

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision approves the settlement of an application for approval for an indirect change of control of a water and wastewater utility. The settlement is in the public interest and is approved without modification.

HISTORY OF THE PROCEEDINGS

On November 9, 2022, Community Utilities of Pennsylvania, Inc. (CUPA or Company) 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 CUPA seeks Commission approval for a change of indirect control of CUPA - Water and Wastewater Divisions as a result

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.

of the proposed merger of SW Merger Acquisition Corp. (SWMAC) and Corix Infrastructure (US) Inc. (Corix US) and the creation of Intermediate Newco, a holding company (Proposed Transaction). Intermediate Newco 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.

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 application in a newspaper of general circulation in CUPA's service area. 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 the proceeding. On December 7, 2022, CUPA filed a Proof of Publication providing affidavits evidencing publication of the notice in the *Express Times*; *Pike County Dispatch*; *Pocono Record*; *The Daily Local News*; and *The Times Herald*.

On December 12, 2022, the Office of Consumer Advocate (OCA) filed a Protest and Public Statement. Also on December 12, 2022, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention and Protest, and Public Statement.

By Hearing Notice dated January 3, 2023, the Commission's Office of Administrative Law Judge assigned the Application to me and scheduled a prehearing conference for February 2, 2023. I issued a prehearing conference order on the same day.

The prehearing conference convened as scheduled. Counsel for all the Parties appeared. At the conference, I consolidated Docket No. A-2022-3036744 (wastewater) and A-2022-3036745 (water) for hearing and disposition. Among other things, the Parties agreed to a litigation schedule, including the exchange of written testimony and an evidentiary hearing on April 27, 2023. I memorialized the matters agreed to at the prehearing conference in a prehearing order that I issued on February 14, 2023.

CUPA and OCA served written direct, rebuttal and surrebuttal testimony. CUPA served written rejoinder testimony. OSBA did not serve written testimony.

By email on April 25, 2023, the Parties notified me that no Party had cross-examination for any witness and requested that I cancel the April 27, 2023 hearing. I granted the request. On April 27, 2023, the Parties filed a Joint Petition for Stipulation for Admission of Testimony and Exhibits into the Evidentiary Record. All Parties signed the Joint Stipulation. The Parties also included verifications by each witness offering testimony in this proceeding. All Parties agreed to the authenticity of the identified evidence. All Parties further stipulated that certain attachments to the Joint Applications were “Highly Confidential” and requested that I protect these attachments from the public record. By interim order served on May 1, 2023, I granted the Joint Stipulation and the Testimony and Exhibits, admitting the designated written testimony and exhibits into the record. Also on May 1, 2023, I issued an order directing the Parties to file main briefs on or before May 12, 2023, and reply briefs on or before May 24, 2023.

On May 12, 2023, the Parties notified me that they had achieved a settlement. CUPA and OCA filed a Joint Petition for Full Settlement (Settlement or Joint Petition) along with statements in support of the settlement on May 24, 2023.

OSBA did not join the settlement, but does not object to any of the terms of the settlement.

FINDINGS OF FACT

The Entities Involved in the Proposed Transaction

1. CUPA is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania. Application at 3.

2. The Company's business address is 570 Hallet Road, East Stroudsburg, PA 18301. Application at 3; CUPA St. No. 1 at 2-3.

3. CUPA is an investor-owned public utility pursuant to Section 1102 of the Public Utility Code, 66 Pa.C.S. § 1102, does business as a regulated water and wastewater utility in Pennsylvania, and is subject to the regulatory oversight of this Commission. Application at 3-4. CUPA St. No. 1 at 2-3.

4. The Company presently serves approximately 3,278 water customers and approximately 3,846 wastewater customers in Pennsylvania. Application at 3-4. CUPA St. No. 1 at 2-3.

