



## **Filing Receipt**

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**Item Number - 54**

**DOCKET NO. 54488**

<b>APPLICATION OF FOREST GLEN UTILITY COMPANY TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY IN MEDINA COUNTY, TEXAS</b>	<b>§ § § § §</b>	<b>BEFORE THE  PUBLIC UTILITY COMISSION  OF TEXAS</b>
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**JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED NOTICE OF APPROVAL**

On December 16 and 19, 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. Forest Glen filed supplemental information on February 16, March 2, March 3, December 11, December 15, and December 18, 2023. The requested service area consists of approximately 1,050.3 acres and 1,917 customer connections.

On February 5, 2024, the administrative law judge (ALJ) issued Order No. 13 establishing a deadline of March 18, 2024 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) and Forest Glen to file joint proposed findings of fact and conclusions of law. Therefore, this pleading is timely filed.

**I. MOTION TO ADMIT EVIDENCE**

The parties respectfully request that the following documents be admitted into evidence in this proceeding:

- A. Forest Glen's application and attachments filed on December 16 and 19, 2022 (AIS Item Nos. 1 and 2);
- B. Staff's recommendation on administrative completeness and proposed procedural schedule filed on January 17, 2023 (AIS Item No. 4);
- C. Forest Glen's response to Staff's recommendation on administrative completeness styled as response to Order No. 2 filed on February 16 and March 2 and 3, 2023 (AIS Item Nos. 6-9);

- D. Staff's supplemental recommendation on administrative completeness filed on March 16, 2023 (AIS Item No. 10);
- E. Forest Glen's proof of mailed and published notice filed on April 20, 2023 and supplemented on May 30, August 28, and October 4, 2023 (AIS Item Nos. 13, 18, 25, and 29);
- F. Staff's supplemental recommendation on sufficiency of notice filed on October 6, 2023 (AIS Item No. 30);
- G. Staff's proposed procedural schedule filed on October 16, 2023 (AIS Item No. 32);
- H. Forest Glen's response to Staff's First Request for Information filed on December 11, 2023 (AIS Item Nos. 38-40);
- I. Forest Glen's application supplement filed on December 15, 2023 (AIS Item No. 41);
- J. Forest Glen's application supplement filed on December 18, 2023 (AIS Item No. 42);
- K. Forest Glen's consent form filed on December 21, 2023 (AIS Item No. 44);
- L. Staff's final recommendation with confidential attachment FB-1 filed on March 4, 2024 (AIS Item Nos. 52-53);
- M. The attached map, certificate, and tariff.

## **II. PROPOSED NOTICE OF APPROVAL**

The parties have agreed on the attached Proposed Notice of Approval, which would grant Forest Glen's application to amend CCN No. 21070. The parties request that the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs from the Proposed Notice of Approval.

## **III. CONCLUSION**

The parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence that the Proposed Notice of Approval be adopted.

Dated: March 18, 2024

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF  
TEXAS LEGAL DIVISION**

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**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 18th of March 2024.



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Helen S. Gilbert

**DOCKET NO. 54488**

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

**PROPOSED NOTICE OF APPROVAL**

This Notice of Approval addresses the application of Forest Glen Utility Company (Forest Glen) to amend its sewer certificate of convenience and necessity (CCN) No. 21070 in Medina County. The Commission amends Forest Glen's sewer CCN No. 21070 to include the requested area to the extent provided in this Notice of Approval.

**I. Findings of Fact**

The Commission makes the following findings of fact:

**Applicant**

1. Forest Glen is a Texas corporation registered with the Texas Secretary of State under filing number 0030347100.
2. Forest Glen owns and operates for compensation facilities and equipment for the collection, transportation, treatment, or disposal of treated sewage for the public in Medina County.
3. Forest Glen provides sewer service for compensation to approximately 433 connections under CCN number 21070.

**Application**

4. On December 16 and 19, 2022, Forest Glen filed an application to amend its sewer CCN No. 21070 in Medina County.
5. On February 16, March 2, March 3, December 11, December 15, and December 18, 2023, Forest Glen filed supplements to the application.

6. Forest Glen's application, as supplemented, seeks to amend its sewer CCN No. 21070 to add approximately 1,050.3 acres of uncertificated area.
7. The requested area is in four locations: Requested Area 1 is approximately 4.6 miles north of downtown Castroville, Texas and is generally bounded on the north by FM 1957; on the east by the intersection of FM 1957 and Stone Loop; on the south by CR 472; and on the west by FM 471. Requested Area 2 is located approximately 5.7 miles northeast of downtown Castroville, Texas, and is generally bounded on the north by FM 1957; on the east by Sittre Drive; on the south by Renee Creek; and on the west by the intersection of FM 1957 and Stone Loop. Requested Area 3 is approximately 5.4 miles northeast of downtown Castroville, Texas, and is generally bounded on the north by FM 1957 and Potranco Road; on the east by the intersection of FM 1957 and CR 388; and on the south by Big Bend Path; and on the west by Barden Parkway. Requested Area 4 is located approximately 4.1 miles northeast of Castroville, Texas, and is generally bounded on the north by Big Bend Path; on the east by the county line of Medina and Bexar counties; on the south by a parallel line east of the intersection of FM 471 and CR 473; and on the west by FM 471.
8. In Order No. 3 filed on March 20, 2023, the Administrative Law Judge (ALJ) found the application administratively complete.

