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July 31, 2026

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**VIA ELECTRONIC FILING**

Hon. David Jones, Chairman  
c/o Ectory Lawless, Docket Manager  
Tennessee Public Utility Commission  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243  
[TPUC.DocketRoom@tn.gov](mailto:TPUC.DocketRoom@tn.gov)

Electronically Filed in TPUC Docket  
Room on July 31, 2026 at 10:47 a.m.

**RE: Petition of Aqua Green Utility, Inc. to Amend its Certificate of Convenience and Necessity to Expand Its Service Area to Include a Portion of Sevier County Known as Thunder Mountain, TPUC Docket No. 22-00028**

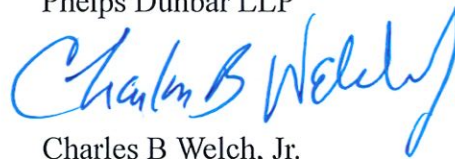
Dear Chairman Jones:

Please find enclosed Aqua Green, Inc.'s *Amended Petition to Terminate CCN of Aqua Green Utility, INC. For Thunder Mountain* and attached exhibits in the above-captioned matter .

As required, an original and four copies of this filing will be mailed to your office via U.S mail. Should you have any questions concerning this filing or require additional information, please do not hesitate to contact me.

Very truly yours,

Phelps Dunbar LLP



Charles B Welch, Jr.

rdb  
Attachment

IN THE TENNESSEE PUBLIC UTILITY COMMISSION AT  
NASHVILLE, TENNESSEE

PETITION OF AQUA GREEN UTILITY, )  
INC. TO AMEND ITS CERTIFICATE OF )  
CONVENIENCE AND NECESSITY TO )  
EXPAND ITS SERVICE AREA TO )  
INCLUDE A PORTION OF SEVIER )  
COUNTY IN TENNESSEE KNOWN AS )  
THUNDER MOUNTAIN LOCATED ON )  
LITTLE COVE ROAD NEAR THE )  
INTERSECTION OF THUNDER )  
MOUNTAIN ROAD )

DOCKET NO. 22-00028

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AMENDED PETITION TO TERMINATE CCN OF AQUA GREEN UTILITY, INC  
FOR THUNDER MOUNTAIN

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Comes now, the Petitioner, Aqua Green Utility, INC. (“Aqua Green”, “Utility” or “Petitioner”), by and through undersigned counsel, and hereby petitions the Tennessee Public Utility Commission (“TPUC” or “Commission”), for termination of the Certificate of Public Convenience and Necessity (hereinafter “CCN”) issued to Aqua Green for the portion of Sevier County known as Thunder Mountain, located on Little Cove Road. In support of its petition, Petitioner would state as follows:

**I. PROCEDURAL HISTORY**

1. On April 11, 2022, Aqua Green filed its *Petition of Aqua Green Utility, Inc. to Amend its Certificate of Convenience and Necessity* to include a “portion of Sevier County known as Thunder Mountain, located on Little Cove Road.”<sup>1</sup>

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<sup>1</sup> *Petition of Aqua Green Utility, Inc. to Amend its Certificate of Convenience and Necessity*, p.1, TPUC Docket No. 22-00028 (April 11, 2022)(Petition).

2. On October 12, 2022, TPUC filed an *Order approving Petition to Amend Certificate of Convenience and Necessity* (“Order”).<sup>2</sup> The order approved the CCN for Aqua Green Utility, Inc. contingent on the following:

- a. **“The registered deed and/or easements for all the land and ownership rights to the wastewater system within fifteen (15) days of being issued and before the first customer is connected to the wastewater system;**
- b. **A final copy of the State Operating Permit issued by the Tennessee Department of Environment and Conservation within fifteen (15) days of issuance;**
- c. **A copy of the as-built plans with signed certification by Aqua Green Utility, Inc. indicating the wastewater system has been inspected and is approved to begin operation;**
- d. **A copy of the signed plat, once the area of development is approved by the City and/or County government within fifteen (15) days of being issued and before the first customer is connected to the wastewater system;**
- e. **A copy of any future contracts regarding phases three (3) and four (4) of the wastewater system at Thunder Mountain;**
- f. **A copy of any future performance bonds from the developer or builder of the wastewater system made payable to the utility as needed to ensure the construction of phases three (3) and four (4) of the wastewater system. The performance bond should be for an amount equal to or greater than any costs of the system as provided in contracts between the builder, developer, and/or utility; and**

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<sup>2</sup> *Order Approving Petition to Amend Certificate of Convenience and Necessity*, p. 6, TPUC Docket No. 22-00028 (October 12, 2022) (“Order”)

g. The final amount of collection system costs and the cost of the land being transferred to Aqua Green Utility, Inc. no later than fifteen (15) days after the final plat is signed by the utility.”<sup>3</sup>

3. Almost four years have passed since the Commission issued its *Order Conditionally Approving CCN* in this docket. Sapp Investments, LLC (“Sapp” or “Owner”) has not filed required documentation to satisfy the conditions set forth in the Order Approving CCN for Thunder Mountain. Nothing of any significance has happened as of the date of the filing of this Amended Petition to proceed with the development or the implementation of the Commission's order.
4. Aqua Green filed a *Request for Territory Removal from CCN* (“Request”) on March 20, 2026. The Request was based on allegations of breach of contract. **(Contract Agreement attached as Exhibit 1)**. Prior to the filing of the Request, a notice to cure was delivered to Sapp on November 17, 2025, and a notice of termination was delivered to Sapp on March 9, 2026. **(Notice to Cure is attached as Exhibit 2 and Notice of Termination attached as Exhibit 3)**. and failure to comply with the contingencies imposed by the Order approving the CCN.<sup>4</sup>
5. On June 8, 2026, TPUC scheduled a Status Conference to be held on June 23, 2026. <sup>5</sup>
6. An *Order on June 23, 2026, Status Conference and Establishing Deadline for Amended Petition* was filed by TPUC on June 24, 2026, directing Aqua Green to file an amended

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<sup>3</sup> *Id.*

<sup>4</sup> *Request for Territory Removal from CCN*, p. 1, TPUC Docket No. 22-200028 (March 20, 2026) (“Request”).

