

STATE OF TENNESSEE

Office of the Attorney General



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July 25, 2019

Dart Kendall  
President  
Aqua Green Utility Inc.  
3350 Galts Road  
Acworth, GA 30102

Re: Tennessee Public Utility Commission, Docket No. 18-00122, *Petition of Aqua Green Utility Inc. to Amend Its Certificate of Public Convenience and Necessity for the Service Part of Maury County, Known as Flat Creek Subdivision at the Corner HWY 431 and Will Brown and the Corner of 431 and Tobe Robertson Road.*

Dear Mr. Kendall:

The Consumer Advocate is reviewing Aqua Green Utility Inc.'s (Aqua Green) Petition in the above-referenced docket. As part of our review, we checked compliance with the minimum requirements for an amendment to a Certificate of Convenience and Necessity (CCN), which is set out in TPUC Rule 1220-04-13-.17. In our review of the Petition's compliance with this rule, we could not locate or are seeking clarification on the following items:

Rule 1220-04-13-.17(2)(a) General Information

1. *Rule 1220-04-13-.17(2)(a)2.* The Consumer Advocate could not locate an organizational chart showing each officer and key personnel by name and title. Can you provide a copy of an organizational chart?
2. *Rule 1220-04-13-.17(2)(a)5.* Although Aqua Green mentions an affiliate, the Consumer Advocate cannot locate either "a corporate organization chart showing all affiliate relationships" or a description detailing "transactions, direct or indirect, that occur or are expected to occur between affiliated entities." Can Aqua Green provide such documentation?
3. *Rule 1220-04-13-.17(2)(a)5.* Aqua Green provided a copy of its charter, but does it have any articles of incorporation or by-laws? If yes, please provide a copy.

4. *Rule 1220-04-13-.17(2)(a)7.* The rule requests Aqua Green to provide a map that includes the requirements set out in subparts (i)-(v). However, Aqua Green provided multiple maps in its attempts to address subparts (i)-(v) rather than one overall map. Additionally, the maps provided have a few roads identified, but the maps submitted do not provide the surrounding street names of the development. In addition to nearby interstates or highways identified, Aqua Green should also identify secondary roads that lead to the development and/or are boundaries of the development. Can Aqua Green provide a map that meets the requirements set out in subparts (i)-(v) of this rule?

Rule 1220-04-13-.17(2)(b) Property Rights and Public Need

1. *Rule 1220-04-13-.17(2)(b)3.* Aqua Green provided two pages of a Contract Agreement between builder, utility, and property developer, but it is not signed. Therefore, it appears a complete copy of the Contract Agreement was not submitted. Can Aqua Green provide a signed/notarized, complete copy of the Contract Agreement?

Rule 1220-04-13-.17(2)(c) Sufficient Managerial Ability

1. *Rule 1220-04-13-.17(2)(c)1.* Aqua Green provided brief biographies of its two officers. However, there is no detail such as position titles, years with each position held, duties of positions. Can Aqua Green provide additional biographical detail?
2. *Rule 1220-04-13-.17(2)(c)2.*<sup>1</sup> Aqua Green states that Dart Kendall holds certifications in Tennessee and Georgia.<sup>2</sup> However, Aqua Green also states that it subcontracts operational work to Advanced Septic Inc. Does any staff with Advanced Septic Inc. have certifications in Tennessee? If so, please provide documentation of such certification.
3. *Rule 1220-04-13-.17(2)(c)4.* Aqua Green submitted a copy of Advanced Septic Inc.'s business tax license, but it did not submit a copy of Advanced Septic Inc.'s Tennessee contractor license. The Consumer Advocate checked the online contractor database with Commerce and Insurance,<sup>3</sup> but we could not locate Advanced Septic Inc. in the database. Can Aqua Green provide a copy of Advanced Septic Inc.'s Tennessee contractor's license? Also, Advanced Septic Inc. is an active corporation in Georgia. However, the Consumer Advocate could not locate it on the Tennessee Secretary of State's online database<sup>4</sup> as authorized to do business in Tennessee. Can Aqua Green provide us documentation from the Tennessee Secretary of State that Advanced Septic Inc. is authorized to do business in Tennessee?

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<sup>1</sup> Please note that this issue will also be raised in Rule 1220-04-13-.17(2)(d)2.

<sup>2</sup> Aqua Green provided a copy of two Tennessee certifications: (1) biological/natural operator and (2) Grade I Wastewater Collection System Operator.

<sup>3</sup> The licensed contractors database maintained by the Tennessee Department of Commerce and Insurance is located at this link <https://www.tn.gov/commerce/regboards/contractors.html>.

<sup>4</sup> The database of corporations maintained by the Tennessee Secretary of State is located at this link <https://tnbear.tn.gov/Ecommerce/FilingSearch.aspx>.