### Notice

9. On April 20, 2023, Forest Glen filed the affidavit of Mia Natalino, P.E., authorized representative of Forest Glen, attesting that notice was mailed to neighboring utilities, county authorities, municipalities, and affected parties on March 30 and April 4, 2023.
10. On April 20, 2023, Forest Glen also filed a publisher's affidavit attesting to the publication of notice in the Hondo Anvil Herald, a newspaper of general circulation in Medina County, on March 30 and April 6, 2023.
11. On May 30, 2023, Forest Glen filed an additional affidavit of Mia Natalino, P.E., authorized representative of Forest Glen, attesting that the mailed notice of March 30 and

April 4, 2023 included each owner of at 25 acres of land wholly or partially included in the proposed area of the CCN.

12. On August 28, 2023, Forest Glen filed a publisher's affidavit attesting to the republication of notice in the Hondo Anvil Herald on August 3 and 10, 2023.
13. On October 4, 2023, Forest Glen filed the affidavit of Mia Natalino, P.E., authorized representative of Forest Glen, attesting that a second notice was mailed to neighboring utilities, county authorities, municipalities, and affected parties (including each owner of at 25 acres of land wholly or partially included in the proposed area of the CCN) to account for revision to maps on September 19, 2023.
14. In Order No. 9, filed on October 9, 2023, the ALJ found the notice sufficient.

#### **Map, Certificate, and Tariff**

15. On December 19, 2023, Commission Staff emailed its proposed final map, certificate and tariff to Forest Glen.
16. On December 21, 2023, Forest Glen filed its consent to the proposed final map, certificate and tariff.
17. On March 18, 2024, the final map, certificate, and tariff were included as attachments to the Joint Motion to Admit Evidence and Proposed Notice of Approval.

#### **Evidentiary Record**

18. On March 18, 2024, the parties filed an agreed Motion to Admit Evidence and Proposed Notice of Approval.
19. In Order No. 14, filed on \_\_\_\_\_, 2024, the ALJ admitted the following evidence into the record for this proceeding:
  - a. Forest Glen's application and attachments, filed on December 16 and 19, 2022;
  - b. Staff's recommendation on administrative completeness and proposed procedural schedule, filed on January 17, 2023;



- c. Forest Glen's response to Staff's recommendation on administrative completeness styled as response to Order No. 2, filed on February 16 and March 2 and 3, 2023;
- d. Staff's supplemental recommendation on administrative completeness, filed on March 16, 2023;
- e. Forest Glen's proof of mailed and published notice, filed on April 20, 2023 and supplemented on May 30, August 28, and October 4, 2023;
- f. Staff's supplemental recommendation on sufficiency of notice, filed on October 6, 2023;
- g. Staff's proposed procedural schedule, filed on October 16, 2023;
- h. Forest Glen's response to Staff's First Request for Information, filed on December 11, 2023;
- i. Forest Glen's application supplement, filed on December 15, 2023;
- j. Forest Glen's application supplement, filed on December 18, 2023;
- k. Forest Glen's consent form, filed on December 21, 2023;
- l. Staff's final recommendation with confidential attachment FB-1, filed on March 4, 2024; and
- m. The attached map, certificate, and tariff.

#### **Adequacy of Existing Service**

- 20. There are no customers in the requested area.

#### **Need for Service**

- 21. There is a need for service as there are 1,917 potential new customers in the requested area.

#### **Effect of Granting the Certificate**

- 22. Forest Glen will be the certificated entity for the requested area and will be required to provide continuous and adequate service to the requested area.
- 23. The landowners in the area will have a sewer provider available when they need to request sewer service.

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

**Ability to Serve: Managerial and Technical**

24. Forest Glen has two Texas Commission on Environmental Quality (TCEQ) approved wastewater treatment plants (WWTP).
25. The requested area will be served by the two Forest Glen WWTPs under TPDES Permit Nos. WQ001503001 and WQ0016192001.
26. The Commission's records contain no complaints against Forest Glen.
27. Forest Glen has a sufficient number of licensed operators and the managerial and technical capability to provide continuous and adequate service to the requested area.
28. Forest Glen is extending service from the existing WWTPs to provide service to the requested area. Forest Glen provided a capital improvement plan which included a budget, an estimated timeline for construction, and a keyed map showing where facilities will be located.

