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February 1, 2023

By Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Second Floor North
Harrisburg, PA 17120

RE: Application of Community Utilities of Pennsylvania Inc., for Certificates of Public Convenience under Sections 1102(a)(3) and 1103 of the Public Utility Code And All Other Approvals Necessary Under the Public Utility Code for Approval of a Merger of Equals Transaction; Docket Nos. A-2022-3036744 and A-2022-3036745; **JOINT PREHEARING CONFERENCE MEMORANDUM OF COMMUNITY UTILITIES OF PENNSYLVANIA, INC., CORIX INFRASTRUCTURE (US) INC., AND SW MERGER ACQUISITION CORP.**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Joint Prehearing Conference Memorandum of Community Utilities of Pennsylvania Inc., Corix Infrastructure (US) Inc., and SW Merger Acquisition Corp.

Thank you for your attention to this matter. If you have any questions, please contact me.

Very truly yours,

/s/ Whitney E. Snyder

Whitney E. Snyder
Thomas J. Sniscak
Phillip D. Demanchick Jr.

*Counsel for
Community Utilities of Pennsylvania Inc. and Corix
Infrastructure (US) Inc.*

WES/das

Enclosures

cc: Honorable Mary D. Long (malong@pa.gov)
Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Community Utilities of :
Pennsylvania Inc., for Certificates of :
Public Convenience under Sections : Docket Nos. A-2022-3036744
1102(a)(3) and 1103 of the Public Utility : A-2022-3036745
Code And All Other Approvals Necessary :
Under the Public Utility Code for Approval :
of a Merger of Equals Transaction :

**JOINT PREHEARING CONFERENCE MEMORANDUM OF
COMMUNITY UTILITIES OF PENNSYLVANIA INC.,
CORIX INFRASTRUCTURE (US) INC., AND
SW MERGER ACQUISITION CORP.**

TO: THE HONORABLE MARY D. LONG:

Pursuant to the Pennsylvania Public Utility Commission’s (“PUC” or the “Commission”) Telephonic Prehearing Conference Notice, the Commission’s regulations at 52 Pa. Code § 5.222(d)(1), and the January 3, 2023 Prehearing Conference Order, Community Utilities of Pennsylvania, Inc. (“CUPA” or the “Applicant”), Corix Infrastructure (US) Inc. (“Corix US”), and SW Merger Acquisition Corp. (“SWMAC”), by and through their counsel in this matter, hereby submit this Joint Prehearing Memorandum in the above-captioned proceeding for the telephonic prehearing conference scheduled for Wednesday, February 2, 2023 at 10:00 AM.

A. PROCEDURAL HISTORY

On November 9, 2022, CUPA filed an Application for Certificates of Public Convenience under Sections 1102(a)(3) and 1103 of the Public Utility Code And All Other Approvals Necessary Under the Public Utility Code for Approval of a Merger of Equals Transaction (“Application”).¹

¹ Consistent with Commission filing procedures, CUPA filed the Application twice, once for its water division and once for its wastewater division to enable to Commission to assign two docket numbers. The Application at each docket is identical.

CUPA seeks Commission approval for a change of indirect control of CUPA - Water and Wastewater Divisions as a result of the proposed merger of SWMAC and Corix US and the creation of Intermediate Newco, a holding company that will be a subsidiary of the newly merged SWMAC and Corix US (with Corix US being the surviving entity) and will acquire indirect control of CUPA (“Proposed Transaction”). The Proposed Transaction will serve to create a larger, stronger water and wastewater company.

On November 14, 2022, the Commission issued a Secretarial Letter which, among other things, acknowledged receipt of the filing of the Application and directed CUPA to publish notice of the proceeding in a newspaper of general circulation in CUPA’s service territory (“Notice”) and file a proof of publication on or before December 12, 2022. The Secretarial Letter also advised that the Notice of the filing of the proceeding would appear in the Saturday, November 26, 2022 issue of the Pennsylvania Bulletin. The Notice set a deadline of on or before December 12, 2022, for the filing of formal protests and petitions to intervene in this proceeding. On December 7, 2022, CUPA filed a Proof of Publication providing affidavits evidencing publication of the Notice.