<sup>5</sup> *Notice of Status Conference*, p. 1, TPUC Docket No. 22-200028.(June 8, 2026).

Petition with evidentiary support and pre-filed testimony by noon on July 31, 2026, and establishing the right for any interested party to file a Petition to Intervene.<sup>6</sup>

7. Sapp filed a Petition to Intervene on June 29, 2026, stating that “Sapp remains committed to the continued development of the Thunder Mountain project.”<sup>7</sup>
8. TPUC filed an Order Granting the *Petition to Intervene of Sapp Investments, LLC*.<sup>8</sup>

## **II. SUPPORTING DOCUMENTS**

9. In Support of this Petition, the following exhibits are attached:
  - a. **Exhibit 1: Contract Agreement**
  - b. **Exhibit 2: Notice to Cure**
  - c. **Exhibit 3: Notice of Termination**
  - d. **Exhibit 4: Budget for Aqua Green**
  - e. **Exhibit 5: Pre-filed Testimony of Petitioner’s President, Dart Kendall**

## **III. ISSUES**

### **FAILURE TO COMPLY WITH ORDER/REGULATIONS**

10. Petitioner sought and obtained a Certificate of Convenience and Necessity to provide wastewater service to the proposed development known as Thunder Mountain Subdivision based upon representations made by Sapp concerning the anticipated construction schedule and development of the project.
11. The Certificate of Convenience and Necessity (CCN) was approved subject to specific conditions that have not been satisfied by Sapp. These conditions are prerequisites to

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<sup>6</sup> *Order on June 23, 2026, Status Conference and Establishing Deadline for Amended Petition*, p. 3, TPUC Docket No. 22-200028 (June 24, 2026)

<sup>7</sup> *Petition to Intervene of Sapp Investments, LLC*, p. 2, TPUC Docket No. 22-00028 (June 29, 2026).

<sup>8</sup> *Order Granting the Petition to Intervene of Sapp Investments, LLC*, (July 10, 2026).

providing utility service and connecting customers, yet Sapp has failed to cooperate and therefore Aqua Green is unable to comply with the conditions due to matters that are in the sole control of Sapp.

12. Specifically:

- a. CCN approval required that Aqua Green obtain an ownership interest in the property before initiation of service.<sup>9</sup> Sapp has failed to provide any instrument of conveyance necessary for the conveyance of such interest in the real property.

Sapp failed to provide the conveyance documents that are necessary for operation, maintenance, repair, and access to the wastewater infrastructure.

For approximately two years, Aqua Green made repeated efforts to obtain the transfer of the property as required. Throughout that period, Sapp repeatedly represented that the transfer documents were "at the title company" and that Aqua Green would receive the property "any day." Despite these assurances, no interest was conveyed even after Aqua Green issued a formal Notice to Cure.

When Aqua Green visited the wastewater site, the system was connected to one cabin. This system was in use without Aqua Green's knowledge and without meeting the contingencies for this CCN. Aqua Green turned the electrical service to the facility off. Nevertheless, the plant is possibly being operated and used despite unresolved compliance issues. Thunder Mountain is/was being operated without a certified operator. State Operating Permit No. SOP-22009 ("SOP") requires that a waste treatment facility shall be operated under the supervision of a

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<sup>9</sup> Order Approving Petition to Amend Certificate of Convenience and Necessity, p. 6 TPUC Docket No. 22-00028(October 12, 2022); Tennessee Public Utility Commission (TPUC) Rule 1220-4-13-.04(1)(b).

Biological Natural System certified wastewater treatment operator in accordance with the Water Environmental Health Act of 1984.<sup>10</sup>

Thunder Mountain is also being operated without a collection system operator.

- b. The CCN approval required Aqua Green to submit complete as-built plans before any customers were connected.<sup>11</sup> This has not been provided by Sapp.
- c. The CCN approval required Aqua Green to file a signed final plat before any customers were connected.<sup>12</sup> The proposed project plat shows cabins to be built on approved drip fields. This would require SOP modification and a search for new soils, assuming TDEC would approve same.
- d. The CCN was approved for a development consisting of rental cabins owned by a single entity and the approved utility tariffs were limited to rental cabin service only.<sup>13</sup> The current proposal for the development no longer conforms to the project as approved, resulting in service potentially being provided outside the scope of the approved CCN. Sapp represented it would own and rent the cabins. In reliance thereon, Aqua Green made such representations to the commission in conjunction with its petition of the CCN and filed a tariff for service to the rental cabins. The only cabin constructed, and tied into the system, in the development is being offered for sale.

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<sup>10</sup> *State Operating Permit No. SOP-22009*, p. 11 TPUC Docket No. 22-00028 (May 27, 2022) (“SOP”)

<sup>11</sup> Order Approving Petition to Amend Certificate of Convenience and Necessity, p. 6 TPUC Docket No. 22-00028(October 12, 2022); Tenn. Comp. Rules Regs. 1220-04-13-.17(2)(d)(5)

<sup>12</sup> Order Approving Petition to Amend Certificate of Convenience and Necessity, p. 6 TPUC Docket No. 22-00028(October 12, 2022); Tenn. Comp. Rules Regs. 1220-4-13-.17(2)(b)(3)(iii).

