

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

January 24, 2022

IN RE:)	
)	
JOINT PETITION OF AQUA GREEN UTILITY, INC.)	DOCKET NO.
AND TPUC STAFF (AS A PARTY) TO INCREASE RATES)	21-00128
AND CHARGES)	

**ORDER SETTING RATES AND AUTHORIZING AN ESCROW ACCOUNT
DISBURSEMENT**

This matter came before Vice Chairman Herbert H. Hilliard, Commissioner Robin L. Morrison, Commissioner Clay R. Good, Commissioner John Hie, and Commissioner David F. Jones of the Tennessee Public Utility Commission (“Commission” or “TPUC”) during the regularly scheduled Commission Conference held on December 6, 2021, to consider the *Joint Petition* filed on November 5, 2021, by Aqua Green Utility, Inc. (“Aqua Green” or “Company”) and the TPUC Party Staff (“Party Staff”). The *Joint Petition* sought to increase the rates and charges of Aqua Green. In summary, the *Joint Petition* was granted.

BACKGROUND

Aqua Green is a small wastewater utility providing service to approximately fifteen residential customers and two commercial customers in Jefferson, Greene, and McNairy counties in Tennessee. At this time, Aqua Green lacks the expertise and financial resources to prepare, file, and defend a rate case before the Commission. To avoid burdening a small customer base with additional legal and consultant expenses, members of the TPUC Commission staff were assigned to participate as a party to assist the Company in preparing its rate case. This assistance provided the Company with the expertise to determine the extent of any revenue deficiency and

rate adjustments were necessary to allow it to continue utility operations without incurring ongoing financial losses.

THE *JOINT PETITION*

On November 5, 2021, Aqua Green and Party Staff filed a *Joint Petition* asking the Commission to increase the Company's service rates and charges. As set forth in the *Joint Petition*, based upon Party Staff's cost study, Aqua Green is projected to incur a revenue deficiency of \$15,730 during the attrition period ending December 31, 2022, without any rate relief.¹ The parties propose to eliminate the revenue deficiency through increasing residential service rates and access fees by approximately 25% and increasing commercial service rates by approximately 33.4%.² In the *Joint Petition*, the parties also request that the Company be authorized to withdraw \$9,163 from its escrow account to recover unreimbursed customer repairs, replacement of a grinder pump, and environmental testing during the test period.³ The *Joint Petition* states that customer notice of the proposed rate increases was sent by direct mail to customers on November 3, 2021, and it requests a rate hearing on December 6, 2021, with new rates to become effective January 1, 2022.⁴ Aqua Green has not filed a rate case since 2009.

In pre-filed direct testimony filed in support of the *Joint Petition*, Aqua Green's president, Dart Kendall, testified that Aqua Green has incurred increases in its operating expenses and taxes over the last twelve years. As a result, the Company has experienced significant revenue shortfalls and cannot continue operating and providing wastewater services without incurring ongoing financial losses.⁵ Mr. Kendall further testified that the Company is requesting reimbursement of \$9,163 from its escrow account to recover repairs made at two customer locations, the replacement

¹ *Joint Petition*, p. 2 (November 5, 2021).

² *Id.*

³ *Id.* at 3.

⁴ *Id.*

⁵ Dart Kendall, Pre-Filed Direct Testimony, p. 2 (November 5, 2021).

of a grinder pump, and environmental testing expenditures for the test period.⁶ A copy of the required customer notice was mailed to customers on November 3, 2021 and was also attached to the pre-filed testimony of Mr. Kendall.⁷

Ms. Michelle Mairs, Deputy Director of the Commission's Utilities Division, participated as Party Staff and presented the test period calculations and attrition period forecast performed by Party Staff.⁸ According to the Party Staff, the Company is projected to experience an operating loss of \$6,712 in 2022.⁹ Using the operating margin method to establish a fair margin of 10.0%, based on Party Staff's forecasted cost of service, the Company requested that it be allowed to increase annual revenues by \$15,730 in order to recover its expenses and taxes and to generate its forecasted revenue requirement.¹⁰ To generate the additional annual revenues, residential service rates would need to be increased by 24.9%, sewer access fees by 25%, and commercial service rates by 33.4% based on the proposed rate design.¹¹

Ms. Mairs also reviewed the Company's request to withdraw \$9,163 from its escrow account to recover certain expense and repair items. These items include environmental testing of the wastewater system during the test period, replacement of a grinder pump at one commercial customer location, and repairs to the system at two residential customer locations.¹² Ms. Mairs reviewed the related invoices and accounting ledgers to confirm that that requested amounts had not been previously charged to or reimbursed by the utility and verified that the Company had sufficient funds in the escrow account to pay the requested reimbursement.¹³ The Commission's financial security rules allow for reimbursement of needed capital expenditures and repairs, and

⁶ *Id.* at 3.