Rule 1220-04-13-.17(2)(d) Sufficient Technical Ability

1. *Rule 1220-04-13-.17(2)(d)1.* After Aqua Green's Petition was filed, the Tennessee Department of Environment and Conservation (TDEC) issued a complete application letter on January 29, 2019, and issued a permit on April 4, 2019.<sup>5</sup> Can Aqua Green supplement its Petition to include these two documents?
2. *Rule 1220-04-13-.17(2)(d)2.*<sup>6</sup> Aqua Green states that Dart Kendall holds certifications in Tennessee and Georgia.<sup>7</sup> However, Aqua Green also states that it subcontracts operational work to Advanced Septic Inc. Does any staff with Advanced Septic Inc. have certifications in Tennessee? If so, please provide documentation of such certification.
3. *Rule 1220-04-13-.17(2)(d)4.* According to Aqua Green's Petition, it had one BOD violation reported to TDEC for the Love McNairy plant. However, the Notice of Violation (NOV) available on TDEC's Dataviewer refers to issues with sampling of BOD and ammonia, resulting in increased monitoring requirements being imposed by TDEC.<sup>8</sup> Although Aqua Green says it is now in compliance, it does not explain in the Petition on how the issues were resolved. There is a response to TDEC's NOV that is available on TDEC's Dataviewer.<sup>9</sup> Can Aqua Green supplement its Petition to include these two documents?

Rule 1220-04-13-.17(2)(e) Sufficient Financial Ability

1. *Rule 1220-04-13-.17(2)(e)1.* The Consumer Advocate could not locate a Balance Sheet or Statement of Cash Flow in the Petition. Can Aqua Green provide a Balance Sheet and Statement of Cash Flow?
2. *Rule 1220-04-13-.17(2)(e)2.* The Consumer Advocate could not locate Income Statements for three years. Can Aqua Green provide three years of Income Statements?
3. *Rule 1220-04-13-.17(2)(e)3.* The Consumer Advocate could not locate a chart of accounts for the wastewater utility, following the NARUC Uniform System of Accounts (USA) for wastewater utilities. Can Aqua Green provide a chart of accounts?
4. *Rule 1220-04-13-.17(2)(e)6.* Although the overall cost of the system is provided, the Consumer Advocate could not locate detailed cost of construction. Can Aqua Green provide such documentation?

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<sup>5</sup> The "complete application letter" and "final permit" can be accessed on the TDEC Dataviewer at this link [http://tdec.tn.gov:8080/pls/enf\\_reports/f?p=9034:34051::NO:34051:P34051\\_PERMIT\\_NUMBER:SOP-18027](http://tdec.tn.gov:8080/pls/enf_reports/f?p=9034:34051::NO:34051:P34051_PERMIT_NUMBER:SOP-18027).

<sup>6</sup> Please note that this issue is also raised in Rule 1220-04-13-.17(2)(c)2.

<sup>7</sup> Aqua Green provided a copy of two Tennessee certifications: (1) biological/natural operator and (2) Grade I Wastewater Collection System Operator.

<sup>8</sup> The NOV is located on the TDEC Dataviewer at this link [http://tdec.tn.gov:8080/pls/enf\\_reports/f?p=9034:34051::NO:34051:P34051\\_PERMIT\\_NUMBER:SOP-16009](http://tdec.tn.gov:8080/pls/enf_reports/f?p=9034:34051::NO:34051:P34051_PERMIT_NUMBER:SOP-16009), and the "document date" in the TDEC Dataviewer is September 24, 2018.

<sup>9</sup> The Response to the NOV is located on the TDEC Dataviewer at this link [http://tdec.tn.gov:8080/pls/enf\\_reports/f?p=9034:34051::NO:34051:P34051\\_PERMIT\\_NUMBER:SOP-16009](http://tdec.tn.gov:8080/pls/enf_reports/f?p=9034:34051::NO:34051:P34051_PERMIT_NUMBER:SOP-16009), and the "document date" in the TDEC Dataviewer is September 25, 2018.

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5. *Rule 1220-04-13-.17(2)(e)7*. No detailed breakdown of the estimated cost of capital to be recorded on books. Can Aqua Green provide such documentation?
6. *Rule 1220-04-13-.17(2)(e)8*. Although rates are mentioned in the Contract Agreement, the Consumer Advocate could not locate a current tariff sheet. Can Aqua Green provide a copy of the current tariff sheet?
7. *Rule 1220-04-13-.17(2)(e)9*. The Consumer Advocate could not locate estimates of costs and customers added by month for the first five years. Can Aqua Green provide such documentation?
8. *Rule 1220-04-13-.17(2)(e)10*. The Consumer Advocate could not locate a description of any bonding requirements imposed by local governments for the proposed system or that the local government does not have such a bonding requirement. Can Aqua Green provide such documentation?
9. *Rule 1220-04-13-.17(2)(e)11*. The Consumer Advocate could not locate documentation that demonstrates that Aqua Green has acquired a performance bond from the developer. Can Aqua Green provide such documentation, and in the format required under this rule?
10. *Rule 1220-04-13-.17(2)(e)12*. Aqua Green lists only one funding source for the wastewater system which is the developer. Is this the only funding source?

Rule 1220-04-13-.17(2)(f) Sworn Pre-filed Testimony

1. *Rule 1220-04-13-.17(2)(f)6*. Although the testimony submitted is signed and notarized, the testimony did not incorporate all the documents submitted as a part of the Petition. Rather, it only referenced one document specifically, which was the letter requesting service. Can the witness file supplemental testimony incorporating the Petition's attachments?

The Consumer Advocate appreciates the time and attention of Aqua Green. If you have questions regarding this request, please contact me at (615) 741-2370.

Respectfully,



Karen H. Stachowski  
Assistant Attorney General

cc: Patsy Fulton, TPUC  
Kelly Cashman-Grams, TPUC