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DOCKET NO. 54488

APPLICATION OF FOREST GLEN	§	BEFORE THE
UTILITY COMPANY TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE	§	PUBLIC UTILITY COMISSION
AND NECESSITY IN MEDINA	§	
COUNTY, TEXAS	§	OF TEXAS

RESPONSE TO ORDER NO. 16

COMES NOW Forest Glen Utility Company (Applicant or Forest Glen) and files this Response to Order No. 16, and in support thereof, would show the following:

I. BACKGROUND

On December 16, 2022, Forest Glen filed an application to amend its sewer certificate of convenience and necessity (CCN) No. 21070 in Medina County. On March 4, 2024, staff of the Public Utility Commission of Texas (Commission) filed Staff's Final Recommendation on the Application. On March 19, 2024, Applicant and Commission Staff filed an Amended Joint Motion to Admit Evidence and Proposed Notice of Approval. On April 8, 2024, the Commission Administrative Law Judge (ALJ) issued Order No. 14 granting the parties' joint motion and admitting certain evidence. However, on April 9, 2024, the Commission ALJ issued Order No. 15 requiring clarification of certain other evidence that was not included in the parties' joint filing. On April 12, 2024, the Commission ALJ issued Order No. 16 requiring still further clarification and supplemental information relating to the application and requiring this clarification by April 25, 2024. Therefore this response is timely filed.

II. ADDITIONAL CLARIFICATION AND SUPPLEMENTAL INFORMATION

1. The parties overlooked including Commission Staff's September 8, 2023 supplemental recommendation on notice sufficiency in their joint filing. The parties will file a Second Amended Joint Motion to Admit Evidence and Proposed Notice of Approval to include Staff's supplemental recommendation in a separate filing.
2. Finding of Fact Nos. 30, 32 and 41 relating to regionalization and requests for service to neighboring utilities are in error. As stated in response to Question 12 of the application (AIS No.

1), there are no retail sewer utilities within one-half mile of the proposed CCN area. The absence of nearby utilities is due in part because the Commission's predecessor agency issued the original CCN in this general area to Forest Glen in 2012, and two subsequent amendments resulting in the addition of nearby uncertificated area. These additions to the CCN reflect an overall phased development scheme. Since requests to neighboring utilities further than one-half mile are not required and they do not exist anyway, these findings should be amended as follows:

~~30.—Forest Glen requested service from neighboring utilities and none of them were able to provide service.~~

30. There are no retail sewer utilities within one-half mile of the proposed CCN area.

~~32.—It is not feasible to obtain service from an adjacent retail public utility in the requested area.~~

32. It is not feasible to obtain service from another retail public utility because none exist within one-half mile of the proposed CCN area.

~~41.—Service was requested from neighboring utilities and none of them were able to provide service.~~

41. Service was not requested from any retail public utility because none exist within one-half mile of the proposed CCN area.

3. Applicant's preliminary engineering report is an investor-owned utility's equivalent of a capital improvement plan (CIP), and the Commission has accepted preliminary engineering reports as such in multiple dockets for nearly a decade. To clarify, a CIP lays out the financing, location, and timing for capital improvement projects over several years for governmental entities. A CIP consists of one or more capital improvement projects, which are financed through a capital budget for major non-recurring infrastructure projects occurring over a period of years. Investor-owned utilities such as the Applicant prepare and file a preliminary engineering report containing all the aspects of a CIP including a true (not "pro forma") budget, timeline, and facilities map for construction of all capital improvements necessary to provide service to the requested CCN area. Applicant's preliminary engineering report detailed the planned capital improvements as required, and a Texas licensed professional engineer prepared, signed, and sealed the report.

