

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 31, 2009

IN RE:

**PETITION OF AQUA GREEN UTILITY INC. TO
OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY FOR THE SERVICE OF THE PART OF
JEFFERSON COUNTY, TENNESSEE KNOWN AS THE
PENINSULA PREVIOUSLY KNOWN AS PARROTT BAY**

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**DOCKET NO.
09-00045**

**ORDER APPROVING PETITION FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

This matter came before Chairman Eddie Roberson, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority ("TRA" or "Authority"), the voting panel assigned to this docket, at a Hearing held on June 29, 2009, to consider the Petition filed by Aqua Green Utility, Inc. ("Aqua Green" or "Company") on April 3, 2009 and revised on April 12, 2009 ("Revised Petition").

BACKGROUND

In its Revised Petition, Aqua Green seeks a certificate of public convenience and necessity ("CCN") to operate a wastewater disposal system in The Peninsula, located in Jefferson County Tennessee.¹ The Peninsula is owned and being developed by The Peninsula on Douglas Lake, LLC. Also, included in the Revised Petition was a proposed Tariff.

¹ This area was formerly known as Parrott Bay. The Authority granted Tennessee Wastewater Systems, Inc. ("TWSI") an amendment to its CCN that entitled it to provide service to Parrott Bay in Docket No. 06-00077 at a Hearing held on July 10, 2006. In an Order issued by the Authority in the same docket on February 2, 2009, the Authority granted TWSI's request to cancel the amendment to its CCN authorizing it to provide service to Parrott Bay.

Legal Standard for Granting Certificate of Public Convenience and Necessity

No public utility is permitted to begin construction or operation of a new utility facility or service before obtaining approval of the Authority. The procedure for obtaining a CCN evidencing such approval is set forth in Tenn. Code Ann. § 65-4-201(a) (Supp. 2008), which states as follows:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate. . . .

TRA Rule 1220-4-13-.04(1)(b) also sets forth certain requirements for a CCN applicant as follows:

(b) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (CCN) authorizing such public utility to construct and/or operate a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13-.07, and possess sufficient managerial, financial, and technical abilities to provide the wastewater services for which they have applied. Each application shall justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.

REVISED PETITION

Aqua Green states that the proposed wastewater system will be used to provide an affordable, environmentally friendly solution for wastewater disposal to eighty residential homes,

once the system is fully built out.² The sewage disposal system will consist of a poured in place cement tank with a factory designed Delta Environmental Bio Pod inserted fixed film system.³ This system is designed to support 24,000 gallons per day flow and should take about four months to fill to the operational levels.⁴ Aqua Green states that it has separately petitioned the Tennessee Department of Environment and Conservation (“TDEC”) for a State Operating Permit (SOP No. 09022)⁵ for the installation of the wastewater system to serve the development.

Aqua Green has submitted financial information, estimated operating revenues and costs, and biographical information for Aqua Green management personnel in support of its Revised Petition. Also, in support of its Revised Petition and as evidence of the public need for wastewater service in the requested area, Aqua Green attached a letter from Robert L. Bertram, Jr., Member, The Peninsulas on Douglas Lake, LLC, requesting that Aqua Green provide service to The Peninsula.⁶ In addition, Aqua Green attached letters from other potential wastewater service providers stating that none of the potential providers currently serves the area or intends to extend wastewater service to The Peninsula area.⁷ The Company filed service area maps showing the location of The Peninsula.⁸ In addition, Aqua Green states that no existing utility routes, plant, line or system will be affected by the proposed services. Finally, the Company included the sworn pre-filed testimony of Dart Kendall, Aqua Green President, which further affirms the Company’s managerial, financial, and technical qualifications.

² *Revised Petition*, Pre-Filed Testimony of Dart Kendall, p.2.

³ *Revised Petition*, p. 7.

⁴ *Id.*.

⁵ *Id.*

⁶ *Revised Petition* (unnumbered attachments): Letter from Robert L. Bertram, Jr., dated March 3, 2009.

⁷ *Revised Petition* (unnumbered attachments): Alan Palmieri, Mayor, Jefferson County, Tennessee, letter dated January 21, 2009; Mike Jones, Shady Grove Utility District, letter dated January 21, 2009; and James D. Hutchins, Town Administrator of Dandridge, Tennessee, letter dated February 19, 2009.

⁸ *Revised Petition*, Exhibit V-F.

JUNE 29, 2009 HEARING

Public notice of the Hearing in this matter was issued by the Hearing Officer on June 16, 2009. No person sought intervention prior to or during the Hearing. During the Hearing held on June 29, 2009, Mr. Dart Kendall, President of Aqua Green, presented testimony and was subject to examination by the panel. The Pre-filed Testimony of Dart Kendall was entered into the record without objection. The Pre-filed Testimony states that the Company has the managerial, technical and financial ability to provide wastewater services to The Peninsula.⁹

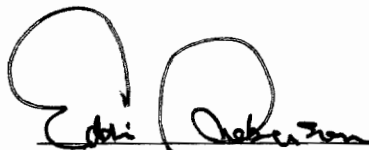
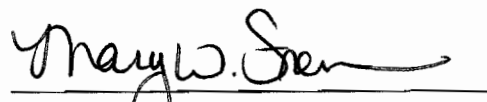
Finding that Aqua Green meets the requirements of Tenn. Code Ann. § 65-4-201(a) (Supp. 2008) and TRA Rule 1220-4-13-.04(1)(b), the panel additionally found that the Company's proposed fees are reasonable, including the monthly escrow amount. The panel also found that the Company should create a separate escrow account and that the employees with signatory authority should obtain a fidelity bond pursuant to TRA Rule 1220-4-13-.07(9).

Thereafter, based upon the evidentiary and administrative record as a whole and relying on the standards set forth in Tenn. Code Ann. § 65-4-201(a) (Supp. 2008) and TRA Rule 1220-4-13-.04(1)(b), the panel voted unanimously to grant approval of the Revised Petition, including the rates filed by the Company, contingent upon Aqua Green being granted a State Operating Permit from TDEC. The panel further voted to approve the proposed rate for residential service of \$44.53, which includes an escrow amount of \$10.13 for non-routine maintenance costs. Finally, the panel voted that the escrow funds shall be placed in a separate bank account, that employees having signatory authority over the escrow account are directed to obtain a fidelity bond, and that the Company is directed to file the monthly bank statements from the escrow account with its annual report on April 1 so the escrow amount can be reviewed for adequacy.

⁹ Dart Kendall, Pre-Filed Testimony, p. 2.

IT IS THEREFORE ORDERED THAT:

1. The Revised Petition of Aqua Green Utility Inc. to obtain a certificate of public convenience and necessity for the service of the part of Jefferson County, Tennessee known as The Peninsula, and previously known as Parrott Bay, is hereby approved contingent upon the Company being granted a State Operating Permit from the Tennessee Department of Environment and Conservation.
2. The Tariff attached to the Revised Petition is hereby approved.
3. The escrow funds shall be placed in a separate bank account, employees having signatory authority over the escrow account are directed to obtain a fidelity bond, and the Company is directed to file the monthly bank statements from the escrow account with its annual report on April 1 each year.


Eddie Roberson, Chairman
Sara Kyle, Director
Mary W. Freeman, Director