

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 28, 2020

IN RE:

**PETITION OF AQUA GREEN UTILITY INC. TO
AMEND ITS CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY FOR THE
SERVICE PART OF WILLIAMSON COUNTY,
TENNESSEE KNOWN AS BETHESDA ROAD
SUBDIVISION ON BETHESDA ROAD**

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**DOCKET NO.
20-00094**

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

This matter came before Vice Chairman Herbert H. Hilliard, Commissioner John Hie, and Commissioner David F. Jones of the Tennessee Public Utility Commission (“TPUC” or “Commission”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on September 14, 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”) on July 24, 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 Williamson County, Tennessee, known as Bethesda Road 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 Order No. 14 on March 12, 2020, (superseded by Tenn.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 September 30, 2020 in Tenn. Exec. Order No. 59 on August 28, 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 September 30, 2020 by Tenn. Exec. Order No. 60 (August 28, 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”), which was initially granted by the Commission on July 31, 2009, authorizing it to operate wastewater treatment plants and provide wastewater service to specific areas in Tennessee. Aqua Green’s principal office is in Acworth, Georgia.

On July 24, 2020, Aqua Green filed an amended *Petition* and the Pre-Filed Direct Testimony of Dart Kendall, President of Aqua Green, requesting to expand the existing service area to include the Bethesda Subdivision in Williamson County, Tennessee.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 Bethesda Subdivision.³ Mr. Kendall has a State of Tennessee Grade 1 Wastewater Collection System Operator License and a State of Tennessee Biological/Natural Operator Treatment System 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 eliminates 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 Aqua Green filed a copy of a Negotiated Contract Agreement with the Developer, in which the Agreement provides the Developer has agreed to deed the wastewater property over to Aqua Green. On July 24, 2020, Aqua Green filed a copy of its State Operating Permit (SOP-

² *Petition*, p. 1 (July 24, 2020).

³ Dart Kendall, Pre-Filed Direct Testimony, p.3 (July 24, 2020).

⁴ *Id* at 2.

20016) to be reviewed by the Tennessee Department of Environment and Conservation (TDEC).⁵

On September 2, 2020, Aqua Green filed Addendums 1, 2, and 3 providing clarity to the cost breakdown of the wastewater facilities. Aqua Green also provided a letter from the Williamson County Mayor stating that Williamson County government does not have any objections to a private sewer system serving in Williamson County, Tennessee.⁶ 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 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.,

⁵ *Petition*, pp. 10-18 (July 24, 2020).

⁶ *Additional Documents Filed by Aqua Green Utility Inc. Re: Amended Petition Filed on July 24, 2020*, p. 2 (August 13, 2020).

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.⁷

THE HEARING

The Hearing in this matter was held before the voting panel during a regularly scheduled Commission Conference held on September 14, 2020, as noticed by the Commission on September 4, 2020. Participating in the Hearing were:

Aqua Green Utility Inc.- Henry Walker, Esq. Bradley, Arant, Boulton, Cummings, LLP, Roundabout Plaza, 1600 Division Street, Suite 1700, 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 the Bethesda Road Subdivision in Williamson 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 Bethesda Road Subdivision in Williamson County, Tennessee, and that a public need exists for such

⁷ Tenn. Comp. Rules & Regs. 1220-04-13-.17 (1).

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 its Certificate of Convenience and Necessity* filed on July 24, 2020 by Aqua Green Utility Inc. is approved contingent upon Aqua Green Utility Inc. filing the following in this docket:

- a. The registered deed and recorded 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 contract(s) between any of the three (3) stakeholder companies: Advanced Septic Inc., Aqua Green Utility, Inc., and Bethesda Road, LLC;
- c. A copy of the final signed plat from Williamson County showing Aqua Green Utility Inc. as the utility of record within fifteen (15) days of signing approval;
- d. A copy of all “as-built” plans with signed certification by both the utility and Tennessee Department of Environment and Conservation, TDEC, indicating the wastewater system has been inspected and is approved to begin operation;
- e. A copy of a performance bond from the developer for the wastewater

system made payable to the utility to ensure construction of the wastewater system; and

f. Final copies of all TDEC permits for the Bethesda Road wastewater system within fifteen (15) days of issuance.

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 Bethesda Road 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 the Bethesda Road 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.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Vice Chairman Herbert H. Hilliard,
Commissioner John Hie,
and Commissioner David F. Jones
concur.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director