On December 12, 2022, the Office of Consumer Advocate (“OCA”) filed a Protest pursuant to 52 Pa. Code § 5.51, *et seq.*, and a Public Statement pursuant to 71 P.S. § 309-4(e). The OCA indicated it filed these documents to ensure that the underlying transaction provides substantial affirmative benefits to the ratepayers of CUPA and is otherwise consistent with the Public Utility Code.

On December 12, 2022, the Office of Small Business Advocate (“OSBA”) filed a Notice of Appearance, Notice of Intervention and Protest, Public Statement, and Verification seeking to investigate how the merger/change of control transaction reflected in the Application would impact

water and wastewater rates of small business customers and whether there exist affirmative public benefits, among other potential issues that might arise in the proceeding.

No other parties or individuals filed a protest or notice of intervention or other correspondence with the Commission.

On January 3, 2023, an Initial Telephonic Hearing Notice was issued setting a Telephonic Pre-Hearing Conference for Thursday, February 2, 2023, at 10:00 AM. Subsequently, Administrative Law Judge Mary D. Long (“ALJ Long”) issued a Prehearing Conference Order directing the parties to file Prehearing Conference Memorandums by no later 12:00 PM on Wednesday, February 1, 2023.

On January 6, 2023, Notices of Appearances were filed by Sean T. O’Neill and Pamela S. Goodwin on behalf of SWMAC. The Applicant, Corix US, and SWMAC now file this Joint Prehearing Memorandum.

B. CONSOLIDATION

The Application was filed at Docket Nos. A-2022-3036744 and A-2022-3036745. The Application at each docket is identical to the other docket and both relate to the Proposed Transaction involving the indirect change of control of CUPA as a result of a merger of equals transaction between Corix US and SWMAC. CUPA requests the dockets be consolidated for purposes of hearings and decisions pursuant to the Commission’s regulations at 52 Pa. Code § 5.81 because the Application at each docket is identical and involves common questions of law and fact. Consolidating the dockets will also facilitate the timely and efficient resolution of the matters raised in the Application.

C. SERVICE

For purposes of service in the above-captioned proceeding, please direct all communications to the Applicant, Corix US, and SWMAC to the following counsel:

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*Counsel for SW Merger Acquisition
Corp.*

In accordance with the Commission’s Order entered September 15, 2022, at Docket No. M-2021-3028321, e-mail service is acceptable to CUPA, Corix US, and SWMAC. CUPA, Corix US, and SWMAC also propose that the parties agree to accept service of all documents via email by 4:30 P.M. as satisfying in-hand delivery. Should hard copy service become necessary as this proceeding progresses, hard copy service can be sent to the attorneys at the addresses listed above. Ms. Snyder will be the speaking attorney on behalf of the Applicant and Corix US for purposes of the prehearing conference. Mr. O’Neill will be the speaking attorney on behalf of SWMAC for purposes of the prehearing conference.

D. ISSUES

This change of control proceeding, and any issues raised herein, are guided by the provisions of Chapter 11 of the Public Utility Code, 66 Pa. C.S. § 1101, *et seq.*, and the Commission’s policy statement at 52 Pa. Code § 69.901. Specifically, Public Utility Code Section 1102(a)(3), 66 Pa. C.S. § 1102(a)(3), requires the Commission to issue a certificate of public

convenience, upon proper application, to authorize a “public utility or an affiliated interest of a public utility” to acquire from or transfer to [any other entity by any means whatsoever] “the title to, or the possession or use of, any tangible or intangible property used or useful in public service.”

The Commission has clarified that, under 52 Pa. Code § 69.901 (“Change of Control Policy Statement”), regardless of the tier, a certificate of public convenience is required, pursuant to 66 Pa. C.S. § 1102(a)(3), when a new controlling interest results from “a different entity becoming the beneficial holder of the largest voting interest in the utility or the parent.” The Commission is required to issue a certificate of public convenience upon finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa. C.S § 1103(a).

