no other sewer providers in the area.

Forest Glen received a request for service for the requested area from a developer. Service was requested from neighboring utilities and none of them were able to provide service. Collection lines will be installed in the requested area to feed into Forest Glen's WWTPs to serve the area. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

3.7. *An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain: a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area (TWC § 13.244(d)(3)).*

Forest Glen is extending service from the existing WWTPs to provide service to the requested area. Forest Glen provided a budget, an estimated timeline for construction, and a keyed map showing where facilities will be located. Construction began in Spring 2023 and estimated to complete in early 2024. Estimated costs to extend the sewer system are expected to exceed \$100,000, therefore the need for firm capital commitment under 16 TAC § 24.11(e)(5) is required.

The Rate Regulation Division will be addressing the need for firm capital commitment criterion in a separate memo.

- 3.8. *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.

- 3.9. *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.

- 3.10. *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)).*

The environmental integrity of the land will be minimally affected as facilities are constructed to provide service to the requested area.

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

Future residents of the planned development will have sewer service.

4. Recommendation

Based on the mapping review by Dave Babicki, Infrastructure 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 its 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 December 21, 2023.

Public Utility Commission of Texas

Memorandum

TO: Cheri Hasz, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: March 4, 2024

RE: Docket No. 54488 – *Application of Forest Glen Utility Company to Amend its Certificate of Convenience and Necessity in Medina County*

On December 16, 2022, Forest Glen Utility Company (Forest Glen) filed an application to amend its sewer Certificate of Convenience and Necessity (CCN) No. 21070 in Medina County under Subchapter G of Texas Water Code Chapter 13.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as required by 16 Texas Administrative Code (TAC) § 24.11. Forest Glen must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

Leverage Test

Forest Glen filed an affidavit stating that California Water Service Group (California WSG) is capable, available, and willing to cover any temporary cash shortages and operating expense shortfalls.¹

My analysis is based on financial statements ending December 31, 2022. These financial statements contain an unqualified auditor's opinion from Deloitte & Touche LLP stating that the

¹ Response to staff's first RFI, interchange item no. 38, at 6 thru 9 (Dec. 11, 2023).

financial statements present fairly, in all material respects, the financial position of California WSG as of December 31, 2022.²

Forest Glen provided California WSG's financial statements, which demonstrates a debt-to-equity ratio of 0.80 as shown in confidential attachment FB-1. Because the ratio is less than one, I recommend a finding that California WSG meets the leverage test specified in 16 TAC § 24.11(e)(2)(A). Therefore, I recommend a finding that—through its affiliate—Forest Glen meets the leverage test as specified in 16 TAC § 24.11(e)(2)(E).

Operations Test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations; or an affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

The affidavit provided by California WSG demonstrates a written guarantee of coverage of temporary cash shortages from an affiliated interest.³ Additionally, Forest Glen projects no operating shortages as shown in confidential attachment FB-1. Therefore, I recommend a finding that Forest Glen meets the operations test specified in 16 TAC § 24.11(e)(3).

Planned Capital Improvements

An applicant proposing service to new CCN areas or subdivisions requiring capital improvements in excess of \$100,000 must provide loan approval documents or firm capital commitments affirming funds are available to install either the plant and equipment necessary to serve projected customers in the first two years of projections, or wastewater systems necessary to provide continuous and adequate wastewater service to a new area per 16 TAC § 24.11(e)(5)(B)(i) and (ii).

Pursuant to the memorandum provided by Jaspinder Singh, Infrastructure Analysis, required capital improvement exceed \$100,000. Forest Glen provided a firm capital commitment demonstrating adequate cash funding of all the required wastewater treatment plant improvement

² Confidential response to staff's 1-1, part 2, interchange item no. 40, at 2 thru 4 (Dec. 11, 2023).

³ Response to staff's first RFI, interchange item no. 38, at 6 thru 9 (Dec. 11, 2023).

costs as shown in confidential attachment FB-1. Forest Glen additionally provided request for service⁴ and nonstandard service developer agreements⁵ for the requested areas affirming the developers are obligated and committed to pay for the collection line and connection cost per the terms of the agreements and Forest Glen's tariff. Therefore, I recommend a finding that Forest Glen provided a firm capital commitment for wastewater plant improvements and extension line improvements for the requested areas satisfying the requirements of 16 TAC § 24.11(e)(5)(B).

Recommendation

Because Forest Glen meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that Forest Glen demonstrates the financial and managerial capability needed to provide continuous and adequate service to the requested areas. My conclusions are based on information provided by Forest Glen before the date of this memorandum and may not reflect any changes in Forest Glen's status after this review.