<sup>13</sup> Order Approving Petition to Amend Certificate of Convenience and Necessity, p. 3-5 TPUC Docket No. 22-00028(October 12, 2022)

- e. If the Owner sells the project before completing the required infrastructure, Aqua Green may be left without the funds necessary to complete the remaining phases of the wastewater treatment system, placing the Utility in an untenable financial and operational position.
  - f. Sapp's proposed revision to the development plan makes the completion of the wastewater facility impossible due to the insufficient soils.
13. Sapp's repeated failure to cooperate and in complying with the express conditions of the CCN approval and applicable TPUC rules demonstrates that the project no longer satisfies the basis upon which the CCN was granted. Accordingly, these material violations and lack of development of the property within a 43-month period provide substantial grounds for the Utility to petition for termination of the CCN.
14. Petitioner's ability to provide service has therefore been frustrated entirely by Sapp's failure to cooperate and is the result of circumstances solely controlled by Sapp.

#### **DETRIMENT TO THE PUBLIC INTEREST**

15. Maintaining the existing CCN under these circumstances serves no public convenience or necessity.
16. The project has effectively stalled, with only one improvement constructed over a four-year period.
17. Requiring Petitioner to continue maintaining the CCN indefinitely would impose substantial and ongoing financial burdens without any corresponding public benefit. (see Exhibit 4).

18. Petitioner faces significant economic losses associated with engineering, regulatory compliance, planning, financing, and the obligation to reserve utility capacity for a development that has not materially progressed. Such continued obligations are unreasonable, inequitable, and inconsistent with the public interest.

### **CHANGED CIRCUMSTANCES**

19. Since the Commission approved the Certificate of Convenience and Necessity ("CCN"), the Sapp has proposed material changes to the project that differ significantly from the development presented to the Commission and relied upon by the Utility.
20. Specifically, the Owner proposed changes would require an amendment of the SOP issued by the Tennessee Department of Environment and Conservation ("TDEC") by reducing the approved capacity from 690 bedrooms to 593 bedrooms. The Owner also proposes to construct cabins on soils currently designated and approved soils of the current SOP. These proposed changes require review and approval by TDEC. At this time, no amended SOP has been approved, and there is no assurance that an amended permit will satisfy current regulatory requirements or ultimately be issued. The Utility's existing obligations under the CCN were based upon the original development plan and approved, not the substantially revised project now being proposed.
21. The proposed redesign also presents significant engineering and financial concerns. Under current TDEC requirements, new SOP applications generally cannot be developed in phases, requiring redesign of the wastewater system and increasing engineering, permitting, and construction costs. These additional expenses were neither contemplated nor allocated by the parties before the CCN was granted.

22. The Owner also proposes to construct cabins on property that currently serves as the only practical access to the remaining drip-disposal soils necessary for completion of the wastewater system. If that access is obstructed, the Utility would be required to construct an alternate access road across property it neither owns nor has easement rights to use. The estimated cost of constructing such a road would be significant.
23. Upon information and belief, Sapp has repeatedly attempted to sell wastewater treatment plant capacity to other developments.
24. Should the property be sold without preserving the Utility's access rights, completion of the wastewater facilities may become impossible or economically prohibitive.
25. Additionally, the Owner has not provided performance bonds, financial assurances, or other security sufficient to protect the Utility from future infrastructure costs or losses associated with the project. If ownership of the development changes before the necessary infrastructure and property rights are conveyed, the Utility could be left with substantial unrecoverable costs and continuing obligations without any practical means of completing the project.

#### **LACK OF DEVELOPMENT PROGRESS**

26. Nearly four years have elapsed since the CCN was approved. During that period, only one cabin was constructed within the development. That cabin was built on an existing road serving an approximately two-acre tract that was previously accessible. No new roads have been constructed, cleared, or even rough graded within the remaining development area.
27. Based on the Utility's current operating costs and anticipated revenues, providing wastewater service to a single cabin is projected to result in an operating loss of

approximately \$1,016.99 per month, exclusive of legal fees, engineering costs, regulatory expenses, and other costs incurred as a result of the Owner 's continued delays. If the development is sold or remains substantially undeveloped, these losses could continue indefinitely. (See Exhibit 4)

#### **FAILURE TO PERFORM**

28. On November 17, 2025, the Utility issued the Owner a formal Notice to Cure regarding its failure to perform under the parties' agreement. No corrective action was taken. (See Exhibit 2).
29. Accordingly, on March 9, 2026, the Utility issued a formal Notice of Termination. (See Exhibit 3). Despite these notices, the Sapp has continued to fail to satisfy its obligations, including timely development of the project, conveyance of required property interests, and provision of the easements necessary for the operation and maintenance of the wastewater system.

#### **IV. CONCLUSION**

30. These facts demonstrate a material change in circumstances since issuance of the CCN and support the Utility's request that the Commission terminate the Certificate of Convenience and Necessity because continued enforcement no longer serves the public convenience and necessity and would impose substantial and inequitable financial harm to the Aqua Green.
31. The circumstances upon which the Commission originally granted the CCN have materially changed.

32. The assumptions regarding development schedule, construction activity, and availability of the property are no longer valid.
33. The Owner 's failure to perform constitutes a material change in circumstances warranting relief by the Commission.
34. Petitioner acknowledges good faith reliance upon Sapp's representations. Based upon Sapp's repeated failure to fulfill obligations and the circumstances described herein, Petitioner no longer believes that Sapp intends to act in good faith. Petitioner further believes based upon current circumstances that the development, as approved by TPUC, will never occur.
35. The statutory three-year period has elapsed since the Commission issued the Certificate of Convenience and Necessity ("CCN"), and the wastewater system cannot become operational as it currently exists. As a result, the Utility has been unable to operate or provide wastewater service within the Thunder Mountain area.

