

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 18, 2016

IN RE:

**PETITION OF AQUA GREEN UTILITY INC. TO
AMEND ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY TO SERVE LOVES TRAVEL
STOP & COUNTRY STORE LOCATED IN
MCNAIRY COUNTY**

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**DOCKET NO.
16-00030**

**ORDER APPROVING PETITION TO AMEND CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY**

This matter came before Vice Chairman David F. Jones, Director Kenneth C. Hill and Director Robin L. Morrison of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on May 9, 2016, for consideration of the Petition to Amend Certificate of Public Convenience and Necessity (“Petition”) filed on March 18, 2016 by Aqua Green Utility, Inc. (“Aqua Green” or the “Company”).

BACKGROUND AND PETITION

On July 31, 2009, Aqua Green obtained a Certificate of Public Convenience and Necessity (“CCN”) to provide wastewater service to the Peninsula subdivision in Jefferson County, Tennessee.¹ Then, on October 11, 2011, the Company received TRA approval to amend its CCN in order to provide service to a subdivision known as Stonebridge on Douglas Lake, also

¹ 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 CCN* (July 31, 2009).

located in Jefferson County, Tennessee.² On March 18, 2016, Aqua Green filed its Petition and the Pre-Filed Direct Testimony of Dart Kendall, President of Aqua Green, requesting to expand its territory to operate a wastewater disposal system in McNairy County, Tennessee at Love's Travel Stop & Country Store ("Love's store" or the "Store").

In his testimony, Mr. Kendall stated the proposed wastewater system will provide environmentally friendly and affordable wastewater service to the Love's store where wastewater service is currently unavailable.³ He also stated that the Love's store will be the only customer serviced by this system.⁴ He further stated the Company will provide service and maintenance of the sewer treatment tanks and main lines, excluding the grease trap, and will also maintain and operate the treatment plant and drip field, and that all operation and maintenance will meet the requirements of the Company's state operating permit.⁵

In its Petition, Aqua Green proposes installing and operating a fully automated trickle filter plant with autonomous redundancy of major components, as well as leak detection and isolation technology.⁶ This trickle type of system pumps sewage across media blocks for natural treatment.⁷ In addition, solar powered recirculation pumping has been included in the design plan which has been submitted to the Tennessee Department of Environment & Conservation where approval of the design plan is pending.⁸

Along with its Petition, Aqua Green filed letters from McNairy County, the Town of Eastview, and Eastview Water Department stating that these entities will not provide wastewater

² See *In re: Petition of Aqua Green Utility Inc. to Amend its CCN and Expand its Service Area to Include a Portion of Jefferson County in Tennessee Known as Stonebridge on Douglas Lake*, Docket No. 10-00145, *Order Approving Amended Certificate of Public Convenience and Necessity* (October 11, 2011).

³ *Petition to Amend CCN at Pre-Filed Direct Testimony of Dart Kendall*, p. 1 (March 18, 2016) (hereinafter *Pre-Filed Direct Testimony*).

⁴ *Id.* at 2.

⁵ *Id.* at 1-2.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.* at 2-3.

services for this Love's store location.⁹ The Company states that construction of the system will take approximately 60 to 90 days to complete.¹⁰

On April 27, 2016, Aqua Green made a filing requesting to include a capitol contribution amount of \$220,000 for the sewer treatment plant and the land. No parties petitioned to intervene in this docket.

STANDARD FOR AUTHORITY APPROVAL

No public utility is permitted to begin construction or operation of a new utility facility or service without first obtaining a CCN from the Authority, as set forth in Tenn. Code Ann. § 65-4-201(a), which reads:

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...

Additionally, in order to obtain a CCN to provide wastewater service, TRA Rule 1220-4-13-.04(1)(b) requires that a public wastewater utility satisfy the following requirements:

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.

⁹ *Petition to Amend CCN*, p. 29-30, 32 (March 18, 2016).

¹⁰ *Pre-Filed Direct Testimony*, p. 3 (March 18, 2016).

THE HEARING

The Hearing in this matter was held before the voting panel during the regularly scheduled Authority Conference on May 9, 2016, as noticed by the Authority on April 29, 2016.

Participating in the Hearing were:

Aqua Green Utility, Inc. – Dart Kendall, President, 3350 Galts Road, Acworth, Georgia 30101.

During the Hearing, Mr. Kendall ratified, then summarized his pre-filed testimony, and was subject to questioning before the panel. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

FINDINGS AND CONCLUSIONS

In its Petition, Aqua Green has asked the Authority for approval pursuant to Tenn. Code Ann. § 65-4-201(a) and TRA Rule 1220-4-13-.04(1)(b) to amend its CCN to provide service to a Love's Travel Stop & Country Store in McNairy County. Based on a review and consideration of the pleadings, pre-filed testimony and the entire administrative record, the Authority finds as follows:

The panel concluded that Aqua Green has demonstrated that it possesses the requisite managerial, financial and technical capabilities to provide wastewater services to the Love's store and that a public need exists for such service as required under Tenn. Code Ann. § 65-4-201(a) and TRA Rule 1220-4-13-.04(1)(b). Accordingly, the panel voted unanimously to approve the Company's Petition to amend its CCN to expand its service to include service to the Store. However, while the panel concluded that the proposed wastewater system should proceed, the panel conditioned its approval upon the Company's filing of the following documents in this Docket:

1. Deed and/or easements for all the land and ownership rights to the wastewater system within 15 days of being issued and before the first customer is connected to the wastewater system;
2. Final copy of the State Operating Permit issued by the Tennessee Department of Environment & Conservation;
3. All final signed contract(s) between Aqua Green Utility, Inc. (the utility), the builder of the wastewater system, and Love's Travel Stop & Country Store; and
4. A copy of the final signed plat from McNairy County.

IT IS THEREFORE ORDERED THAT:

1. The Petition to Amend Certificate of Convenience and Necessity filed on March 18, 2016 by Aqua Green Utility, Inc. is approved contingent upon Aqua Green Utility, Inc. filing the following in this Docket:

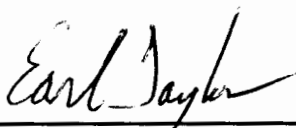
- a) Deed and/or easements for all the land and ownership rights to the wastewater system within 15 days of being issued and before the first customer is connected to the wastewater system;
- b) Final copy of the State Operating Permit issued by the Tennessee Department of Environment & Conservation;
- c) All final signed contract(s) between Aqua Green Utility, Inc. (the utility), the builder of the wastewater system, and Love's Travel Stop & Country Store; and
- d) A copy of the final signed plat from McNairy County.

2. Any person who is aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

3. Any person who is aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Vice Chairman David F. Jones, Director Kenneth C. Hill and Director Robin L. Morrison concur.

ATTEST:



Earl R. Taylor, Executive Director