5. The Company's service territory spans four counties in Pennsylvania. Application at 3-4. CUPA St. No. 1 at 2-3.

6. Corix US is a corporation incorporated under the laws of Delaware. Application at 4; CUPA St. No. 3 at 4-6.

7. Corix US is owned by Corix Infrastructure Inc. (CII). Application at 4; CUPA St. No. 3 at 4-6.

8. CII, through its operating subsidiaries, owns and operates approximately 385 water, 310 wastewater, two electricity distribution, one propane, three geothermal, one municipal, and three natural gas distribution systems in the United States and Canada. Application at 4; CUPA St. No. 3 at 4-6.

9. CII's water and wastewater utilities and related businesses serve over 800,000 people in 18 U.S. states and two Canadian provinces. Corix US, in turn, indirectly owns 100% of CUPA. Application at 4; CUPA St. No. 3 at 4-6.

10. SWMAC is a Delaware corporation that owns 100% of SouthWest Water Company (SouthWest). Application at 4-5; CUPA St. No. 4 at 3-4.

11. SWMAC, through its operating subsidiaries, owns and operates 18 water and wastewater utility companies in the United States. Application at 4-5; CUPA St. No. 4 at 3-4.

12. SWMAC's water and wastewater utilities provide service to over 500,000 people in seven U.S. states. Application at 4-5; CUPA St. No. 4 at 3-4.

13. SWMAC is owned by IIF Subway Investment LP ("IIF Subway") and Bazos CIV, L.P. Application at 4-5; CUPA St. No. 4 at 3-4.

14. As part of the Proposed Transaction, Corix US will organize Intermediate Newco under the laws of Delaware (Intermediate Newco). Application at 5.

The Proposed Transaction

15. The Proposed Transaction does not involve a change in direct control of CUPA. Application at 1, 8; CUPA St. No. 3 at 16.

16. The Proposed Transaction does not involve a transfer of the stock or assets of CUPA. Application at 1, 8; CUPA St. No. 3 at 16.

17. The stock or assets of the Company will not be pledged or encumbered as a result of the Proposed Transaction. Application at 1, 8; CUPA St. No. 3 at 16.

18. The Proposed Transaction will take place in several stages.

19. On August 26, 2022, CII and Corix US (the “Corix Parties”) entered into a transaction agreement (Transaction Agreement) with IIF Subway, SWMAC, and SouthWest (the “SouthWest Parties”). Application at 7. CUPA St. No. 3 at 6-7.

20. The Transaction Agreement provides a framework for combining CII’s water, wastewater, and related businesses, with the water and wastewater businesses owned by SWMAC. Application at 7. CUPA St. No. 3 at 6-7. (The Transaction Agreement is attached to the Application at Appendix B.)

21. When the transactions contemplated by the Transaction Agreement are completed, CII and an affiliate or affiliates of CII will own 50% of Corix US and SWMAC Holdco, an entity that will be formed by SWMAC’s shareholders before closing, will own the other 50% of Corix US. Application at 7; CUPA St. No. 3 at 6-7.

22. Corix US, in turn, will indirectly own and control all the CII water, wastewater and related businesses, and the SWMAC water and wastewater businesses. Application at 7; CUPA St. No. 3 at 6-7.

23. To prepare for the transaction, both the Corix Parties and the Southwest Parties will undertake pre-closing restructuring transactions. Application at 7. CUPA St. No. 3 at 6-7.

24. After the Corix Parties and the SouthWest Parties complete the pre-closing restructuring transactions, SWMAC will merge with and into Corix US, with Corix US being the surviving entity. Application at 7-8; CUPA St. No. 3 at 7-11.

25. As a result, SWMAC Holdco will acquire 50% of Corix US’s stock, Corix US will acquire the outstanding stock of SouthWest currently owned by SWMAC, and Corix US will continue to indirectly own the Company. Application at 7-8; CUPA St. No. 3 at 7-11.

26. Corix US then will transfer all the outstanding equity of SouthWest and certain Corix US entities to Intermediate Newco. Application at 8; CUPA St. No. 3 at 7-11.

27. In exchange for this contribution of stock, Intermediate Newco will issue stock to Corix US and assume all of Corix US's third-party debt, with Intermediate Newco being a wholly owned subsidiary of Corix US. Application at 8; CUPA St. No. 3 at 7-11.

