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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 REVISED 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 October 8, 2024, the administrative law judge (ALJ) filed Order No. 20, directing the Staff (Staff) of the Public Utility Commission of Texas to file a revised final recommendation to address whether a good-cause exception to the requirements of 16 TAC § 24.11(e)(5)(B)(ii) is necessary. Additionally, Staff is to address the clarifications Forest Glen will file in response to the Order by November 1, 2024. Therefore, this pleading is timely filed.

II. REVISED RECOMMENDATION

Staff has reviewed the supplemental information filed by Forest Glen and, as detailed in the attached memoranda of Jaspinder Singh, Engineering Specialist with the Commission's Infrastructure Division and of Fred Bednarski III of the Rate Regulation Division, recommends approval of the application and the attached certificate and map.

Staff's review indicates that Forest Glen meets the applicable technical, managerial, and financial requirements of TWC §§ 13.242 through 13.250 and 16 TAC §§ 24.225 through 24.237 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.

Finally, Staff recommends that a good-cause exception to the requirements of 16 TAC § 24.11(e)(5)(B)(ii) is necessary. This rule requires Forest Glen to provide loan approval documents or firm capital commitment affirming funds are available to install a new water system or a substantial addition to an existing water system if Forest Glen is proposing new service to a

new CCN area or a new subdivision. Here, Forest Glen is proposing new service to a new CCN area in its application. Although Forest Glen did not provide non-standard service agreements for all developments, nor customer bills explicitly demonstrating proof of service for those developments lacking such agreements, Forest Glen did provide requests for non-standard service from each developer to which Forest Glen is extending service to under the application.¹ Additionally, Forest Glen's tariff includes the Commission's language regarding the developer's responsibility for construction of facilities for a non-standard service agreement – here, the construction of the collection lines.² Furthermore, Forest Glen's affiliate California Water Service Group states it is “capable, available, and willing to cover temporary cash shortages as needed, as well as provide funding to install [Forest Glen]'s required capital improvements,” and submitted an affidavit in support of this statement.³ Forest Glen's affiliate will cover the cost of the collection line installation should the developers not comply with their obligations under the tariff. Therefore, Staff recommends finding a good-cause exception to the requirements under 16 TAC § 24.11(e)(5)(B)(ii).

III. CONCLUSION

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

¹ Application at 14 (Att. 9) (Dec. 16, 2022).

² Application at 47 (Att. 29); Forest Glen's Response to Staff's Second Request for Information at 2-1 (Dec. 27, 2023).

³ Forest Glen's Response to Staff's First Request for Information at 1-1 (Dec. 11, 2023).

Dated: November 1, 2024

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 will be provided to all parties of record via electronic mail on November 1, 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: November 1, 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.

On October 8, 2024, the administrative law judge requested a revised recommendation in Order No. 20 from Commission Staff (Staff) on the supplemental information provided by Forest Glen.

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 (FGU-WRRF1), 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)).*

Forest Glen is not building a new wastewater plant to provide service to the requested areas. They will be extending service to an existing wastewater plant. 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 received a request for service for the requested area from a developer. Forest Glen has plans to construct a new wastewater treatment plant, FGU-WRRF3, in the future, however it is not necessary at this time to provide service to the requested area. Forest Glen is not building a new wastewater plant to provide service to the requested areas. Collection lines will be installed in the requested area to feed into Forest Glen's existing WWTPs to serve the area. Therefore, it is not feasible to obtain service from an adjacent retail public utility. I recommend a finding that Forest Glen satisfies the requirements of 16 TAC § 24.11(e)(5) and that, if necessary, a good cause exception should be granted.

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 submitted their capital improvement plan under item 6 on February 16, 2023 (Preliminary engineering report). Forest Glen is extending service from the existing WWTPs to provide service to the requested areas. Forest Glen provided a budget, an estimated timeline for construction, and a keyed map showing where facilities will be located. WWTP, FGU-WRRF1 (WQ001503001) is the existing treatment facility to serve the requested areas and according to Forest Glen, WRRF 1 has adequate capacity for all existing developments including Potranco West Subdivision. WRRF 1 expansion was completed in summer 2023. TCEQ granted a minor amendment to FGU-WRRF1 on April 8, 2024, and a copy of the permit was filed on October 22, 2024 under Item 76. Additionally, Forest Glen also provided a copy of the notice of completion of construction to TCEQ.

WWTP, FGU-WRRF2 (TPDES Permit No. WQ0016192001) was issued on September 29, 2023; the WWTP will provide serve to Requested Area 1 (Medina Estates, Megan's Landing, and Microsoft Subdivisions). Construction was expected to begin in Spring 2024 and Forest Glen is currently working on the bidding process for construction.

Forest Glen is planning to construct FGU-WRRF 3 and to obtain the TCEQ permit in the future to serve Stinson Property Subdivision. At this time, the service to Stinson Property Subdivision will be provided by FGU-WRRF1. According to preliminary engineering report, construction will likely begin in Fall 2027 with completion of the WWTP in Summer 2028. Estimated costs to construct and extend the sewer systems 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 file a memo addressing the need for firm capital commitment criterion.

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 file a memo addressing this criterion.

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 file a memo addressing this criterion.

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 collection lines are installed 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: November 1, 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 California WSG's financial statements ending December 31, 2022. These financial statements contain an unqualified auditor's opinion from Deloitte & Touche LLP

¹ Response to Staff's First RFI at 6 – 9 (Dec. 11, 2023).

stating that the 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, the amount of required capital improvements exceeds \$100,000. Forest Glen's affiliate—California WSG—provided a written guarantee of coverage of temporary cash shortages and a firm capital

² Confidential Response to Staff's First RFI, 1-1, part 2 at 2 – 4 (Dec. 11, 2023).