## **V. REQUEST FOR RELIEF**

For the reasons stated herein, Petitioner respectfully petitions the Commission to declare the CCN issued to Aqua Green Utility, Inc. Thunder Mountain Subdivision, located on Little Cove Road to be deemed expired and terminated in accordance with Commission Rule 1220-04-13-.09(7).

Accordingly, the conditions giving rise to the rebuttable presumption under the Commission's rules have been satisfied. Because there is no factual or legal basis to continue the CCN under these circumstances, the Utility respectfully requests that the Commission find that the CCN is no

longer valid or in effect and enter an Order terminating the Certificate of Convenience and Necessity for the Thunder Mountain service area.

Petitioner respectfully requests that the Commission enter an Order terminating the Certificate of Convenience and Necessity for the Thunder Mountain service area and grant such other, further, and general relief as the Commission deems just, proper, and appropriate.

Respectfully submitted,



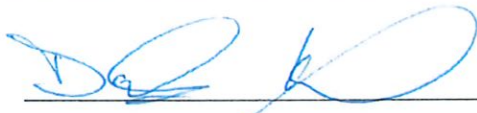
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Phelps Dunbar LLP  
414 Union Street, Suite 1105  
Nashville, TN 37219  
Cell: (615) 414-5619  
[chuck.welch@phelps.com](mailto:chuck.welch@phelps.com)

*Attorney for Aqua Green Utility*

VERIFICATION

STATE OF Georgia )  
COUNTY OF Cherokee )

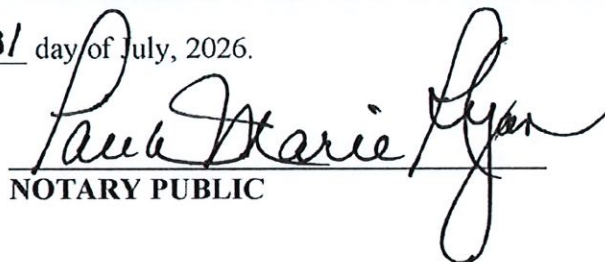
I, Dart Kendall, after being duly sworn in accordance with law, do hereby make oath and depose and state that I am the President of Aqua Green, Inc. I hereby verify that I have read the foregoing Petition and know the contents thereof and that the same are true to the best of my knowledge, information and belief.



Dart Kendall, President of Aqua Green, Inc.

Personally appeared before me, the undersigned, a Notary Public for the state and county aforesaid, Dart Kendall with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand and seal at office this 31 day of July, 2026.

  
NOTARY PUBLIC

My Commission Expires:

10/21/2027



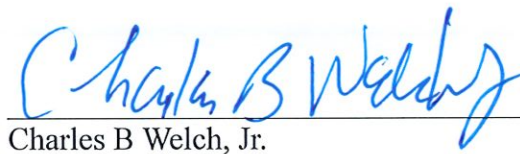
## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

Melvin J. Malone (BPR #13874)  
Butler Snow LLP  
Neuhoff Building  
1320 Adams Street, Suite 1400  
Nashville, TN 37208  
Office: (615) 651-6700  
[Melvin.Malone@butlersnow.com](mailto:Melvin.Malone@butlersnow.com)  
*Attorneys for Sapp Investments, LLC*

Office of Tennessee Attorney General  
Consumer Advocate Division  
ATTN: Karen H. Stachowski  
[Karen.Stachowski@ag.tn.gov](mailto:Karen.Stachowski@ag.tn.gov)  
PO Box 20207  
Nashville, TN 37202

This the 31<sup>ST</sup> Day of July 2026.

  
\_\_\_\_\_  
Charles B Welch, Jr.

**EXHIBIT 1:**  
**CONTRACT AGREEMENT**

## CONTRACT AGREEMENT

THIS AGREEMENT made as of the fourteenth day of July in the year of 2021.

Between Parties:

Sapp Investments LLC ("Owner")  
101 West Court St.  
Paragould AR. 72450

and

Advanced Septic, Inc. ("Contractor")  
3350 Galts Road  
Acworth, Georgia 30102

and

Aqua Green Utility Inc. ("Utility")  
3350 Galts Road  
Acworth Georgia 30102

For the following Project:

Thunder Mountain ("Project")

### 1. Scope of Work ("Work")

This Scope of Work ("Work") will include design drawings submitted to Contractor's engineering firm for final approval to standards necessary for the State of Tennessee to allow permitting of the sewage disposal system. The Contractor will build a sewage treatment system compatible of meeting Tennessee Department of Environment and Conservation (TDEC) requirements and standards necessary for the disposal of wastewater for the Thunder Mountain Project that will consist of a treatment plant capable of 25,000 gallons per day. This plant and system will not provide sewage service for industrial waste. The plant will be designed for 250 bedrooms only. The plant build will be in two phases, once phase one is complete, phase two will be built. Only residential type of structures, will be connected to this plant. The wastewater treatment plant will include complete automation of operation PLC controlled. This will be equipped to text and email the Utility's technicians in case of a problem, for quick reliable service. All plant components will be solely owned by the Utility and will be the Utility's responsibility. A secure control building to house electrical components and PLC controls is included. All electrical and other equipment needed for the main plant operation is included. All associated plant and drip field engineering costs are included. All needed drip zones will be installed and are included. The Contractor will design the software for the plant so that flow data and any alarms are sent by telemetry to the Utility's central computer for record keeping. The Contractor will maintain a clean work place. The Contractor will operate under the existing SWPPP for the site.

The Owner will furnish a irrevocable letter of credit or payment bond to the Utility for the total cost of this contract. This is a Tennessee Public Utility Commission (TPUC) required letter showing financial capability and will be included with the Utility's application to provide service to the TPUC.