Further, in *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825 (Pa. 1972) (“*City of York*”), the Pennsylvania Supreme Court articulated the legal standard for approval of public utility mergers and acquisitions known as the public benefits test: “[A] certificate of public convenience approving a merger is not to be granted unless the Commission is able to find affirmatively that public benefit will result from the merger... [T]hose seeking approval of a utility merger [are required] to demonstrate more than the mere absence of any adverse effect upon the public... [T]he proponents of a merger [are required to] demonstrate that the merger will affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.”

In *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007) (MCI/Verizon Merger), the Pennsylvania Supreme Court interpreted the Public Utility Code and the *City of York* standard as satisfied by a simple preponderance of benefits, which every customer is not required to receive, and that such burden can be shown by the likelihood or probability of public benefits that need not be specifically quantified or guaranteed.

The *Popowsky* Court further provided that the Commission is required to address whether a proposed merger is likely to result in anti-competitive or discriminatory conduct, as “competitive impact is a substantial component of a rational net public benefits evaluation in the merger context.” *Popowsky*, 937 A.2d at 1056. An applicant for a certificate of public convenience also must establish financial, legal, and technical fitness. *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958).

CUPA is prepared to satisfy its burden of proof and demonstrate entitlement to a certificate of public convenience in connection with the indirect change of control of CUPA under Chapter 11 of the Public Utility Code, the Commission’s Change of Control Policy Statement and applicable case law. In this regard, CUPA will address all issues raised by the parties in their protests and such other issues that may arise during the course of the proceeding.

E. DISCOVERY

All parties to the proceeding agree to and propose the following modifications to the Commission’s discovery regulations.

1. Answers to written interrogatories shall be served in-hand within seven (7) calendar days of service.
2. Objections to interrogatories shall be communicated orally within three (3) calendar days of service of the interrogatories; unresolved objections shall be served to the ALJ in writing within five (5) days of service of the interrogatories.
3. Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of the written objections.
4. Answers to motions to dismiss objections and/or answering of interrogatories shall be filed within two (2) calendar days of service of such motions.

5. Any discovery served after noon (12 p.m.) on a Friday or the day before a holiday will be deemed to have been served on the following business day for purposes of tracking due dates.
6. All discovery due dates be “in-hand” and that electronic or fax service on the due date will satisfy the “in-hand” requirement.
7. Pursuant to 52 Pa. Code § 5.341(b), neither discovery requests nor responses thereto are to be served on the Commission or the Administrative Law Judge, although a certificate of service may be filed with the Commission’s Secretary.

If any discovery disputes cannot be resolved by the parties, such issue(s) will be brought to the Administrative Law Judge for disposition in accordance with the proposed discovery modifications and the Commission’s regulations governing practice and procedure.

F. WITNESSES

CUPA submitted its direct testimony as an attachment to the Application and presented the following witnesses:

1. Dana Hill
President
Community Utilities of Pa., Inc.
570 Hallett Road
East Stroudsburg, PA 18301

Subject: Mr. Hill’s testimony supports the Application from the position of CUPA being subject to the change of indirect control by way of the Proposed Transaction. He discusses the history and structure of CUPA, a summary of the Proposed Transaction, impacts and benefits of the Proposed Transaction, and other commitments being made on behalf of CUPA.

2. Ellen Lapson, CFA
Founder and Principal
Lapson Advisory
370 Riverside Drive
New York, New York 10025

Subject: Ms. Lapson’s testimony supports the Application and discusses the financial aspects of the Proposed Transaction. She provides a description

of the current ownership structure and financial circumstances surrounding the transaction, the impact of the Proposed Transaction on CUPA's access to equity capital, and the impact on access to debt capital and credit by Intermediate Newco and the combined companies.