³ Response to Staff's First RFI at 6 – 9.

commitment by demonstrating adequate cash available to fund all of the required wastewater treatment plant improvement costs as shown in confidential attachment FB-1.⁴

Forest Glen additionally provided requests for service⁵ and nonstandard service developer agreements⁶ for the requested areas affirming the developers are obligated and committed to pay for the collection line and connection costs per the terms of the agreements and Forest Glen's tariff.⁷ Therefore, I recommend a finding that Forest Glen provided a firm capital commitment for the wastewater plant improvements and extension line improvements for the requested areas satisfying the requirements of 16 TAC § 24.11(e)(5)(B)(ii) and that a good cause exception be granted for the collection line costs based on the terms of the request for service, developer agreements, and terms of Forest Glen's tariff pursuant to the requirements of 16 TAC § 24.11(e)(5)(B)(ii).

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.

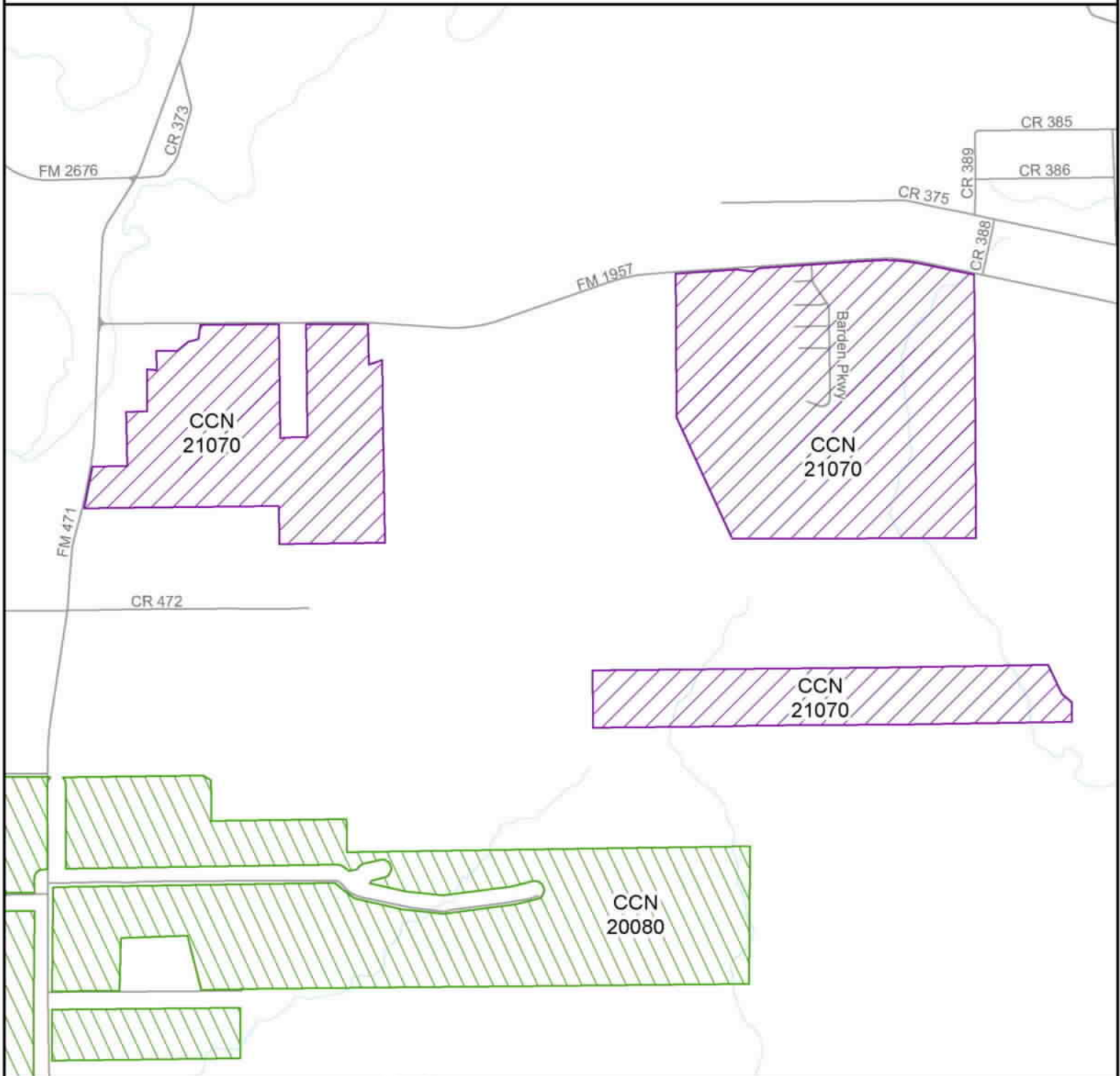
⁴ See Open Meeting Tr. at 39 and 40 (Feb. 16, 2023) (available at https://www.adminmonitor.com/tx/puct/open_meeting/20230216).

⁵ Application at 15 – 22 (Dec. 16, 2022).



⁶ Confidential Supplemental Attachment 9 to the Amended Application at 2 – 61, 63 – 140, and 142 – 202 (Dec. 18, 2023).

⁷ Response to Commission Staff's Second RFI at 4, 5 – 6 (Dec. 27, 2023); see also *Application of East Medina County Special Utility District to Amend its Certificate of Convenience and Necessity in Medina County*, Docket No. 52337, EMSUD's Response to Order No. 1 at 8 (Aug. 20, 2021).

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

0 1,500 3,000
Feet





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.