The Owner will furnish all soil mapping necessary to acquire a state operating permit, SOP.

Aqua Green Utility Inc. will be the permanent wastewater Utility and provide maintenance to this system once the system is accepted, Utility acceptance requires:

- All monies be paid to Contractor by Owner for this Project.
- The entire sewer system be built per the Utility's specifications.
- The land where the wastewater plant and drip field is located will be deeded to the Utility.
- Payment to the Utility for acceptance of system (Tax).
- All other easements or documents necessary to operate and maintain the sewer system will be provided or signed as needed.

The Utility will apply to TPUC to add the Thunder Mountain project to its necessity and convenience permit, which will include posting the necessary financial surety for permanent operation with the TPUC. The Utility will be responsible for all future costs including electricity, internet telemetry, sludge removal, septic tank pumping, parts replacements and certified operator visits.

The Owner understands that Aqua Green Utility Inc. service contract, rule 5, will prohibit anyone from building a unit of higher water usage than the permit allows (250 bedrooms) or any type of residence that would jeopardize the wastewater permit for the Project. Rule 5 is listed below:  
*5. I accept the current Rules and Regulations and the Rates and Fees Schedule and agree to abide by any amendments to such Schedules as approved by the Tennessee Public Utility Commission. New service may be refused if AGU determines the new service is or will cause a violation of the Tennessee Department of Environment and Conservation SOP permit.*

#### Utility Customer Charges

The customer understands that the fee approved by the Tennessee Public Utility Commission is what will be charged. Any changes in the fee structure would need also to be approved by the TPUC. The fee where no home is built but a service connection exists is called a sewer access fee and is due each year. The owner of each property parcel, which is provided a service connection when the sewer system is built, will be required to pay a sewer access fee of \$120.00 per year. This fee will be payable each July 1st. As each Customer attaches to the service connection and signs up for service, they will pay a pro-rated sewer access fee for that year and thereafter a monthly fee will be charged.

The Owner also agrees to give a welcome packet, provided by the Utility, to anyone who purchases a lot or home. The Owner also agrees to add verbiage provided by the Utility, to any neighbourhood covenants or rules to identify Aqua Green Utility Inc. as the wastewater provider.

The sewer line or sewer pipe installer must meet the specifications of Aqua Green Utility and a Utility representative must be allowed to inspect before being covered. The sewer line

specifications can be found on the [aquagreenutility.com](http://aquagreenutility.com) website. If appropriate specifications cannot be found, contact Aqua Green Utility Inc. at 865-908-0432 for assistance. The sewer lines start at each home or occupancy and connect back to the wastewater plant. Sewer lines that the Utility determines not to meet specifications will not be permitted to be connected to the plant until corrections are made and inspected.

**Not included in this contract price:**

Collection system (i.e. sewer pipes) and any associated and needed lift stations throughout the Project (Thunder Mountain). Installation and maintenance of silt fencing, any land clearing, temporary roads to the construction site, maintenance of said roads, embankments built to obstruct view of sewage facility site, landscaping planted and used to obstruct the view of the sewage facility site, any site grading work, planting of trees to enhance the area's beauty, construction of ditches or swales to control water runoff, fencing to control access to the area during construction, temporary electrical power to the site or trees planted in drip zones.

**2. Price and Payment**

Owner shall pay the Contractor for performance of the Work the sum of \$202,840.00

Invoices shall be submitted upon substantial completion of each work item listed below. Payment is to be made by Owner within 30 days of submission of invoice by Contractor. Payment by others to Owner shall not be a condition precedent for payment by Owner to Contractor.

|        |                                                             |                  |
|--------|-------------------------------------------------------------|------------------|
| a.     | Acceptance of contract by Owner and engineering work begins | \$16,904.00      |
| b.     | SOP received from TDEC                                      | \$8,452.00       |
| c.     | TPUC approvals                                              | \$8,452.00       |
| d.     | Phase 1 tanks installed                                     | \$16,904.00      |
| e.     | Phase 1 drip field is complete                              | \$16,904.00      |
| f.     | Control room concrete complete                              | \$16,904.00      |
| g.     | Control room built out                                      | \$16,904.00      |
| h.     | Pump tank slab concrete complete                            | \$16,904.00      |
| i.     | Pump tank and trickle filter walls complete                 | \$16,904.00      |
| j.     | Drip tubing installation begins                             | \$16,904.00      |
| k.     | Trickle filter media complete                               | \$16,904.00      |
| l.     | Drip zone ready to accept wastewater                        | \$16,904.00      |
| m.     | All concrete work complete                                  | \$16,896.00      |
| p.     | Payment to the Utility for acceptance of system (Tax)       | To be determined |
| Total: |                                                             | \$202,840.00     |

### **Tax:**

For all cash and property contributions provided to the Utility, a gross-up factor shall be applied in order to recover the corporate federal income taxes associated with those contributions. The Utility will be paid this amount directly before the sewage system is allowed to start operation. The formula used to gross up contributed cash and property is as follows:

$$\text{Tax Impact} = \text{TR} / (1 - \text{TR}) * (\text{C} + \text{P})$$

TR = Marginal tax rate of federal corporate income tax.

C = Dollar amount of charges (cash) paid to the utility as a contribution.

P = Dollar amount of property (plant, land...) conveyed to the utility to be recorded at the construction cost of the property conveyed to the utility.

### **Example**

Developer donates \$500,000 cash to utility to build a specified facility.

Using a 21% federal corporate tax rate, developer owes the utility federal income taxes of:

$.21 / (1 - .21) * \$500,000$ , or  $.2658 * \$500,000 = \$132,900$

In total, developer owes utility \$632,900 (\$500,000 cash + \$132,900 in federal corporate income tax)

The projected cost for this project federal and state tax will be \$67,099.47 The pipe installed for the sewer line will also be part of this calculation.

