

COMMONWEALTH OF PENNSYLVANIA



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February 1, 2023

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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 (Wastewater)
A-2022-3036745 (Water)

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceedings.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Erin L. Gannon
Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
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Enclosures:

cc: The Honorable Mary D. Long (**email only**)
Certificate of Service

*340509

CERTIFICATE OF SERVICE

Application of Community Utilities of :
Pennsylvania Inc., for Certificates of Public :
Public Convenience under Sections 1102(1)(3) :
and 1103 of the Public Utility Code and All : Docket Nos. A-2022-3036744 (Wastewater)
Other Approvals Necessary Under the Public : A-2022-3036745 (Water)
Utility Code for Approval of a Merger of :
Equals Transaction :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 1st day of February 2023.

SERVICE BY E-MAIL ONLY

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Phone: 717-783-5048
Fax: 717-783-7152
Dated: February 1, 2023
*338479

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333 and the Prehearing Order issued by Administrative Law Judge Mary D. Long on January 3, 2023, the Office of Consumer Advocate (OCA) provides the following:

I. INTRODUCTION

On or about November 9, 2022, the Community Utilities of Pennsylvania, Inc. (CUPA or Applicant) filed Applications related to a change in control of its Pennsylvania water and wastewater utilities, under Sections 1102 and 1103 of the Public Utility Code, 66 Pa. C.S. §§ 1102, 1103. Specifically, the Applicant seeks the Commission’s approval of a proposed merger of Corix Infrastructure (US) Inc. (Corix US) and SW Merger Acquisition Corp. (SWMAC).¹ Application ¶ 1. Corix US indirectly owns 100% of CUPA. *Id.* at 4. As proposed, a new entity will be created, named Intermediate Newco, that will indirectly own 100% of CUPA, and all of the regulated water and wastewater utilities currently owned by Corix US’s parent (Corix Infrastructure, Inc.) and SWMAC. *Id.* at 7, 14.

¹ CUPA names and joins Corix US and SWMAC as necessary parties to this proceeding and represents that they have no objection to being named as a party. Application ¶¶ 4, 5.

CUPA serves approximately 3,278 water customers in Monroe County, Northampton County and Pike County, Pennsylvania, and approximately 3,846 wastewater customers in Monroe County, Chester County, and Pike County, Pennsylvania.

On December 12, 2022, the OCA and the Office of Small Business Advocate filed Protests. On January 3, 2023, the parties received notice that a Prehearing Conference would be held on February 2, 2023. Also on February 2, 2023, the presiding Administrative Law Judge issued a Prehearing Order directing the parties to provide prehearing memoranda by noon on February 1, 2023. On January 6, 2023, counsel for SWMAC filed Notices of Appearance.

II. SERVICE ON THE OCA

The OCA will be represented in this proceeding by Senior Assistant Consumer Advocate Erin L. Gannon. Two copies of all documents should be served in the OCA as follows:

Erin L. Gannon	717-780-4523
Senior Assistant Consumer Advocate	EGannon@paoca.org
Office of Consumer Advocate	
555 Walnut Street, Forum Place 5th Fl	
Harrisburg, PA 17101-1923	

The OCA requests that LMyers@paoca.org be included on the e-mail distribution list. The OCA will extend the same courtesy to any other parties requesting that additional persons be included on the e-mail distribution list.

III. DISCOVERY

The OCA anticipates that the parties will exchange information informally and does not propose any modifications to the Commission's discovery regulations at this time.

IV. ISSUES

Based upon a preliminary analysis of the Application, the OCA has identified the following areas which require consideration:

- Whether the transaction would have adverse tax effects or financial impacts for ratepayers.

- Whether the transaction is in accordance with the Public Utility Code and applicable Commission rules and regulations. *See* 66 Pa. C.S. §§ 1102, 1103, 1301, 1501.

- Whether the proposed change of control will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. *City of York v. Pa. PUC*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972). The Application includes a list of commitments to customers that would appear to mitigate harm. Application ¶ 36. The OCA will review the proposed transaction to ensure that it affirmatively benefits customers.

- Whether any conditions should be imposed on the proposed transfer of control. *See* 66 Pa. C.S. § 1103(a).

The OCA reserves the right to develop additional issues and address or respond to issues and positions raised by other parties in this proceeding.

IV. WITNESSES

The OCA's witness in this matter is Morgan N. DeAngelo, who will address financial, ratemaking and policy issues raised by the proposed transfer of control.

Morgan N. DeAngelo, Regulatory Analyst
Office of Consumer Advocate
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MDeAngelo@paoca.org

The OCA specifically reserves the right to call witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that an additional witness is necessary for any portion of its case, it will notify ALJ Long and all parties of record immediately.

V. PROPOSED SCHEDULE

The OCA is working with the parties to arrive at an agreeable procedural schedule. The OCA requests that all dates included in the schedule be considered “in-hand” dates and that electronic service on the due date will satisfy the “in-hand” requirement.

VI. SETTLEMENT

The OCA anticipates that the issues raised by the proposed change in control could be narrowed or resolved through the informal exchange of information and settlement discussions and, for that reason, the OCA supports establishing a procedural schedule that delays the deadline for submission of non-Applicant direct testimony for 45 to 60 days.

VII. PUBLIC INPUT HEARINGS

At present, the OCA is not aware of any interest in a public input hearing. The OCA will promptly notify the other parties and request a public input hearing should circumstances warrant.

Respectfully submitted,

/s/ Erin L. Gannon
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Dated: February 1, 2023