⁷ *Id.* at 4.

⁸ Michelle Mairs, Pre-Filed Direct Testimony, pp. 1-2 (November 5, 2021).

⁹ *Id.* at Exhibits and Work Papers, Schedule 2.

¹⁰ *Id.* at Schedule 1.

¹¹ *Id.* at Schedule 7.

¹² *Id.* at 8.

¹³ *Id.*

provide that, for good cause shown, escrow funds may be used to maintain affordability of rates and minimize rate shock.¹⁴

Ms. Mairs testified that recovery of the requested items from customers would equate to an assessment of \$539 for each customer and states that using existing escrow funds to pay these items maintains the affordability of monthly service rates by providing a funding mechanism that limits rate impacts to individual customers.¹⁵ Given the circumstances and facts, Party Staff concluded that using escrow funds as requested to reimburse the Company for these costs is reasonable and promotes the affordability of monthly service rates.¹⁶

Mr. Joe Shirley, the Director of Utility Audit & Compliance at the Commission, also participated as Party Staff. Mr. Shirley provided pre-filed testimony in support of the *Joint Petition*, covering an overview of ratemaking principles and justification for use of the Operating Margin Method to establish the needed revenue for continued operations. Mr. Shirley testified that the Commission has previously adopted a 10.0% operating margin rate in TPUC Docket No. 20-00009, which was a staff-assisted rate case for Tennessee Wastewater Systems, Inc. Here, he recommends that a 10.0% rate be approved in this case.¹⁷

Mr. Shirley testified that the Party Staff used a twelve-month historical period ended December 31, 2020; and consistent with normal ratemaking procedures, Party Staff removed non-recurring amounts and items disallowed for ratemaking purposes and then applied normal growth to arrive at revenues and expenses for a forward-looking attrition period ending December 31, 2022.¹⁸ In total, Party Staff's calculations reveal that Aqua Green needs additional revenues of

¹⁴ See Commission Rules 1220-04-13-.07(7) & (8).

¹⁵ Michelle Mairs, Pre-Filed Direct Testimony, p. 9 (November 5, 2021).

¹⁶ *Id.*

¹⁷ Joe Shirley, Pre-Filed Direct Testimony, p. 3 (November 5, 2021).

¹⁸ *Id.* at 4-5.

\$15,730 annually to cover its reasonable operating expenses and taxes and provide an operating margin of 10.0%.

Under the Party Staff's proposed rates, monthly rates for residential customers will increase from \$44.53 to \$55.63, a 24.9% increase; and monthly rates for commercial customers will increase from \$5.75 per 1,000 gallons to \$7.67 per 1,000 gallons, a 33.4% increase.¹⁹ The annual sewer access fees assessed to lot owners who have sewer connections available will rise from \$120.00 to \$150.00.²⁰ Mr. Shirley testified that, when examined on an annual basis, the requested increases are less than 2% per year for residential customers and lot owners and about 2.33% per year for commercial customers since Aqua Green began Tennessee operations in 2009. Further, Mr. Shirley stated that the proposed service rates remain comparable to the service rates of other wastewater utilities regulated by the Commission.²¹ While acknowledging the proposed increases are significant, Party Staff maintained that the cost-of-service study it performed demonstrates that Aqua Green must have additional financial resources to maintain its wastewater systems and continue providing quality wastewater services.

After the filing of the *Joint Petition*, no one sought intervention to participate in the proceeding. On November 22, 2021, the Consumer Advocate Unit in the Financial Division of the Tennessee Attorney General ("Consumer Advocate") filed a letter stating that it had no opposition to the *Joint Petition*.²² The Consumer Advocate stated that it had reviewed the *Joint Petition* and the accompanying pre-filed testimony and workpapers. After a review and taking into consideration discussions it had with the parties, the Consumer Advocate indicated its concerns regarding this matter had been addressed.²³

¹⁹ *Id.* at 7.

²⁰ *Id.*

²¹ *Id.* at 8.