28. Upon consummation of the Proposed Transaction: (a) CII and an affiliate or affiliates of CII will own 50% of Corix US's stock; and (b) SWMAC Holdco will own the remaining 50% of Corix US's stock. Corix US will own all the stock of Intermediate Newco, and Intermediate Newco will indirectly own all the utility operating subsidiaries comprising the CII water, wastewater and related businesses, as well as the SWMAC water and wastewater business. Application at 8; CUPA St. No. 3 at 7-11.

After the Proposed Transaction

29. The President of the Company, Dana Hill, will remain the President of the Company. Application at 9.

30. The Chief Executive Officer of the combined company will be Rob MacLean, the current CEO of SWMAC and SouthWest. Application at 9.

31. As of closing, the combined company will be governed by a board comprised of nine directors (the "Board"): the combined company's CEO; four shareholder representatives; and four independent directors (one of whom will be the chair). Application at 9.

32. CUPA will remain financially, technically, and legally fit to own and operate its Pennsylvania public utility business. Application at 11; CUPA St. No. 1 at 5-6. CUPA St. No. 2 at 10; CUPA St. No. 3 at 16; CUPA St. No. 4 at 5-6.

33. The Proposed Transaction will not result in any anti-competitive or discriminatory conduct because SWMAC does not own or operate any utilities in Pennsylvania, the Proposed Transaction will not reduce competition in Pennsylvania. Application at 16.

34. The merger will have no impact on the Commission's continuing regulation of CUPA as a water and wastewater utility in Pennsylvania. CUPA will remain a public utility subject to regulation by the Commission pursuant to the Public Utility Code. Application at 16.

35. The Proposed Transaction creates no new risks to CUPA or CUPA's customers. CUPA St. No. 2 at 10.

SETTLEMENT TERMS

The Parties have agreed to the settlement terms as set forth below. These terms are stated verbatim and for ease of reference retain the same paragraph numbers as they appear in the Settlement.

49. Consistent with the Company's commitment to maintaining a strong local presence in Pennsylvania in terms of employees, facilities and offices, CUPA will maintain its principal business address in East Stroudsburg, Pennsylvania unless relocation of the office is necessary for CUPA to properly manage day-to-day operations. The Company will notify the Commission within 30 days if it relocates its principal office.

50. CUPA will continue to maintain sufficient staff, facilities, and operating skills consistent with its obligation to serve customers in Pennsylvania. CUPA will continue to meet the service needs of its customers in accordance with the Public Utility Code and applicable provisions of the Commission's regulations. CUPA will continue to have access to capital needed to support continued prudent investment in its facilities, systems, and staff that will improve service to Pennsylvania customers.

51. CUPA will undertake commercially reasonable efforts to obtain the information that it needs to develop and bill volumetric rates for wastewater customers who do not receive

water service from CUPA in the service territory formerly known as Utilities, Inc. of Pennsylvania. If CUPA obtains at least six months' worth of usage data for the relevant customers at least two months before the next base rate case filing, it will propose volumetric rates in that proceeding. In the event CUPA is unable to obtain the necessary information in this time frame, CUPA commits to proposing volumetric rates in a subsequent base rate proceeding once it has obtained the necessary information. Every 45 days until metered rates are proposed, CUPA will file a report in this docket regarding its progress in obtaining the usage data.

52. Consistent with CUPA's rebuttal testimony in Docket Nos. R-2021-3025206 & R-2021-3025207, when CUPA customers contact customer service, they are directed to a customer service representative responsible for customers in Pennsylvania. Therefore, at closing, the current process will continue to be in place.

53. CUPA will hold a customer meeting in the Tamiment service territory within 60 days after entry of an order. The meeting will be open to the public and allow for in-person and virtual participation. CUPA will work with the Glen at Tamiment Property Owners Association (POA) to 1) schedule the date, time, and location of the meeting and 2) ensure that CUPA and, as needed, Corix US representatives attend the meeting who have knowledge and authority to respond to questions and concerns regarding high bill complaints, water quality, training for call center representatives, and other issues identified in advance by the POA or customers. Within 60 days, post-meeting, CUPA will file a report with the Commission summarizing its actions to address questions and complaints raised during the customer meeting.

