

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 17, 2018

IN RE:

**PETITION OF AQUA GREEN UTILITY INC. TO
AMEND ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY TO SERVICE A PORTION OF
MAURY COUNTY TENNESSEE KNOWN AS
CEDAR BROOKE SUBDIVISION AT THE CORNER
OF HIGHWAY 431 AND JOEY PEAY ROAD**

**DOCKET NO.
18-00019**

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

This matter came before Chair Robin Morrison, Commissioner Herbert H. Hilliard and Commissioner David F. Jones of the Tennessee Public Utility Commission (“TPUC” or “Commission”), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on July 23, 2018, for consideration of the *Petition Of Aqua Green Utility Inc. to Amend its Certificate of Public Convenience and Necessity* (“*Petition*”), filed by Aqua Green Utility, Inc. (“Aqua Green,” or “Utility”) on February 22, 2018, requesting the Commission’s approval for an expansion of Aqua Green Utility Inc.’s service area to include a portion of Maury County, Tennessee known as Cedar Brooke Subdivision.

BACKGROUND AND *PETITION*

Aqua Green is certified to do business in the State of Tennessee and currently holds a Certificate of Public Convenience and Necessity (“CCN”) with the State of Tennessee to operate wastewater treatment plants and has a principal office located in Acworth, Georgia. Aqua Green

was granted an initial CCN in June 2009.¹ On August 22, 2011, Aqua Green received TPUC approval to amend its CCN in order to provide service to a subdivision known as Stonebridge on Douglas Lake, located in Jefferson County, Tennessee.² On March 18, 2016, TPUC granted Aqua Green's petition to further expand its territory to operate a wastewater disposal system in McNairy County, Tennessee at Love's Travel Stop & Country Store.³

On February 22, 2018, Aqua Green filed its *Petition* and the Pre-Filed Direct Testimony of Dart Kendall, President of Aqua Green, requesting to amend its CCN to expand its existing service to include Cedar Brooke in Maury County, Tennessee at the intersection of Highway 431 and Joey Peay Road.⁴ In his testimony, Mr. Kendall stated that Aqua Green is capable of supporting all the sewage treatment needs at the Cedar Brooke Subdivision and intends to service Cedar Brooke with a fully automated trickle filter plant where sewage is pumped across media blocks for natural treatment and the plant features autonomous redundancy of major components, as well as leak detection and isolation technology. The system has a capacity flow of 20,400 gpd to service the sixty-six (66) proposed sewer customers at Cedar Brooke.⁵

Aqua Green provided a copy of the Contract Agreement ("Agreement") negotiated among the three parties, Bridgewater of Tennessee, LLC (Owner), Advanced Septic, Inc. (Contractor), and Aqua Green Utility, Inc. (Utility), for the build-out and continued operation of the wastewater system. In the Agreement once the system is online, and all permits have

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).

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 See *In re: Petition of Aqua Green Utility Inc. to Amend its CCN to Serve Loves Travel Stop & Country Store Located in McNairy County*, Docket No. 16-00030, *Order Approving Amended Certificate of Public Convenience and Necessity* (July 18, 2016).

⁴ *Petition*, p. 1 (February 22, 2018).

⁵ Dart Kendall, Pre-Filed Direct Testimony, p. 2 (February 22, 2018).

been acquired; Bridgewater agrees to transfer ownership to Aqua Green all land used for access to the plant; land where the plant is located; land where drip disposal fields are located, and all wastewater facilities.⁶

Also, the Agreement includes a proposed monthly residential rate of \$44.53 inclusive of a \$10.13 amount for escrow that was previously approved by the Commission for Aqua Green (Rate Class 1) at its other locations, and a previous lot fee of \$120.00 to be paid annually by lot owners of undeveloped lots. Furthermore, the Owner will furnish an irrevocable Letter of Credit to the Utility for the cost of the project in the event that the Bridgewater defaults on any payments for the build-out of the wastewater system.⁷

STANDARD FOR COMMISSION 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 Commission, 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 commission, 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, Commission 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

⁶ Contract Agreement, pp. 1- 2 (June 11, 2018).

⁷ *Id.* at 2.

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 Commission 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 HEARING

The Hearing in this matter was held before the voting panel during the regularly scheduled Commission Conference on July 23, 2018, as noticed by the Commission on July 13, 2018. 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, additional 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 Commission for approval pursuant to Tenn. Code Ann. § 65-4-201(a) and Commission Rule 1220-4-13-.04(1)(b) to amend its CCN to provide service to Cedar Brooke Subdivision in Maury County, Tennessee. Based on a review and consideration of the pleadings, pre-filed testimony and the entire administrative record, the panel made the following findings and conclusions:

The panel found that Aqua Green has demonstrated that it possesses the requisite managerial, financial and technical capabilities to provide wastewater services to Cedar Brooke Subdivision and that a public need exists for such service as required under Tenn. Code Ann. § 65-4-201(a) and Commission Rule 1220-4-13-.04(1)(b).

Further, the panel found that Aqua Green is in good standing with the Commission and is

in compliance with all Commission rules. Based on these findings, the panel voted unanimously to grant the *Petition*, contingent upon the filing of the following documents in this Docket:

1. The deed and/or easements for all the land and entitlement to ownership rights to the wastewater system within fifteen (15) days of being issued and before any customers are connected to the wastewater system;
2. All final signed contracts between Aqua Green and Bridgewater of Tennessee, LLC;
3. A Copy of the final signed plat from Maury County, Tennessee showing Aqua Green as the utility of record;
4. “As-built” plans for the sewer system and the collection system capable of providing wastewater service for a total of sixty-six (66) to sixty-eight (68) equivalent dwelling units certified as being inspected by Aqua Green; and,
5. A Tariff filing adding Cedar Brooke Subdivision as a location under Rate Class 1 with an effective date of July 23, 2018.

IT IS THEREFORE ORDERED THAT:

1. The *Petition to Amend Certificate of Convenience and Necessity* filed on February 22, 2018, by Aqua Green Utility, Inc. is approved contingent upon Aqua Green Utility, Inc. filing the following in this Docket:
 - a) The deed and/or easements for all the land and entitlement to ownership rights to the wastewater system within fifteen (15) days of being issued and before any customers are connected to the wastewater system;
 - b) All final signed contracts between Aqua Green Utility Inc. and Bridgewater of Tennessee, LLC;

- c) A Copy of the final signed plat from Maury County, Tennessee showing Aqua Green Utility, Inc. as the Utility of record;
- d) “As-built” plans for the sewer system and the collection system capable of providing wastewater service for a total of sixty-six (66) to sixty-eight (68) equivalent dwelling units certified as being inspected by Aqua Green; and
- e) A Tariff filing adding Cedar Brooke Subdivision as a location under Rate Class 1 with an effective date of July 23, 2018.

2. Any person who is aggrieved by the Commission’s decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

3. Any person who is aggrieved by the Commission’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 (60) days from the date of this Order.

Chair Robin Morrison, Commissioner Herbert H. Hilliard and Commissioner David F. Jones concur.

ATTEST:



Earl R. Taylor, Executive Director