²² *Letter of the Consumer Advocate* (November 22, 2021).

²³ *Id.*

THE HEARING

The hearing in this matter was noticed by the Commission on November 24, 2021 and held during the regularly scheduled Commission Conference on December 6, 2021. Participating in the Hearing were:

Aqua Green Utility, Inc. – Petar A. Angelov, Esq., Smith Cashion & Orr, PLC, One American Center, 3100 West End Avenue, Suite 800, Nashville, Tennessee 37203.

TPUC Party Staff – Ryan McGehee, Esq., Tennessee Public Utility Commission, 502 Deaderick Street, 4th Floor, Nashville, Tennessee 37219.

Michelle Mairs, on behalf of the Party Staff, and Dart Kendall, on behalf of the Company, provided testimony in the support of the *Joint Petition*. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

CRITERIA FOR JUST AND REASONABLE RATES

In setting rates for public utilities, the Commission balances the interests of the utilities subject to its jurisdiction with the interests of Tennessee consumers, i.e., it is obligated to fix just and reasonable rates.²⁴ The Commission must also approve rates that provide regulated utilities the opportunity to earn a just and reasonable return on their investments.²⁵ The Commission considers petitions for a rate increase, filed pursuant to Tenn. Code Ann. § 65-5-103, in light of the following criteria:

1. The investment or rate base upon which the utility should be permitted to earn a fair rate of return;
2. The proper level of revenues for the utility;
3. The proper level of expenses for the utility; and
4. The rate of return the utility should earn.

²⁴ Tenn. Code Ann. § 65-5-101 (2015).

²⁵ See *Bluefield Water Works and Improvement Company v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 43 S.Ct. 675 (1923).

Applying these criteria, and upon consideration of the entire record, including all exhibits and the testimony of the witnesses, the panel made the following findings and conclusions.

FINDINGS AND CONCLUSIONS

Based upon a review of the evidentiary record and the unique facts and circumstances of this docket, the panel unanimously voted to approve the *Joint Petition* as filed by Aqua Green Utility, Inc. and Commission Staff participating as a party to the case, to increase the rates and charges of Aqua Green. The panel found that the increased rates and charges are necessary for Aqua Green to continue providing quality wastewater service and, therefore, are reasonable and in the public interest. In summary, the provisions of the proposed rate increase include:

1. A historical Test Period for the twelve-months ended December 31, 2020;
2. A forward-looking Attrition Period for the twelve months ended December 31, 2022;
3. An Operating Margin Rate of 10.0%;
4. Total Attrition Period Operating Revenues of \$44,542;
5. Total Attrition Period Operating Expenses of \$51,254;
6. A Gross Revenue Conversion Factor of 1.353821; and
7. A Revenue Deficiency of \$15,730.

In addition, the panel found that the proposed tariffs containing the recommended service rate increases to eliminate the projected revenue deficiency are just and reasonable and should become effective January 1, 2022. Further, the panel voted unanimously to authorize Aqua Green to withdraw \$9,163 from its escrow account to reimburse the Company for unrecovered capital repairs and expenditures.

IT IS THEREFORE ORDERED THAT:

1. The *Joint Petition* filed on November 5, 2021 by Aqua Green Utility, Inc. and the Party Staff of the Tennessee Public Utility Commission is approved.

2. For purposes of setting rates, the following are adopted:
 - a. A historical Test Period for the twelve-months ended December 31, 2020;
 - b. A forward-looking Attrition Period for the twelve months ended December 31, 2022;
 - c. An Operating Margin Rate of 10.0%;
 - d. Total Attrition Period Operating Revenues of \$44,542;
 - e. Total Attrition Period Operating Expenses of \$51,254;
 - f. A Gross Revenue Conversion Factor of 1.353821; and
 - g. A Revenue Deficiency of \$15,730.

3. Aqua Green Utility Company, Inc. is authorized to withdraw \$9,163 from its escrow account to reimburse the Company for unrecovered capital repairs and expenditures.

4. The proposed tariffs filed by the Party Staff of the Tennessee Public Utility Commission and Aqua Green Utility, Inc. on November 5, 2021, are approved.

5. Any party 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.

6. Any party 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 Robin L. Morrison,
Commissioner Clay R. Good,
Commissioner John Hie, and
Commissioner David F. Jones,
concurring.**
None dissenting.

ATTEST:



Earl R. Taylor, Executive Director