54. CUPA, as a condition to the approval of the Proposed Transaction, is willing to commit to continuing to propose low-income water and wastewater rates in its next two base rate cases. CUPA will also propose an arrearage management program for water and wastewater customers in its next base rate case. The OCA and OSBA reserve their rights to present their positions on CUPA's proposals in future cases.

55. For customers who are found to be eligible for the low-income program, CUPA will apply the low-income rate retroactively to the date the customer applied for enrollment.

56. CUPA will take the following steps to increase enrollment in its low-income program, at a minimum, within 30 days after entry of an order approving the Proposed Transaction:

- Send to all residential water customers a bill insert containing information about CUPA’s low-income program, eligibility requirements, and how to enroll.
- Add and maintain updated information on CUPA’s website about the bill discount program in its current or future forms that is readily accessible from the home page.
- Provide reasonable training to customer service representatives about the CUPA low-income program, including eligibility criteria and ways to enroll.

57. In its next base rate case, CUPA will propose to increase eligibility to the low-income program from customers with income at or below 100% of the Federal Poverty Level (“FPL”) to customers with income at or below 200% of the FPL. The OCA and OSBA reserve their rights to present their positions on CUPA’s proposal in future cases.

58. CUPA defines “Transaction Costs” as:

- The costs of securing formal written evaluations of the transaction;
- The costs of structuring the transaction and obtaining tax advice on the structure of the transaction;
- The costs of negotiating, preparing, and reviewing the Transaction Agreement;
- The costs of retained consultants and advisors to evaluate the transaction and perform due diligence;
- Legal and other fees of completing pre-closing restructuring;
- Legal and other fees to close the proposed transaction;
- Financial advisor fees; and
- The costs of securing regulatory approvals.

Transaction Costs have been and will be incurred before, or on the date, the Proposed Transaction closes. CUPA will not seek to recover Transaction Costs. Likewise, while CUPA’s definition of Transaction Costs does not include incentive and retention payments made to employees, CUPA will not seek recovery from customers of Transaction Costs or incentive and retention payments directly related to and paid solely because of the Proposed Transaction.

- a) If Corix US becomes obligated to make, and subsequently makes, a termination payment to IIF Subway pursuant to Section 10.2(c) of the Transaction Agreement, CUPA will not seek to recover any portion of such payment from its customers. If any of the Corix Parties become liable for money damages under Section 10.2(a) of the Transaction Agreement and CUPA seeks to recover any portion of such payment from its customers, it will be separately identified in CUPA's rate case, and the OCA and OSBA reserve the right to challenge the reasonableness, prudence, and basis of the claim.
- b) CUPA does not anticipate that the Proposed Transaction will be reflected in CUPA's books. CUPA agrees to provide, within 60 days after the Proposed Transaction closes, the journal entries that reflect the impact of the transfer/merger on its books and records, if there are any such entries. If there are any entries, CUPA agrees that these entries will not impact CUPA's rate base for ratemaking purposes. The parties reserve all rights to challenge any direct or indirect impact of the Transaction on other components of the ratemaking formula, including but not limited to cost of capital.

59. No claim will be made for an acquisition adjustment under 66 Pa. C.S. § 1327 related to the Transaction.

60. At least for the first two rate cases post-closing, if the cost of capital claimed for establishing water and wastewater rates for CUPA reflects any risk adjustment associated with its corporate parents or any affiliate not regulated by the Commission, CUPA will identify the adjustment, and the OCA and OSBA reserve the right to challenge the reasonableness, prudence, and basis of the adjustment.

61. At least for the first two rate cases post-closing, if any equity or debt issued to finance goodwill is included in CUPA's ratemaking capital structure, CUPA will identify it, and the OCA and OSBA reserve the right to challenge the reasonableness, prudence, and basis for its inclusion.

