

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 13, 2021, Aqua Green filed a *Petition* and the Pre-Filed Direct Testimony of Dart Kendall, President of Aqua Green, requesting to expand the existing service area to include the Williamson County Recreation Center ("WCRC"), located near the Bethesda Subdivision in Williamson County, Tennessee. The WCRC is located on Bethesda Road near its intersection with Highway 431.¹

In his testimony, Mr. Kendall stated that Aqua Green has all the necessary technical, managerial, and financial capabilities to provide wastewater service to the WCRC.² 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 stated 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.³ Aqua Green submitted a letter from the Williamson County Mayor stating that the Williamson County government does not currently provide public sanitary sewer service to the WCRC property and has no plans to provide such service for the foreseeable future.⁴

¹ *Petition*, p. 1 (July 13, 2021).

² Dart Kendall, Pre-Filed Direct Testimony, p. 1 (July 13, 2021).

³ *Id.* at 2.

⁴ Aqua Green Utility, Inc. Additional Documents Re: Petition to Add the Williamson County Recreation Center (July 20, 2021).

The WCRC is being constructed on property adjacent to the Fairhaven Subdivision for which Aqua Green holds a CCN to provide wastewater services.⁵ The WCRC will be served by an expansion of the Fairhaven Subdivision wastewater system, for which Aqua Green submitted a modified State Operating Permit (SOP-20016) issued by the Tennessee Department of Environment and Conservation,⁶ as well as copies of deeds and easements relative to the modification of the Fairhaven Subdivision wastewater system.⁷ 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., shall

⁵ See *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*, Docket No. 20-00094, *Order Approving Petition to Amend Certificate of Public Convenience and Necessity* (September 28, 2020).

⁶ Aqua Green Utility, Inc. Additional Documents Re: Petition to Add the Williamson County Recreation Center (November 24, 2021).

⁷ Aqua Green Utility, Inc. Additional Documents Re: Petition to Add the Williamson County Recreation Center (January 29, 2022).

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.⁸

THE HEARING

The Hearing in this matter was held before the voting panel during a regularly scheduled Commission Conference held on February 28, 2022, as noticed by the Commission on February 18, 2022. 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 WCRC property on Bethesda Road 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 WCRC in Williamson County, Tennessee, and that a public need exists for such service as required under

⁸ Tenn. Comp. Rules & Regs. 1220-04-13-.17 (1).

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 as well as reports on progress on the filing of required documents and the completion and operation of the wastewater system.

IT IS THEREFORE ORDERED THAT:

1. The Petition to Amend Certificate of Convenience and Necessity filed on July 13, 2021, by Aqua Green Utility, Inc. is approved contingent upon Aqua Green Utility, Inc. filing the following in this docket:

- a. The registered easements for all required access to any connection lines, equipment, or other parts of the wastewater system that is not located on property owned by Aqua Green Utility, Inc. to provide ongoing wastewater services to the Fairhaven Subdivision;
- b. The registered easement(s) from Williamson County, Tennessee that may be necessary to access wastewater treatment facilities for the ongoing operation of the wastewater treatment services to the County's proposed parks and recreation facilities;
- c. A copy of the maintenance agreement, referred to on page 1 of the Contract for Cost for Construction of a Wastewater Treatment Facility between Aqua Green Utility, Inc. and Williamson County for the provision of wastewater treatment services prior to connecting service for Williamson County;
- d. A copy of documents evidencing ownership rights to any wastewater

facility equipment required for Aqua Green Utility, Inc. to operate the Bethesda Treatment Facility, including any equipment needed to serve both the Fairhaven Subdivision and the Williamson County Recreation Center, within fifteen (15) days of the signing of the final plat and before any customers are connected to the wastewater system;

e. 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;

f. A copy of all “as-built” plans with signed certification by both Aqua Green Utility, Inc. and Tennessee Department of Environment and Conservation indicating the wastewater system has been inspected and is approved to begin operation;

g. In addition, Aqua Green Utility, Inc. is directed to file a report in this docket that demonstrates its compliance with these requirements before providing wastewater service to the Williamson County Recreation Center. In the event that the compliance report is not filed, the panel further directs Aqua Green Utility, Inc. 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 Williamson County Recreation Center, as well as the status of its compliance with each of the aforementioned filing requirements. Further, after the initial report, Aqua Green Utility, Inc. is directed to file a report updating the Commission on compliance with the aforementioned filing requirements and the status of its provision of wastewater service to the Williamson County Recreation Center every three (3) months after until such time as compliance

has been accomplished and wastewater service is established at the Williamson County Recreation Center.

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:

**Chairman Kenneth C. Hill,
Vice Chairman Herbert H. Hilliard,
Commissioner Robin L. Morrison,
Commissioner John Hie,
and Commissioner David F. Jones
concur.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director