⁴ Application, interchange item no. 1, at 15 thru 22 (Dec. 16, 2022).

⁵ Confidential supplemental attachment 9 to the CCN application for amendment, interchange item no. 42, at 2 thru 61, 63 thru 140, and 142 thru 202 (Dec. 18, 2023).



Public Utility Commission of Texas

By These Presents Be It Known To All That

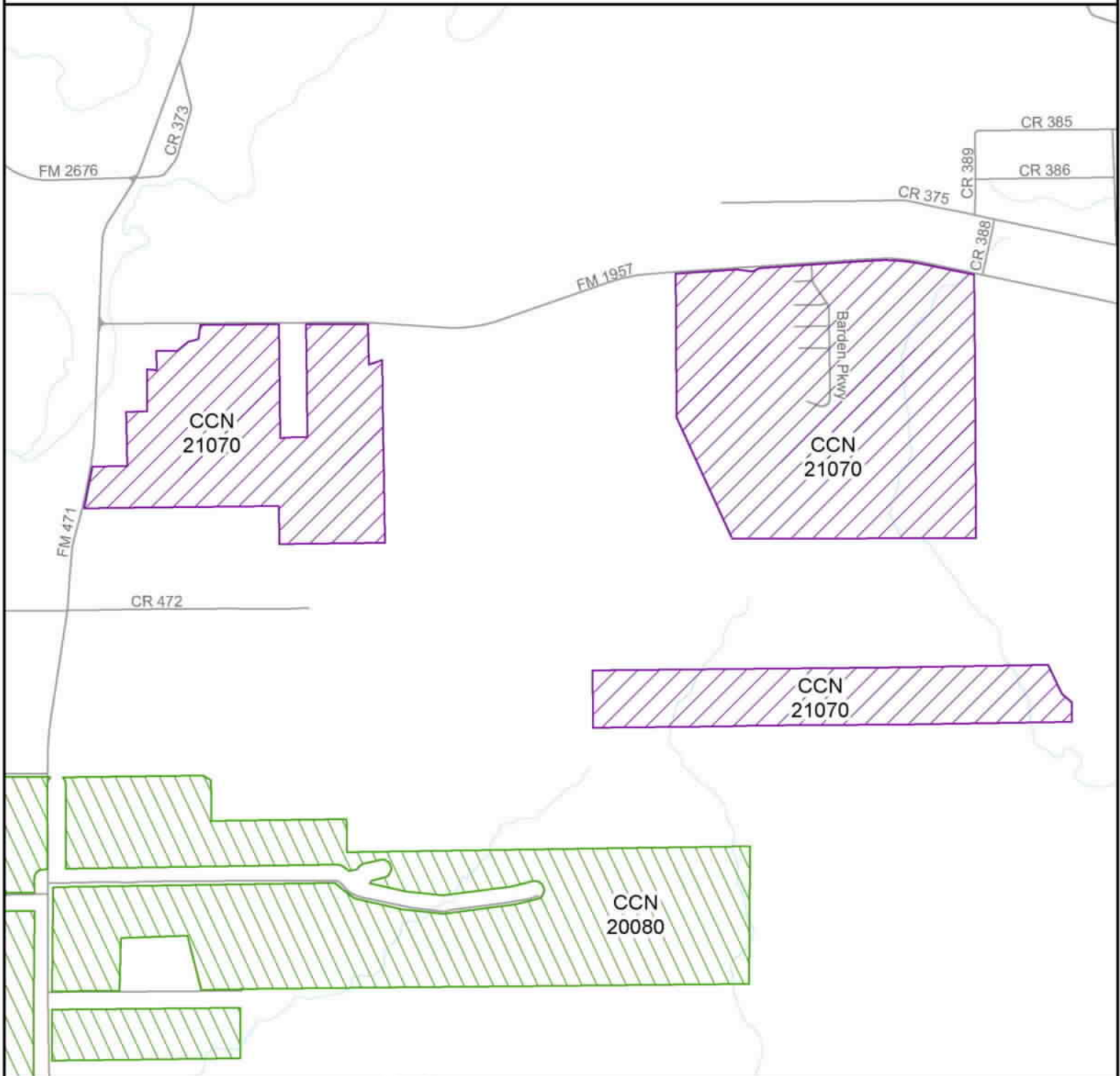
Forest Glen Utility Company

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. 54488 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.

PUCT Docket No. 54488
Forest Glen Utility Company
Portion of Sewer CCN No. 21070
Amend CCN No. 21070 in Medina County



Sewer CCN

-  21070 - Forest Glen Utility Company
-  20080 - City of Castroville

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Feet