3. Steven M. Lubertozi
Senior Vice President of Rates, Regulatory, and Legislative Affairs
Corix Infrastructure, Inc.
500 W. Monroe Street, Suite 3600
Chicago, Illinois 60661

Subject: Mr. Lubertozi's testimony supports the Application from the position of Corix US merging with SWMAC by way of the Proposed Transaction. His testimony explains why the proposed merger provides affirmative public benefits, describes the business of Corix Infrastructure Inc. ("CII"), Corix US's parent company, involved in the Proposed Transaction, the Proposed Transaction, the rationale behind the proposed merger, and governance of the combined companies. Mr. Lubertozi's testimony also addresses CII's vision and values and explains how they are consistent with those of SouthWest Water Company ("SouthWest"), the subsidiary of SWMAC that owns utility subsidiaries operating water and wastewater systems in seven states.

4. Brian D. Bahr
Direct of Rates and Regulatory Affairs
SouthWest Water Company
1620 Grand Avenue Parkway, Suite 140
Pflugerville, Texas 78660

Subject: Mr. Bahr's testimony supports the Application from the position of SouthWest, whose parent company, SWMAC, will be merging with Corix US by way of the Proposed Transaction. His testimony describes the SouthWest organization, SouthWest's mission and values, SouthWest's financial, technical, and managerial expertise in the water and wastewater industries, and the ways in which the proposed merger will provide affirmative public benefits to the public and CUPA's customers over time.

CUPA reserves the right in the subsequent round of testimony to add such other witnesses as it may deem appropriate upon further notice to the presiding Administrative Law Judge and the parties. CUPA will not offer direct testimony of any additional witnesses.

G. SCHEDULE FOR SUBMISSION OF TESTIMONY, HEARINGS AND BRIEFS

The parties are continuing to discuss and attempt to reach agreement on a litigation schedule. CUPA is willing to engage in informal discovery and settlement negotiations prior to the filing of other parties direct testimony with a procedural schedule as follows:

Application/Applicant Direct Testimony	November 9, 2022
Prehearing Conference	February 2, 2023
Informal Discovery and Settlement Negotiations	February 2 - March 3, 2023
Potential Submission of Settlement Petition	April 1, 2023
If no settlement reached, proceed with litigation:	
Other Parties Direct Testimony	March 16, 2023
Rebuttal Testimony	March 30, 2023
Surrebuttal Testimony	April 14, 2023
Oral Rejoinder/Evidentiary Hearings	April 28, 2023
Main Briefs	May 10, 2023
Reply Briefs/Settlement Petition	May 24, 2023
Recommended Decision	June 30, 2023
Exceptions	July 20, 2023
Reply Exceptions	July 31, 2023
Public Meeting	September 21, 2023

H. PUBLIC INPUT HEARINGS

CUPA submits that public input hearings are not necessary in this proceeding. Individual members of the public have not shown any interest in the Application. CUPA published notice in various newspapers of general circulation in its territory as the Commission directed. The Commission published notice of the Application in the PA Bulletin. No member of the public has filed a protest, intervention, or other correspondence with the Commission regarding the Application.

I. PROTECTIVE ORDER

CUPA, OCA, and OSBA have already entered into a stipulated protective agreement. CUPA will circulate among the parties a draft Protective Order to address confidential and proprietary materials that may be entered into the record in this proceeding consistent with the stipulated agreement. Once agreement among the parties on the Protective Order has been achieved, CUPA will submit the proposed order to the Administrative Law Judge for review and approval.

J. SETTLEMENT

CUPA, Corix US, and SWMAC are open, available and amenable to settlement discussions with the parties in accordance with 52 Pa. Code § 5.231(a).

Respectfully submitted,

/s/ Whitney E. Snyder

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Counsel for SW Merger Acquisition Corp.

Dated: February 1, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

BY ELECTRONIC MAIL ONLY

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Counsel for SWMAC

/s/ Whitney E. Snyder
Thomas J. Sniscak
Whitney E. Snyder
Phillip D. Demanchick Jr.

Dated: February 1, 2023