62. As provided in the Application, until the company enters into a new affiliate interest agreement after closing, the company will continue to use its existing affiliate interest agreement to allocate corporate shared services costs. When the company proposes to enter into a new affiliate interest agreement, the agreement will be presented to the Commission for its approval.

pursuant to Section 2102 of the Public Utility Code, 66 Pa. C.S. § 2102.

63. Within sixty (60) days after the Proposed Transaction closes, CUPA will file a report with the Commission, copied to OCA and OSBA, notifying them of the date the Transaction was completed/closed.

64. For five years after the closing date, CUPA will track and quantify all the benefits (both qualitative and quantitative) customers in its service territory are receiving under its new ownership. CUPA will submit that information in any future base rate case in which such tracked benefits accrue in the test years applicable to the particular rate filing(s).

65. The Commission's approval of the Settlement shall not be construed as approval of any Joint Petitioner's position on any issue in the proceeding but rather as an agreed-to compromise of the Joint Petitioners' competing positions. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any Joint Petitioner in this or any other proceeding if it were fully litigated. Accordingly, this Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement any term specifically agreed to by the Joint Petitioners or to enforce this Settlement.

66. This Settlement is presented without prejudice to the position any of the Joint Petitioners may advance in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to by the Joint Petitioners in this Settlement.

67. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. In reaching this Settlement, the Joint Petitioners thoroughly considered all issues and the give and take of the Joint Petitioners' respective positions. As a result of that consideration, the Joint Petitioners believe that the Settlement meaningfully addresses all such issues raised and therefore should be approved without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active Parties within five (5) business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement, or any Joint Petitioner elects to

withdraw the Settlement, the Joint Petitioners reserve their respective rights to fully litigate this case, including but not limited to, presentation of legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

68. All Joint Petitioners support the Settlement and have agreed to make reasonable and good faith efforts to obtain approval of the Settlement by the Presiding Officers and the Commission without modification. If the Presiding Officers, in their Recommended Decision, recommend that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions. However, to the extent any terms and conditions of the Settlement are modified, or additional matters are proposed by the ALJ in the Recommended Decision, the Joint Petitioners do not waive their rights to file Exceptions in support of the Settlement. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed provided such Replies support the Settlement.

69. The Joint Petitioners recognize that the Settlement fully resolves all issues in this proceeding and is only binding upon the signatories to this Joint Petition.

70. The Joint Petitioners agree that this Settlement may be signed or executed in separate counterparts or signature pages that shall be binding upon the Joint Petitioners, and such counterparts shall be considered as one document. The Joint Petitioners agree and request that if the Settlement is approved, the OCA's and OSBA's Protests in this matter should be marked satisfied and closed due to the Settlement.^[2]

DISCUSSION

A. The Proposed Transaction

On August 26, 2022, the Corix Parties entered into the Transaction Agreement with IIF Subway, SWMAC, and the SouthWest Parties. The Transaction Agreement provides a framework for combining CII's water, wastewater, and related businesses, with the water and wastewater businesses owned by SWMAC. When the transactions contemplated by the

² Settlement pp. 22-29.

Transaction Agreement are completed, CII and an affiliate or affiliates of CII will own 50% of Corix US and SWMAC Holdco, an entity that will be formed by SWMAC's shareholders before closing, will own the other 50% of Corix US. Corix US, in turn, will indirectly own and control all the CII water, wastewater and related businesses, and the SWMAC water and wastewater businesses. To prepare for the transaction, both the Corix Parties and the Southwest Parties will undertake pre-closing restructuring transactions. After the Corix Parties and the SouthWest Parties complete the pre-closing restructuring transactions, SWMAC will merge with and into Corix US, with Corix US being the surviving entity. As a result, SWMAC Holdco will acquire 50% of Corix US's stock, Corix US will acquire the outstanding stock of SouthWest currently owned by SWMAC, and Corix US will continue to indirectly own the Company. Corix US then will transfer all the outstanding equity of SouthWest and certain Corix US entities to Intermediate Newco. In exchange for this contribution of stock, Intermediate Newco will issue stock to Corix US and assume all of Corix US's third-party debt, with Intermediate Newco being a wholly owned subsidiary of Corix US. Upon consummation of the Proposed Transaction: (a) CII and an affiliate or affiliates of CII will own 50% of Corix US's stock; and (b) SWMAC Holdco will own the remaining 50% of Corix US's stock. Corix US will own all the stock of Intermediate Newco, and Intermediate Newco will indirectly own all the utility operating subsidiaries comprising the CII water, wastewater and related businesses, as well as the SWMAC water and wastewater business.