**Feasibility of Obtaining Service from Adjacent Utilities**

29. Forest Glen received six requests for service for the requested area from developers.
30. Forest Glen requested service from neighboring utilities and none of them were able to provide service.
31. Forest Glen has approved TCEQ plans to expand facilities in the requested area to serve future customers and will have sufficient capacity to serve the area.
32. It is not feasible to obtain service from an adjacent retail public utility in the requested area.

**Ability to Serve: Financial Ability and Stability**

33. Forest Glen's affiliate is capable, available, and willing to cover temporary cash shortages, and has a debt to equity ratio of less than one, satisfying the leverage test specified in 16 Texas Administrative Code (TAC) § 24.11(e)(2)(E).
34. Forest Glen projects no cash shortages. Forest Glen's affiliate provided a written guarantee of coverage of temporary cash shortages and meets the leverage test as well as has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations, should they occur. Therefore, Forest Glen satisfies the operations test specified in 16 TAC § 24.11(e)(3).
35. Forest Glen provided a firm capital commitment sufficient to pay for the required system improvements to provide continuous and adequate sewer service to the requested area, satisfying 16 TAC § 24.11(e)(5)(B).
36. Forest Glen has demonstrated the financial ability and stability to provide continuous and adequate sewer service to the requested area.

#### **Financial Assurance**

37. Because Forest Glen meets the financial tests, there is no need to require Forest Glen to provide a bond or other financial assurance to ensure continuous and adequate service.

#### **Environmental Integrity and Effect on the Land**

38. The environmental integrity of the land will be minimally affected as facilities are constructed to provide service to the requested area.
39. The land and environmental integrity of the requested area will not be affected to such a degree that the application should not be granted.

#### **Improvement in Service or Lowering of Cost**

40. Future residents of the planned development will have sewer service.

#### **Regionalization or Consolidation**

41. Service was requested from neighboring utilities and none of them were able to provide service.
42. TCEQ has approved plans for Forest Glen to expand facilities in the requested area to serve future customers and will have sufficient capacity to serve the area.
43. Therefore, concerns of regionalization or consolidation do not apply.

**Informal Disposition**

44. More than 15 days have passed since the completion of notice provided in this docket.
45. No person filed a protest or motion to intervene.
46. Commission Staff and Forest Glen are the only parties to this proceeding.
47. No party requested a hearing and no hearing is needed.
48. Commission Staff recommended approval of the application.
49. The decision is not adverse to any party.

**II. Conclusions of Law**

The Commission makes the following conclusions of law:

1. The Commission has authority over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.241, 13.242, 13.244, and 13.246.
2. Forest Glen is a retail public utility as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Notice of the application was provided in compliance with TWC § 13.246 and 16 TAC § 24.235.
4. Forest Glen's application meets the requirements of TWC § 13.244 and 16 TAC § 24.227.

5. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,<sup>1</sup> the TWC, and Commission rules.
6. After consideration of the factors in TWC §§ 13.241(a) and 13.246(c) and 16 TAC § 24.227(e), Forest Glen demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested service area in Medina County and its current service area as required by TWC § 13.241(a) and 16 TAC § 24.227.
7. Forest Glen demonstrated that the amendment to CCN No. 21070 will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(d).
8. After consideration of TWC § 13.241(d), regionalization or consolidation is not feasible, because no neighboring utilities have the facilities needed to provide service to the requested area.
9. It is not necessary for Forest Glen to provide a bond or other financial assurance under TWC § 13.246(d) or 16 TAC § 24.227(f).
10. Forest Glen must record a certified copy of its approved map and certificate, along with a boundary description of the service area, in the real property records of Medina County within 31 days of receiving this Notice of Approval and submit evidence of the recording to the Commission in accordance with TWC § 13.257(r) and (s).
12. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

### **III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

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<sup>1</sup> Tex. Gov't Code Ann. §§ 2001.001-2001.903

1. The Commission amends Forest Glen's sewer CCN No. 21070 to include the requested area as described in this Notice of Approval and shown on the attached map.
2. The Commission approves the map and tariff attached to this Notice of Approval.
3. The Commission issues the certificate attached to this Notice of Approval.
4. Forest Glen must provide service to every customer and applicant for service within the approved area under sewer CCN No. 21070 who requests sewer service and meets the terms of Forest Glen's sewer service, and such service must be continuous and adequate.
5. Forest Glen must comply with the recording requirements of TWC § 13.257(r) and (s) for the areas in Medina County affected by the application and file in this docket proof of the recording no later than 31 days after receipt of this Notice of Approval.
7. Within 10 days of the date of this Notice of Approval, Commission Staff must provide a clean copy of the tariff approved by this Notice of Approval to central records to be marked approved and filed in the Commission's tariffbook.
8. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

**Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_, 2024.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**CHRISTINA DENMARK**

**ADMINISTRATIVE LAW JUDGE**