The exact cost is based on tax rates at the time of payment. This amount is subject to change based on federal corporate tax code. If the tax code changes and this tax is exempt there will be no charge. If other state or local taxes are charged to the Utility they will also be added with a gross up calculation.

### **3. Time**

The Owner agrees to transfer ownership of all land for drip disposal fields and for all wastewater facilities, and sign easements used for access to the plant and all parts of the wastewater collection system to the Utility before any Work begins.

Contractor shall submit a complete State Operating Permit (SOP) to Tennessee Department of Environment and Conservation (TDEC) with a signed engineering report and associated drawings.

Construction of the plant work shall start in coordination with Owners schedule after receiving all needed permits and approvals from the State of Tennessee. Contractor shall not be liable for any delays due to circumstances beyond its control, including strikes, weather or other causes, and shall be entitled to time extensions for said causes.

If the construction does not start within 6 months of receiving approvals, that will constitute a change order and there may be a price increase based on any cost increases.

#### 4. Warranty

All equipment and workmanship will be warranted for two years from when the Utility starts using the facility. The Contractors' warranty excludes a remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

#### 5. Changes

No alteration shall be made in the Work except on the written order of the Owner, at which time Contractor shall perform any such changes only after a price has been established and agreed to by Owner for the additional work to be performed. Any changes may impact the duration of the performance of the Work.

UNFORSEEN CIRCUMSTANCES. Prices within this proposal are firm unless there are unforeseen circumstances that result in delays or obstacles. An example of such would be if Contractor begins excavating and finds large boulders, rebar, sewer drain, etc. If such circumstances arise, Contractor will notify Owner immediately with an evaluation and proposed change in price or work. If the obstacle deems the Work unable to be completed or if Owner decides the cost to proceed is too prohibitive, the Owner is responsible for labor costs incurred until that point and for any materials used that cannot be returned.

#### 6. Indemnification

The Parties shall indemnify and hold each other harmless from and against all claims, damages, losses and expenses, including reasonable attorney fees, costs of court and other legal expenses arising out of or resulting from their sole acts and/or omissions, including any such claim, damage, loss or expense which is attributable to bodily injury, sickness, disease, death or the injury to or destruction of personal or tangible property.

#### 7. Termination

If the Contractor at any time shall refuse or neglect to supply adequate or competent supervision, or a sufficiency of properly skilled workman or of materials of the proper quality or quantity, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any agreement on his part herein contained, the Owner shall have the option, after thirty days notice to cure and failure by the Contractor to cure, to terminate the Contract. Contractor shall be entitled to payment for the value of all work performed up through the time of contract termination.

If the Owner fails to pay Contractor within thirty days from submitting of invoice for payment or otherwise interferes in the performance of Contractors' Work, Contractor has the right, after five (5) days notice to cure and failure by the Owner to cure, to terminate the contract or to stop work without prejudice to any other remedy it may have.

8. Insurance

Contractors' Insurance

The Contractor shall maintain such insurance as will protect it from claims under workers compensation and from any other claims arising from injury or death during the performance of its Work. Automobile Bodily Injury and Property Damage Liability Insurance, coverage shall not be less than \$300,000.00. Comprehensive General Bodily Injury and Broad Form Property Damage Liability Insurance coverage shall not be less than \$1,000,000.00. Contractor shall maintain policies, and will have proof of such policies faxed to the Owner any time requested.

9. Miscellaneous provisions

Payments due and unpaid under this Contract shall bear interest at the rate of 18% per annum from the date due and all costs of collection, including reasonable attorney fees, shall be paid by Owner as the result of non-payment.

The Parties submit to the jurisdiction and venue of the Courts of The State of Tennessee for the resolution of any disputes.

ACCEPTED:

OWNER:

(Signature)

Print

CONTRACTOR:

(Signature)

Dart Kendall (CEO, Advanced Septic Inc.)

UTILITY:

(Signature)

Dart Kendall (President, Aqua Green Utility Inc.)



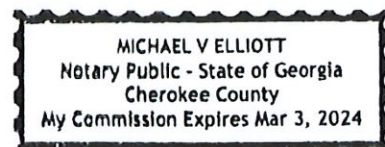
Sworn & subscribed before me this

16 day of July, 2020: 2021

Sworn & subscribed before me this

19 day of JULY, 2020.

*Michael V Elliott*



**EXHIBIT 2:**  
**NOTICE TO CURE**

11/17/2025

Dear Logan Sapp.

This letter serves as a formal notice of your right to cure the breach of contract that occurred on 7/14/2021. As per the terms of our agreement, you have 30 days from the date of this notice to remedy the breach.

The specific breach of contract that has occurred is . The land where the wastewater plant and drip field is located will be deeded to the Utility.

To cure the breach, you must take the following steps:

Deed the land where the wastewater plant and drip field is located to the Utility.

If you fail to cure the breach within the specified timeframe, we will have no choice but to pursue legal action to enforce our rights under the contract. We hope that this matter can be resolved amicably and that you will take the necessary steps to rectify the situation.

Please acknowledge receipt of this notice and confirm your intention to cure the breach by 12/17/2025. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Dart Kendall  
Aqua Green Utility Inc

**EXHIBIT 3:**  
**NOTICE TO TERMINATE**



March 9, 2026

Mr Logan Sapp,

On 11/17/2025, I gave you notice to cure our contract agreement. Unfortunately, that contract requirement has not been met. Therefore, please consider our contract breached and no longer valid. Operating a sewer plant without owning the land is a violation of Tennessee Public Utility Commission Approval. This puts all our approved plants at risk of losing approvals. This is something we cannot allow to happen. I will not lose my company over your lack of action.