Figure 1 depicts the simplified organization of Corix US and SWMAC before the transaction, and Figure 2 provides a simplified organization chart reflecting the combined company after SWMAC merges with and into Corix US.³

³ Application at 1-3.

Figure 1.

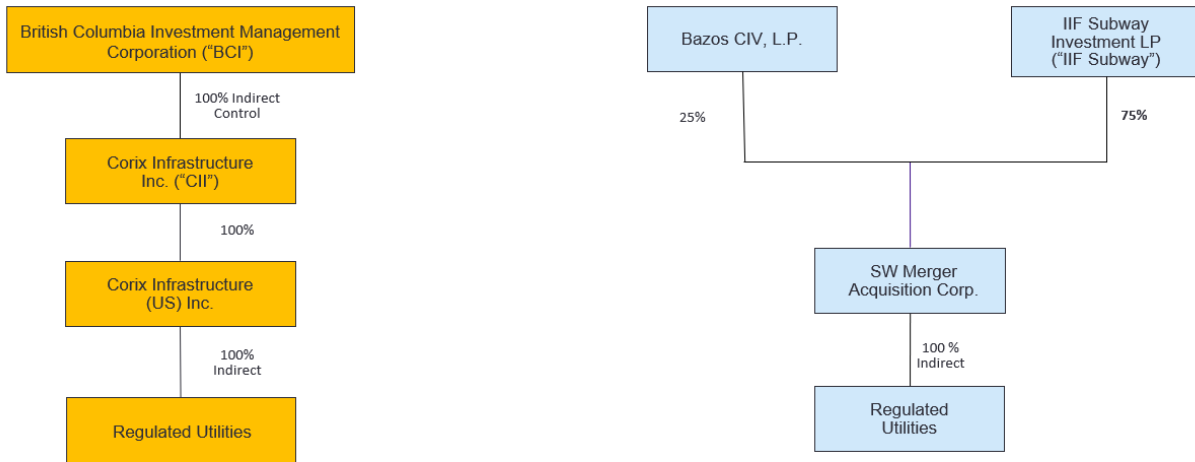
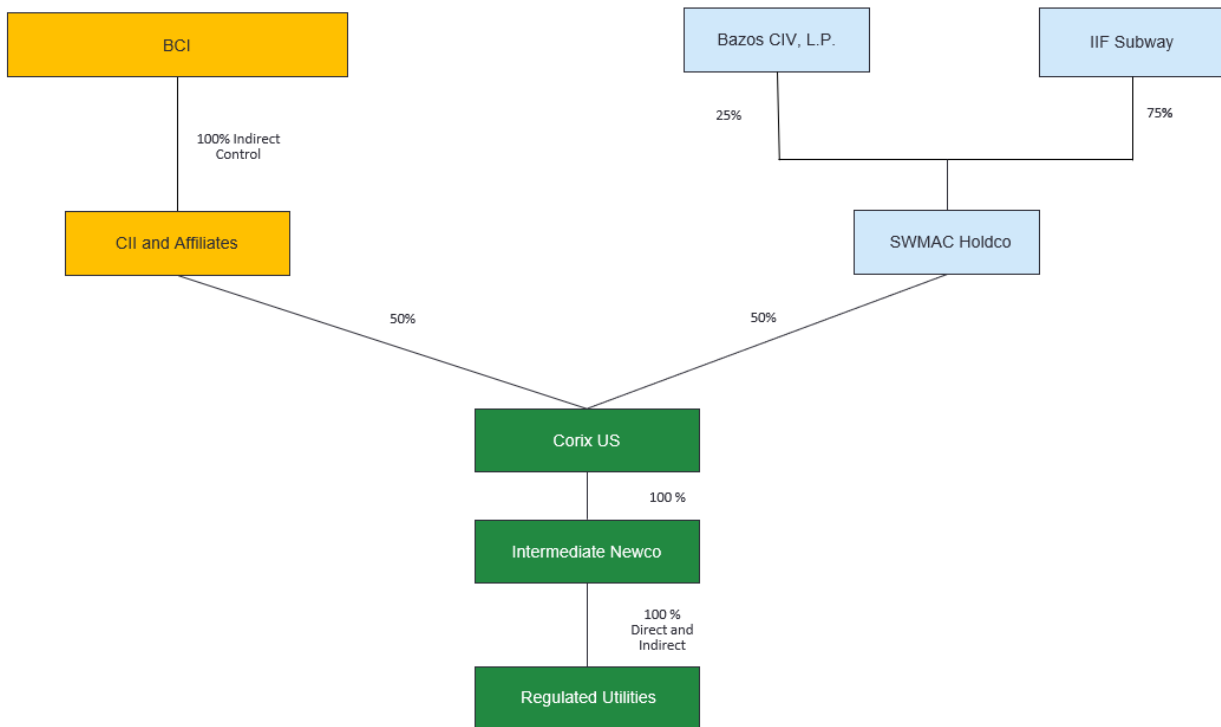


