

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 9, 2019

IN RE:

PETITION OF AQUA GREEN UTILITY INC. TO
AMEND ITS CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY FOR THE
SERVICE PART OF GREENE COUNTY, TENNESSEE
KNOWN AS LOVE'S TRAVEL STORE AT THE
CORNER OF INTERSTATE 81 AND
LONESOME TRAIL ROAD.

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DOCKET NO.
19-00048

ORDER APPROVING PETITION TO AMEND CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY

This matter came before Vice Chair Kenneth C. Hill, 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 15, 2019, 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 May 1, 2019, requesting the Commission's approval for an expansion of Aqua Green's service area to include a portion of Greene County, Tennessee, known as Love's Travel Store.

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 on June 29, 2009.

On May 1, 2019, 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 territory to operate a wastewater disposal system in Greene County, Tennessee at Love's Travel Store.¹ In his testimony, Mr. Kendall stated that the proposed wastewater system will provide environmentally friendly and affordable wastewater service to Love's Travel Store where wastewater service is not currently available.² Mr. Kendall further stated that as a Wastewater Utility, Aqua Green will provide service to include maintenance of the sewer treatment tanks, control systems, and drip fields in order to meet all requirements of the state operating permit.³ Aqua Green proposes a fully automated trickle filter plant with autonomous redundancy of major components, as well as leak detection and isolation technology. This trickle type system pumps sewage across media blocks for natural treatment, and the water is disposed of through drip emitter tubing installed in the soil.⁴

Aqua Green initially filed with this *Petition* a request to amend its escrow amount and terms. On July 5, 2019, Aqua Green filed an amended *Petition* removing the escrow amendment request from the original *Petition* filed on May 1, 2019. Accordingly, the escrow amendment request is no longer an issue in this docket. No party requested to intervene in this docket.

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

¹ *Petition*, p. 1 (May 1, 2019).

² Dart Kendall, Pre-Filed Direct Testimony, p. 1 (May 1, 2019).

³ *Id.* at 1-2.

⁴ *Id.* at 3.

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 1220-04-13-.17(1) requires that a public wastewater utility satisfy the following requirements:

Any public wastewater utility requesting a Certificate of Public Convenience and Necessity ("CCN") in accordance with Tenn. Code Ann. §§ 65-4-201, et seq., shall file an application that complies with Rule 1220-01-01-.03 and this rule. Each applicant shall demonstrate to the Commission that it possesses sufficient managerial, financial, and technical capabilities to provide the wastewater services for which it has applied. Each application shall demonstrate that there exists a public need for wastewater service and include the required financial security consistent with Tenn. Code Ann. § 65-4-201, and these rules.⁵

THE HEARING

The Hearing in this matter was held before the voting panel during the regularly scheduled Commission Conference on July 15, 2019 as noticed by the Commission on July 3, 2019. Participating in the Hearing were:

Aqua Green Utility Inc.- Thomas Hall, Esq. Smith, Cashion & Orr, One America Center, 3100 West End Avenue, Nashville, Tennessee 37203; and Dart Kendall, President, 3350 Galts Road, Acworth, Georgia 30102.

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.

⁵ Tenn. Comp. Rules & Regs. 1220-4-13-.17(1).

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 1220-04-13-.17(1) to amend its CCN to provide service to Love's Travel Store in Greene 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 the Love's Travel Store in Greene County, Tennessee and that a public need exists for such service as required under Tenn. Code Ann. § 65-4-201(a) and Commission Rule 1220-04-13-.17(1).

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. A Copy of the final State Operating Permit issued by the Tennessee Department of Environment and Conservation.

IT IS THEREFORE ORDERED THAT:

1. The *Petition to Amend Certificate of Convenience and Necessity* filed on May 1, 2019 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) A Copy of the final State Operating Permit issued by the Tennessee Department of Environment and Conservation.

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.

Vice-Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, and Commissioner David F. Jones concur.

ATTEST:



Earl R. Taylor, Executive Director