On 2/10/2026, I sent you a copy of the TDEC inspection where we not owning the land was noted and questioned.

I do not know if your cabin is connected to the system. If it is, it will cause a spill, as the plant is turned off. That is a big deal. The plant power is currently turned off at the breaker.

We are canceling our SOP and CCN approvals.

You will need to get a new SOP permit to operate this plant. You will also need permits for any sewer lines that you plan on using. If you contact the Knoxville TDEC field office, they should be able to tell you the best next steps to take.

I am truly sorry, but we have no choice in this matter.

Sincerely,

Dart Kendall, President  
Aqua Green Utility Inc.

**EXHIBIT 4:**  
**BUDGET FOR THUNDER**  
**MOUNTAIN**

| Budget              | B1              | Monthly    | Run Total | Per Cust | Type Custom | Current \$      | # of Customer | Income     |
|---------------------|-----------------|------------|-----------|----------|-------------|-----------------|---------------|------------|
| Mgt fee 2.5 %       | \$41.85         | \$3.49     |           |          |             |                 |               |            |
| Permits             | 350/12 + 750/60 | \$42.00    |           |          | Monthly     | 102.00          | 1             | \$102.00   |
| Power               |                 | \$75.00    |           |          |             |                 | 0             | \$0.00     |
| Prop taxes          |                 | \$100.00   |           |          | Annual      | 12.50           | 3             | \$37.50    |
| Office and postage  |                 | \$3.00     |           |          |             |                 |               | \$139.50   |
| Repairs             |                 | \$50.00    |           |          |             | Plus Legal Cost |               | \$1,016.99 |
| Grass maintenance   |                 | \$50.00    |           |          |             |                 |               |            |
| Water testing       | 475 * 4 / 12    | \$158.00   |           |          |             |                 |               |            |
| TAUD                |                 | \$4.20     |           |          |             |                 |               |            |
| Fed tax & State     |                 | \$30.00    |           |          |             |                 |               |            |
| LOC                 |                 | \$0.00     |           |          |             |                 |               |            |
| Septic tank pumping | 450/24          | \$18.75    |           |          |             |                 |               |            |
|                     |                 | \$0.00     |           |          |             |                 |               |            |
| legal 20,000/12     | 1666            | \$0.00     |           |          |             |                 |               |            |
| Escrow              |                 | \$20.40    |           |          |             |                 |               |            |
| 30 day visits       |                 | \$500.00   |           |          |             |                 |               |            |
| Total               |                 | \$1,051.35 |           |          |             |                 |               |            |
| 10% profit margin   |                 | \$105.14   |           |          |             |                 |               |            |
| Total w/10%         |                 | \$1,156.49 |           |          |             |                 |               |            |

**EXHIBIT 5:**  
**PREFILED TESTIMONY**

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION AT  
NASHVILLE, TENNESSEE**

**PETITION OF AQUA GREEN UTILITY, )  
INC. TO AMEND ITS CERTIFICATE OF )  
CONVENIENCE AND NECESSITY TO )  
EXPAND ITS SERVICE AREA TO )  
INCLUDE A PORTION OF SEVIER )  
COUNTY IN TENNESSEE KNOWN AS )  
THUNDER MOUNTAIN LOCATED ON )  
LITTLE COVE ROAD NEAR THE )  
INTERSECTION OF THUNDER )  
MOUNTAIN ROAD )**

**DOCKET NO. 22-00028**

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**PRE-FILED DIRECT TESTIMONY OF DART KENDALL**

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**Q: Please state your name for the record and your position with the Petitioner, Aqua Green Utility, Inc.**

A: Dart Kendall; I am the President of Aqua Green Utility, Inc.

**Q: Are you presenting testimony on behalf of Aqua Green Utility, Inc?**

A: Yes.

**Q: What is the purpose of your testimony?**

A: The purpose of my testimony is to explain Aqua Green's position regarding the Petition to Terminate the Certificate of Convenience and Necessity ("CCN") for Thunder Mountain Subdivision. Specifically, it is Aqua Green's position that the CCN for Thunder Mountain should be terminated by the Tennessee Public Utility Commission ("TPUC"). Under Rule 1220-4-13-.09(7) of the Tennessee Public Utility Commission Rules, it states that "when a wastewater system has not been completed or is not operational and providing service to

the designated service area after three (3) years from the date of the CCN Order, there shall be a rebuttal presumption that the CCN granted to the public wastewater utility is no longer valid or in effect.” It is Aqua Green’s position that the CCN is no longer in effect as this system has not provided services, in compliance with the Commission’s order granting the CCN, in more than the required three (3) years from the date of the CCN Order.

The Owner has failed to timely develop the property, failed to convey the land and easements necessary for Aqua Green to operate and maintain the wastewater system, and materially failed to fulfill its obligations. Sapp investments Inc.'s (“Sapp”) actions have fundamentally changed the circumstances under which the CCN was granted and requiring Aqua Green to continue holding the CCN would result in substantial and ongoing financial harm without providing corresponding public benefit. Based on these facts, it is my opinion that termination of the CCN is in the public interest and consistent with the Commission's responsibility to ensure that Certificates of Convenience and Necessity continue to serve the public interests.

**Q: Is the information contained in the Petition true and accurate to the best of your knowledge?**

A: Yes, it is.

**Q. Did the Developer agree to convey to Aqua Green the property and easements necessary to operate, and maintain the wastewater system?**

A: Yes.

**Q. Has the developer conveyed the required property?**

A: No.

**Q. Has the developer granted the required easements?**

A: No.