4. According to the TCEQ, Applicant's request for minor permit amendment with renewal for WRRF 1 (TPDES Permit No. WQ0015030001) was issued on April 8, 2024 and mailed to

Applicant the week of April 22, 2024, but has not been received at the time of this filing.¹ The amendment facilitates more consistency with the phasing of permitted flow and pace of construction of treatment facilities. As stated in Applicant's Preliminary Engineering Plan, with this amendment, WRRF 1 will have adequate capacity for "all existing developments, as well as the Potranco West Subdivision." Pursuant to TCEQ's consolidated permitting rules at 30 TAC § 305.126, when a WWTP reaches 75% of the permitted average daily or annual average flow for three consecutive months, the permittee must initiate an expansion (i.e., file permit application for major amendment) and when flow reaches 90% permitted average daily flow, the permittee must obtain authorization to construct necessary treatment or collection facilities. The corollary of this rule is that a permittee must demonstrate need for a permit amendment and TCEQ will not process a permit application unless and until the need is established within the next 5 years.² That is to say, although Applicant has demonstrated a financial ability and firm capital commitment to provide the necessary facilities to provide continuous and adequate service in all 6 proposed CCN areas in all phases, Applicant will not be able to submit and obtain a major permit amendment for WRRF 1 from TCEQ until there is a need for it, which, in turn, will be driven by housing starts, the pace of construction, etc.

5. TCEQ has approved plans and specifications for WRRF 2 (TPDES Permit No. WQ0016192001) and issued an approval to commence construction dated March 26, 2024.³ Applicant has begun the bidding process for construction.

6. Permitting for WRRF 3 is not currently necessary, so no additional TCEQ documentation exists for the reasons stated above. Service to the "Stinson Tract" will be provided via lift station with ultimate treatment and discharge at WRRF 1 until such time as demand on WRRF 1 necessitates construction of WRRF 3. Thus, service to the Stinson Tract is not dependent upon the permitting and construction of WRRF 3 and should not impede the issuance of this CCN amendment as requested.

¹ See Exhibit A, April 22, 2024 email from TCEQ permitting staff to Applicant apprising of the issuance of WRRF 1 permit amendment.

² Tex. Water Code § 26.0282 (the typical term of a TPDES permit is 5 years).

³ See Exhibit B, March 26, 2024 TCEQ construction approval letter for WRRF 2.

7. The map attached to the amended joint proposed notice of approval correctly identified the requested area. The earlier depiction may be confusing because this amendment seeks the addition of uncertificated area on the east and the west side of the previously-certificated area. When maps were prepared for this amendment application only, only the additional uncertificated areas were shown. However, once the Commission GIS staff “filled in” the new amended areas in the final map with the preexisting certificated area, it appears as three areas.


8. The revised tariff correcting the docket number and referencing both TPDES permit numbers will be filed separately with a Second Amended Joint Motion to Admit Evidence and Proposed Notice of Approval and is intended to apply to WRRF 3.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Forest Glen respectfully prays that the Commission ALJ grants the requested CCN amendment.

Respectfully submitted,

Randall B. Wilburn
State Bar No. 24033342
Helen S. Gilbert
State Bar No. 00786263
BARTON BENSON JONES PLLC
7000 N. MoPac Expwy, Suite 200
Austin, Texas 78731
Telephone: (210) 640-9174
Telecopier: (210) 600-9796
hgilbert@bartonbensonjones.com
rwilburn@bartonbensonjones.com

By: 

Helen S. Gilbert

**ATTORNEYS FOR FOREST GLEN
UTILITY COMPANY**

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 25th of April 2024.

Helen S. Gilbert

EXHIBIT A

Thursday, April 25, 2024 at 10:18:25 Central Daylight Time

From: Garrison Layne <Garrison.Layne@tceq.texas.gov>
Sent: Monday, April 22, 2024 4:46:21 PM
To: Samantha Marin <samantham@bvrwater.com>
Subject: Re: WQ0015030001 Forest Glen Utility Company LLC

This is an EXTERNAL EMAIL. Stop and think before clicking a link or opening attachments.

Dear Ms. Marin,

Based upon the permit data records that I have for the permit it appears that the permit was approved on April 8th 2024 with TCEQ and the comment period has ended on March 18th. Then it appears that the permit has been mailed out today for issuance.

Thank you,
Garrison Layne

From: Samantha Marin <samantham@bvrwater.com>
Sent: Monday, April 22, 2024 4:30 PM
To: Garrison Layne <Garrison.Layne@tceq.texas.gov>
Subject: RE: WQ0015030001 Forest Glen Utility Company LLC

Hi Garrison – Could you please provide a status update on this permit? Thank you.

