

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

July 20, 2020

IN RE:

**PETITION OF AQUA GREEN UTILITY INC. TO
AMEND ITS CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY FOR THE
SERVICE PART OF MAURY COUNTY, TENNESSEE
KNOWN AS FOREST TRAILS SUBDIVISION AT
ON OLLIE CHUNN ROAD**

**DOCKET NO.
20-00026**

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

This matter came before Chair Robin L. Morrison, Vice Chairman Kenneth C. Hill, and Commissioner Herbert H. Hilliard of the Tennessee Public Utility Commission (“TPUC” or “Commission”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on June 15, 2020,¹ 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”) filed on February 25, 2020. In its *Petition*, Aqua Green requests the Commission’s approval for an expansion of Aqua Green’s service area to include a portion of Maury County, Tennessee, known as Forest Trails Subdivision.

¹ Due to the state of emergency declared by Governor Bill Lee relative to the Coronavirus Disease 2019 (“COVID-19”) pandemic in Tenn. Exec. Order No. 14 on March 12, 2020, (superseded by Tenn. Exec. Order No. 15 on March 19, 2020 which was extended until June 30, 2020 in Tenn. Exec. Order No. 36 on May 12, 2020), the Commission Conference was held electronically via WebEx. The public health emergency places limitations on public gatherings and meetings in order to prevent the spread of COVID-19. In convening the Commission Conference electronically, the Commission relied upon Tenn. Exec. Order No. 16 (March 20, 2020), which was extended until June 30, 2020 by Tenn. Exec. Order No. 34 (May 6, 2020), and affirmed on the record that the electronic meeting was necessary to conduct the essential business of the agency and to protect the health, safety, and welfare of Tennesseans.

BACKGROUND AND PETITION

Aqua Green holds a Certificate of Public Convenience and Necessity (“CCN”) issued by the Commission permitting it to operate wastewater treatment plants and has a principal office located in Acworth, Georgia. Aqua Green was granted its initial CCN on June 29, 2009.

On February 25, 2020, 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 service to include a portion of Maury County known as the Forest Trails Subdivision.² In his testimony, Mr. Kendall stated that Aqua Green has all the necessary technical, managerial, and financial capabilities to provide wastewater service to the Forest Trails Subdivision.³

Mr. Kendall has obtained a State of Tennessee Grade 1 Wastewater Collection System Operator License and a State of Tennessee Biological/Natural Operator Treatment System Operator License to ensure Aqua Green’s technical compliance. Mr. Kendall states that Aqua Green has operated since 2009, with no customer complaints due to the Company’s established billing system with expanded technologies that eliminate mistakes and verifies payments. Mr. Kendall further stated that processes have also been established that ensure that, even with a total system failure, technicians will be immediately notified of the situation and take appropriate, timely action.⁴

On May 18, 2020, Aqua Green filed an amended *Petition* removing the escrow collection request from the original *Petition* filed on February 25, 2020. Accordingly, the escrow amendment request is no longer an issue in this docket. No party requested to intervene in this docket.

² *Petition*, p. 1 (February 25, 2020).

³ *Pre-Filed Direct Testimony of Dart Kendall* (February 25, 2020).

⁴ *Id.* at 2.

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 1220-04-13-.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 a regularly scheduled Commission Conference held on June 15, 2020, as noticed by the Commission on May 29, 2020. Participating in the Hearing were:

⁵ Tenn. Comp. Rules & Regs. 1220-04-13-.17 (1).

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.

FINDINGS AND CONCLUSIONS

In its *Petition*, Aqua Green has asked the Commission for approval under Tenn. Code Ann. § 65-4-201(a) and Commission Rule 1220-04-13-.17(1) to amend its CCN to provide service to Forest Trails 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 the Forest Trails Subdivision in Maury 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 in compliance with all Commission rules. Based on these findings, the panel voted unanimously to grant the *Petition*, contingent upon the filing of various documents of proof being filed in this docket.

IT IS THEREFORE ORDERED THAT:

1. The *Petition to Amend Certificate of Convenience and Necessity* filed on February 25, 2020, by Aqua Green Utility Inc. is approved contingent upon Aqua Green Utility Inc. filing the following evidence of fitness in the docket file:

- 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 any of the three (3) stakeholder companies: Advanced Septic Inc., Aqua Green Utility, Inc., and/or Charles Raines, Alan Stalnaker, Woodland Trails, LLC;
- c. A copy of the final signed plat from Maury County showing Aqua Green Utility as the utility of record within fifteen (15) days of signing approval;
- d. A copy of “as-built” plans with signed certification for both the utility and Tennessee Department of Environment and Conservation indicating the wastewater system has been inspected and is approved to begin operation;
- e. Proof that the contractor of the wastewater system has a current contractor’s license by the applicable licensing board of the State of Tennessee;
- f. A copy of a performance bond in the amount of one hundred and sixty-one thousand dollars from the developer of the wastewater system made payable to the utility to ensure construction of the wastewater system; and
- g. An itemization of the estimated cost of the wastewater system, inclusive of treatment system, collection system and land.

In addition, the panel directed Aqua Green Utility to file a report in this docket that demonstrates its compliance with these requirements before providing wastewater service to the Forest Trails Subdivision. In the event that the compliance report is not filed, the panel further directs Aqua Green to file, within six (6) months of the issued-date of this the Order, a report on

the status of its provision of wastewater service to Forest Trails Subdivision, as well as the status of its compliance with each of the aforementioned filing requirements.

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 L. Morrison, Vice Chairman Kenneth C. Hill, and Commissioner Herbert H. Hilliard concur.

ATTEST:

A handwritten signature in cursive script, appearing to read "Earl Taylor", written in black ink.

Earl R. Taylor, Executive Director