**Q. Why are those easements necessary?**

A: For access to the system so Aqua Green can maintain the system. There is only one access road to the rest of the site's drip soils. A cabin is planned to be built on that access. A new road would need to be built on land that the utility does not own or have an easement. The estimated cost to build that road is around \$100,000. If the project is sold without access, the project could not be completed.

**Q: Has the developer met agreed project deadlines?**

A: No. Presently, only 2 cabins have been built and only one of those cabins is suitable for connection to the wastewater system. These cabins are built on a pre-existing developed road. On information and belief, one cabin is being offered for sale. No roads have been built, cleared for, or even rough graded in the area to be developed.

**Q: Are there any issues with the cabin being connected to the wastewater system?**

A: Yes. This unit was not connected to the wastewater system or operated by Aqua Green. Only Aqua Green has an SOP to operate this system. It is unclear who tied this unit into the system, but they did not have an SOP to operate this system, and it is unclear if they had a State of Tennessee Wastewater Collection System Operator License and a State of Tennessee Biological/Natural Operator Treatment System License which is required to ensure technical compliance. The contingencies, in the commission's order to approve the CCN, which need to be satisfied before connecting and operating the wastewater system, have not been satisfied, nor has there been a good faith effort to initiate compliance.

**Q: How did Aqua Green address this improper connection to the wastewater system?**

A: Aqua Green ensured that the system was closed from further use.

**Q: What is the financial impact to Aqua Green in running this system for one unit?**

A: Utility costs to operate one (1) cabin will cause the utility a loss of \$1016.99 per month, plus the cost of these and expected future legal expenses. If the project is sold, this loss could continue on for many years. (see Exhibit 4 attached to the Amended Petition).

**Q. Has the developer offered reasonable explanations for delays?**

A: No. Aqua Green was assured on numerous occasions over a two-year period that the required documents to convey the property to the utility were available for delivery immediately. Delivery never occurred.

On 11/17/2025, Aqua Green delivered to the owner a notice to cure. The owner made no attempt to cure. On 3/9/26 Aqua Green gave notice to the owner of the breach of its obligations. (see Exhibits 2 and 3 attached to the Amended Petition).

**Q. In your opinion, has the developer acted in good faith?**

A: No. Based on all the circumstances as they exist today, it would appear that this development cannot be built with rental cabins as represented to the Commission in the application for the CCN.

1. I believe this development will be sold and not be built out with rental cabins as represented to the commission in the application for a CCN.
2. After approximately four years from the Order for the CCN to include Thunder Mountain, the development has not made progress in building or preparing for phase

1 or 2 and has not complied with the contingencies required prior to operation of the system, by the Order.

3. Sapp has repeatedly attempted to sell capacity from the Thunder Mountain wastewater facilities to another development.

**Q. Has the development proceeded within reasonable expectations?**

A: No. Only 1 unit of the 690 units anticipated to be connected to the wastewater system has been completed in the past four (4) years.

**Q. Has Aqua Green attempted to work cooperatively with the developer?**

A: Yes.

**Q. Has Aqua Green made repeated efforts to move the project forward?**

A: Yes.

**Q. Have circumstances materially changed since the Commission originally approved the CCN?**

A: Yes.

**Q. Please describe those changes.**

A: changes and issues include:

- Sapp indicated changing the capacity from 690 bedrooms to 593 bedrooms which would require amending State Operating Permit previously issued to Aqua Green.
- Sapp proposes to construct cabins on property that currently serves as the only practical access to remaining drip-disposal soils necessary for completion of the wastewater system.
- There is no realistic construction schedule

**Q. What action are you requesting from the Commission?**

A: Termination of the CCN granted to Aqua Green for the Thunder Mountain Property.

**Q. Why do you believe that termination of the CCN for Thunder Mountain is appropriate?**

A. It is appropriate for the Commission to terminate the Thunder Mountain CCN because Sapp has continually delayed construction of the development. As a result, approximately four years have elapsed since the CCN was granted, exceeding the anticipated three-year development period upon which the project was approved. These continued delays demonstrate that the original assumptions underlying the CCN are no longer valid and that continued enforcement no longer serves the public convenience and necessity.

**Q. How would continued enforcement unfairly burden your company?**

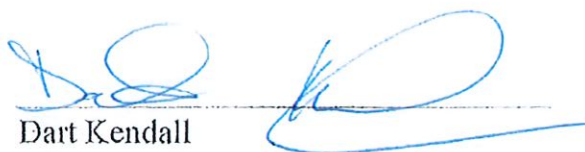
A: Based on the Aqua Green's current operating costs and anticipated revenues, providing wastewater service to a single cabin is projected to result in an operating loss of approximately **\$1,016.99 per month**, exclusive of legal fees, engineering costs, regulatory expenses, and other costs incurred as a result of the Developer's continued delays. If the development is sold or remains substantially undeveloped, these losses could continue indefinitely. (see Exhibit 4 attached to the Amended Petition)

**Q: Does this conclude your testimony?**

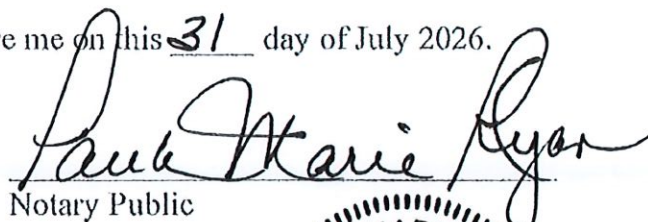
A: Yes.

State of Georgia )  
County of Cherokee )

Dart Kendall having been duly sworn, makes oath that the statements contained in foregoing Pre-filed Direct Testimony are true to the best of his knowledge, information and belief.

  
Dart Kendall

SWORN TO AND SUBSCRIBED before me on this 31 day of July 2026.

  
Notary Public

My Commission Expires: 10/21/2027

