

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

October 12, 2022

IN 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 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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ORDER APPROVING PETITION TO AMEND CERTIFICATE  
OF CONVENIENCE AND NECESSITY

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This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, Commissioner Robin L. Morrison, Commissioner Clay R. Good, and Commissioner John Hie 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 12, 2022, for consideration of the *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* (“*Petition*”), filed by Aqua Green Utility Inc. (“Aqua Green” or “Utility”) on April 12, 2022. In its *Petition*, Aqua Green requests the Commission’s approval for an expansion of Aqua Green’s service area to include a portion of Sevier County, Tennessee, known as Thunder Mountain.

**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.<sup>1</sup>

On April 12, 2022, Aqua Green filed a *Petition*, requesting to expand the existing service area to include the development at Thunder Mountain, located in Sevier County, Tennessee. The Thunder Mountain treatment facility will serve rental cabins.<sup>2</sup> Along with its *Petition*, Aqua Green provided a letter from the Sevier County government indicating that it does not currently provide and does not intend to provide wastewater service to the Thunder Mountain area.<sup>3</sup> In addition, Aqua Green filed maps indicating in detail the area to be served.<sup>4</sup> The treatment system will be constructed in four phases with the construction of phases one and two expected to commence as soon as the title to the land is transferred and permits are received.<sup>5</sup> Phases one and two will constitute a total of 250 bedrooms with a design flow up to 25,000 gpd. Phases three and four will eventually be added to this system, serving a maximum of 693 bedrooms with a design flow of 69,300 gpd.<sup>6</sup>

Along with additional information in response to a Commission Staff request, Aqua Green submitted the Pre-Filed Direct Testimony of Dart Kendall, President of the Company.<sup>7</sup> In his testimony, Mr. Kendall states that Aqua Green has “all the necessary technical, managerial, and financial capabilit[ies] to provide wastewater service to Thunder Mountain located on Little Cove Road near Thunder Mountain Road.”<sup>8</sup> Mr. Kendall has a State of Tennessee Wastewater

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<sup>1</sup> *Aqua Green Utility, Inc. Response to Commission Staff Data Request*, p. 4, Dart Kendall, Pre-Filed Direct Testimony (August 26, 2022). *See also Petition*, pp. 3-5 (April 12, 2022).

<sup>2</sup> *Petition*, p. 1 (April 12, 2022).

<sup>3</sup> *Id.* at 10.

<sup>4</sup> *Id.* at 88-91.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.*

<sup>7</sup> *Aqua Green Utility, Inc. Response to Commission Staff Data Request*, p. 4, Dart Kendall, Pre-Filed Direct Testimony (August 26, 2022).

<sup>8</sup> *Id.*.

Collection System Operator License and a State of Tennessee Biological/Natural Operator Treatment System License to ensure Aqua Green's technical compliance.<sup>9</sup> Mr. Kendall also testified that the proposed system will operate by the pumping of sewage across media blocks for natural treatment and, after being treated, the water will be disposed of through drip emitter tubing installed into the soil.<sup>10</sup> The design will be similar to the majority of systems owned and operated by Aqua Green.<sup>11</sup>

Aqua Green included a proposed rate schedule in its *Petition* which would establish a new Commercial Cabins Rate, designated as Rate Class 3. The proposed Commercial Cabins Rates are:

<u>RATE CLASS 3</u>	<u>TOTAL</u>
From 0 to 2,000 Square Feet	\$74.00
From 2,001 to 4,000 Square Feet	\$86.00
From 4,001 to 6,000 Square Feet	\$102.00
Over 6,000 Square Feet	\$125.00

The Company proposes to charge customers of the Thunder Mountain system in accordance with the schedule hereinabove utilizing the square footage assigned to each respective cabin per the Register of Deeds.<sup>12</sup>

#### **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

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Petition*, p. 1 (April 12, 2022).

<sup>12</sup> *Id.* at 44.

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.<sup>13</sup>

### **THE HEARING**

The Hearing in this matter was held before the voting panel during a regularly scheduled Commission Conference held on September 12, 2022, as noticed by the Commission on September 2, 2022. Participating in the Hearing were:

Aqua Green Utility Inc.- Petar Angelov, Esq. Bradley, Arant, Boulton, Cummings, LLP, Roundabout Plaza, 1600 Division Street, Suite 700, 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.

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<sup>13</sup> Tenn. Comp. Rules & Regs. 1220-04-13-.17 (1).

§ 65-4-201(a) and Commission Rule 1220-04-13-.17(1) to amend its CCN to provide service to the Thunder Mountain rental cabin development on Little Cove Road near Thunder Mountain Road in Sevier 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 Thunder Mountain development in Sevier 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 the new proposed Commercial Cabin Rate schedule that would charge customers of Thunder Mountain according to square footage assigned to the rental cabin is reasonable. The Commission determined that because the premises served are used for commercial purposes with larger numbers of occupants, rather than a standard residence, these properties place additional strain on the wastewater system as opposed to similar systems providing standard residential service. In addition, the Commission has approved similar rate designs for other wastewater utilities.<sup>14</sup>

The panel found that no other utility service provides wastewater service to the proposed area nor intends to provide such service in the future. Therefore, the panel found that Aqua Green has demonstrated the public need for wastewater service to Thunder Mountain. Further, the panel found that Aqua Green is in good standing with the Commission and in compliance with all Commission rules and has testified that it will abide by all applicable statutes, Commission rules, and Commission orders in the operation of the wastewater facility. Based on these findings, the

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<sup>14</sup> See *In Re: Joint Petition of Tennessee Wastewater Systems, Inc. and TPUC Staff (As a Party) to Increase Rates and Charges*, TPUC Docket No. 20-00009, *Order* (August 25, 2020).

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 of Aqua Green Utility, Inc. to Amend its Certificate of Convenience and Necessity to Expands Its Service Area to Include a Portion of Sevier County Known as Thunder Mountain* filed on April 12, 20221 by Aqua Green Utility, Inc. is approved contingent upon Aqua Green Utility, Inc. filing the following in this docket:

- 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

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.

2. Aqua Green Utility, Inc. shall file a report in this docket demonstrating its compliance with these filing requirements prior to providing wastewater service to Thunder Mountain. In the event the compliance report is not filed within six (6) months of the date of issuance of this order, Aqua Green Utility, Inc. shall file a report on the status of providing wastewater service to Thunder Mountain, 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 its compliance with the filing requirements and the status of its provision of wastewater service to Thunder Mountain every three (3) months after the initial report until such time as compliance has been accomplished and wastewater service is established at Thunder Mountain.

3. Aqua Green Utility, Inc. shall file an updated tariff reflecting the Commission's ruling.

4. 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.

5. 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 Herbert H. Hilliard,  
Vice Chairman David F. Jones  
Commissioner Robin L. Morrison,  
Commissioner Clay R. Good, and  
Commissioner John Hie**

**concur.**

None dissenting.

**ATTEST:**

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

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**Earl R. Taylor, Executive Director**