

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

<b>IN RE:</b>	<b>October 11, 2011</b>	)	
		)	
<b>PETITION OF AQUA GREEN UTILITY INC. TO</b>		)	<b>DOCKET NO.</b>
<b>AMEND ITS CERTIFICATE OF PUBLIC CONVENIENCE</b>		)	<b>10-00145</b>
<b>AND NECESSITY AND EXPAND ITS SERVICE AREA TO</b>		)	
<b>INCLUDE A PORTION OF JEFFERSON COUNTY IN</b>		)	
<b>TENNESSEE, KNOWN AS STONEBRIDGE ON DOUGLAS</b>		)	
<b>LAKE</b>		)	

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**ORDER APPROVING AMENDED CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

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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 August 22, 2011, to consider the *Petition to Amend Certificate of Public Convenience and Necessity and Expand Its Service Area to Include a Portion of Jefferson County in Tennessee, Known as Stonebridge on Douglas Lake* (the "*Petition*") filed by Aqua Green Utility, Inc. ("Aqua Green" or "Company") on July 16, 2010 requesting that the Authority approve expansion of its service area to include a portion of Jefferson County, Tennessee, known as Stonebridge on Douglas Lake.

**BACKGROUND**

On July 31, 2009, Aqua Green received a Certificate of Public Convenience and Necessity ("CCN") in Docket No. 09-00045 from the TRA to operate a wastewater treatment plant in Tennessee.<sup>1</sup> The Company's principal office is located in Acworth, Georgia. On July 16, 2010,

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<sup>1</sup> See *In re: Petition of Aqua Green Utility Inc. to Obtain a CCN for the Service of the Part of Jefferson County, Tennessee Known as the Peninsula Previously Known as Parrott Bay*, Docket No. 09-00045, *Order Approving Petition for a Certificate of Public Convenience and Necessity* (July 31, 2009).

Aqua Green filed the *Petition* in this matter, along with the Pre-filed Direct Testimony of Dart Kendall, which was further amended on November 19, 2010 and April 8, 2011. A final version was filed on August 4, 2011.

**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. 2009), 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) sets forth certain requirements for a wastewater 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 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.

**The *Petition***

In support of its *Petition*, Aqua Green submitted financial information, estimated operating revenues and costs, and biographical information for Aqua Green management personnel. The Company also included the sworn pre-filed testimony of Dart Kendall, Aqua Green President, further affirming the Company's managerial, financial, and technical qualifications.

In its Petition, Aqua Green requested that its service area be expanded to include Stonebridge in Jefferson County. The Company further stated that over 100 lots have been sold and six (6) homes are either complete or under construction at the present time.<sup>2</sup> Aqua Green will provide wastewater service using effluent collection, fixed film treatment, and subsurface drip dispersal system that has a projected capacity of 15,515 gallons per day.<sup>3</sup>

In support of its *Petition* and as evidence of the public need for wastewater service in the requested area, the Company provided letters from Shady Grove Utility and the Mayor of Jefferson County stating that there are no plans to provide sewer services to Stonebridge. On August 16, 2010, Aqua Green provided a letter from Dandridge Water Management Facility stating that the area is not within their service area and they are not planning on providing service to this area within the next twelve (12) months. In addition, Aqua Green submitted letter from the Mayor of Baneberry,<sup>4</sup> New Market Utility District, Jefferson City Water, and White Pine Water System,<sup>5</sup> stating that they are not serving this area and do not anticipate serving this area.

Additionally, Aqua Green filed a copy of the Warranty Deed for the property on which the wastewater treatment plant is sited, which was transferred, on April 14, 2011 from Stonebridge on Douglas Lake, LLC to Aqua Green.<sup>6</sup> Aqua Green also provided a letter from Chip Leonard, President of RPM Group, LLC, the developer, requesting it to be the service provider at Stonebridge.<sup>7</sup>

The Tennessee Department of Environment and Conservation ("TDEC") application was submitted for State approval of the permit tracking number SOP-10042, effective on May 1,

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<sup>2</sup> *Response to Data Request*, p. 1 (August 25, 2010).

<sup>3</sup> *Petition*, p. 1 (July 16, 2010).

<sup>4</sup> *Response to Data Request*, Letter from City of Baneberry (October 29, 2010).

<sup>5</sup> *Response to Data Request* (September 15, 2010).

<sup>6</sup> *Response to Data Request* (May 5, 2011).

<sup>7</sup> *Petition*, Letter from Chip Leonard.

2011.<sup>8</sup> The Company states that the system should be completed approximately thirty days after approval of the CCN.<sup>9</sup>

**August 22, 2011 Hearing**

Public notice of the Hearing in this matter was issued by the Hearing Officer on July 28, 2011. No person sought intervention prior to or during the Hearing. During the Hearing held on August 22, 2011, Mr. Dart Kendall, President, Aqua Green Utility, participated, presented testimony, and was subject to examination by the panel. Mr. Michael Sorrels, a Stonebridge homeowner, was also in attendance and participated in the Hearing. Mr. Kendall's Pre-filed Testimony, which was entered into the record without objection, states that the Company has the managerial, technical and financial ability to provide wastewater services to Stonebridge, on Douglas Lake.

The panel found that Aqua Green had met the requirements of Tenn. Code Ann. § 65-4-201 and TRA Rules 1220-4-8-.02 through 1220-4-8-.04. 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) and TRA Rules 1220-4-8-.02 through 1220-4-8-.04., the panel voted unanimously to approve the *Petition*, conditioned upon Aqua Green receiving approval of its engineering plans from TDEC. In addition, Aqua Green was directed to file reports with the Authority in this docket at the end of each month to detail the progress of the system build-out, including an itemization and documentation of all funds provided, all construction completed to date, and an estimated remaining time line for completion. The reports are to be filed beginning on September 30, 2011 and shall continue until the system is completed.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition to Amend Certificate of Public Convenience and Necessity* filed by Aqua Green Utility, Inc. to include a portion of Jefferson County, Tennessee known as Stonebridge

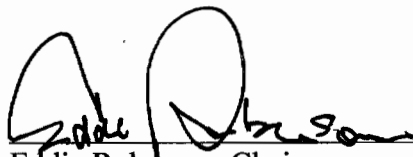
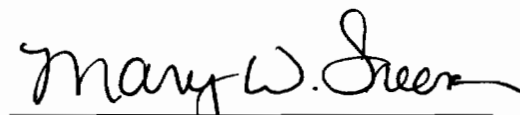
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<sup>8</sup> State Operating Permit (March 29, 2011).

<sup>9</sup> *Petition*, p. 3 (July 16, 2010).

on Douglas Lake, as shown in the map attached to the *Petition*, is approved contingent upon Aqua Green receiving approved engineering plans from TDEC.

2. Aqua Green shall file reports with the Authority in this docket at the end of each month, which details the progress of the system build-out. The reports shall be filed beginning on September 30, 2011 and continue until the system is completed.

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