Samantha Marin, Regulatory Manager
BVRT Utility Holding Company, LLC
P.O. Box 701201, San Antonio, TX 78270
Office: 210.209.8029
Mobile: 210.632.8645
www.bvrwater.com

and subsidiaries:
[Forest Glen Utility Co.](#) | [Plum Creek Utility Co.](#) | [Windy Hill Utility Co.](#) |
[Zipp Road Utility Co.](#) | O&M Management Services



Jon Niermann, *Chairman*
 Bobby Janecka, *Commissioner*
 Catarina R. Gonzales, *Commissioner*
 Kelly Keel, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 26, 2024

Allison M. Nieto, P.E.
 SOUTHWEST ENGINEERS, INC.
 307 Saint Lawrence Street
 Gonzales, TX 78629

Re: Forest Glen Utility Company
 FGU WRRF 2 - Unit 1
 Permit No. WQ0016192-001
 WWPR Log No. 0324/072
 CN603662180, RN111542734
 Medina County

Dear Ms. Nieto:

We have received the project summary transmittal letter dated 3/7/2024.

The rules which regulate the design, installation and testing of domestic wastewater projects are found in 30 TAC, Chapter 217, of the Texas Commission on Environmental Quality (TCEQ) rules titled, Design Criteria for Wastewater Systems.

Section 217.6(d), relating to case-by-case reviews, states in part that upon submittal of a summary transmittal letter, the executive director may approve of the project without reviewing a complete set of plans and specifications.

Under the authority of §217.6(e) a technical review of complete plans and specifications is not required. **However, the project proposed in the summary transmittal letter is approved for construction. Please note, that this conditional approval does not relieve the applicant of any responsibilities to obtain all other necessary permits or authorizations, such as wastewater treatment permit or other authorization as required by Chapter 26 of the Texas Water Code.** Below are provisions of the Chapter 217 regulations, which must be met as a condition of approval. These items are provided as a reminder. If you have already met these requirements, please disregard this additional notice.

- You must keep certain materials on file for the life of the project and provide them to TCEQ upon request. These materials include an engineering report, test results, a summary transmittal letter, and the final version of the project plans and specifications. These materials shall be prepared and sealed by a Professional Engineer licensed in the State of Texas and must show substantial compliance with Chapter 217. All plans and specifications must conform to any waste discharge requirements authorized in a permit by the TCEQ. Certain specific items which shall be addressed in the engineering report are discussed in §217.6(d). Additionally, the engineering report must include all constants, graphs,

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EXHIBIT B

Allison M. Nieto, P.E.

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equations, and calculations needed to show substantial compliance with Chapter 217. The items which shall be included in the summary transmittal letter are addressed in §217.6(d)(1)-(9).

- Any deviations from Chapter 217 shall be disclosed in the summary transmittal letter and the technical justifications for those deviations shall be provided in the engineering report. Any deviations from Chapter 217 shall be based on the best professional judgement of the licensed professional engineer sealing the materials and the engineer's judgement that the design would not result in a threat to public health or the environment.
- Any variance from a Chapter 217 requirement disclosed in your summary transmittal letter is approved. If in the future, additional variances from the Chapter 217 requirements are desired for the project, each variance must be requested in writing by the design engineer. Then, the TCEQ will consider granting a written approval to the variance from the rules for the specific project and the specific circumstances.
- Within 60 days of the completion of construction, an appointed engineer shall notify both the Wastewater Permits Section of the TCEQ and the appropriate Region Office of the date of completion. The engineer shall also provide written certification that all construction, materials, and equipment were substantially in accordance with the approved project, the rules of the TCEQ, and any change orders filed with the TCEQ. All notifications, certifications, and change orders must include the signed and dated seal of a Professional Engineer licensed in the State of Texas.

This approval does not mean that future projects will be approved without a complete plans and specifications review. The TCEQ will provide a notification of intent to review whenever a project is to undergo a complete plans and specifications review. Please be reminded of 30 TAC §217.7(a) of the rules which states, "Approval given by the executive director or other authorized review authority does not relieve an owner of any liability or responsibility with respect to designing, constructing, or operating a collection system or treatment facility in accordance with applicable commission rules and the associated wastewater permit".

If you have any questions or if we can be of any further assistance, please call me at (512) 239-4552.

Sincerely,



Louis C. Herrin, III, P.E.
Wastewater Permits Section (MC 148)
Water Quality Division
Texas Commission on Environmental Quality

LCHIII/tc

cc: TCEQ, Region 13 Office