Figure 2.



B. Legal Standards

Section 1102(a)(3) of the Public Utility Code provides that the Commission must approve the Proposed Transaction:

For any public utility . . . to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.^[4]

Before the Commission may issue a certificate of public convenience it must find that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.⁵ Even where the Commission finds sufficient public benefit to grant a certificate of public convenience the Commission has discretion to impose conditions which it deems to be just and reasonable.⁶

According to the Pennsylvania Supreme Court, satisfying the standard of Section 1103(a) of the Public Utility Code, requires the Commission to find that the Proposed Transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.”⁷ More recently, the Supreme Court explained:

In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.^[8]

⁴ 66 Pa. C.S. § 1102(a)(3).

⁵ 66 Pa.C.S. § 1103(a).

⁶ 66 Pa.C.S. § 1103(a).

⁷ *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972) (*City of York*).

⁸ *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040, 1057 (Pa. 2007) (*Popowsky*).

The Court also explained that demonstration of the affirmative public benefit does not require that every customer receive a benefit from the Proposed Transaction.⁹

With regard to the legal standard applied in this case, the Parties submitted a settlement of all issues. Commission policy promotes settlements.¹⁰ Settlements reduce the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding.¹¹ The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters.¹² Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest.¹³ The Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest.¹⁴

C. Analysis

1. Technical Fitness

As a certificated public utility, the Commission has already determined that the Company is financially, technically, and legally fit. That is, “[a] certified public utility ... enjoys a presumption that it is fit.”¹⁵

⁹ 937 A.2d at 1061.

¹⁰ 52 Pa. Code § 5.231.

¹¹ 52 Pa. Code § 69.401.

¹² *Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (*Lancaster*).

¹³ *Id.* (citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered Apr. 1, 1996) (*Warner*)); *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

¹⁴ *Pa. Pub. Util. Comm’n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

¹⁵ *McCloskey v. Pa. Pub. Util. Comm’n.*, 195 A.3d 1055, 1058 (Pa. Cmwlth. 2018).

CUPA stated in its Application, that the Proposed Transaction will not negatively impact CUPA's continuing financial, technical, and legal fitness to own and operate a water and wastewater utility in Pennsylvania.¹⁶ The Proposed Transaction is a change in indirect control of CUPA and does not appear to have a direct effect on the day-to-day operation of the utility. With the Settlement described below, no party challenged the presumption that CUPA is and will remain technically, financially, and legally fit.

2. Effect on Competition

Similarly, no party challenged CUPA's statement in the Application that the Proposed Transaction will not result in any anti-competitive or discriminatory conduct, particularly as SWMAC does not own or operate any utilities in Pennsylvania.¹⁷ The Proposed Transaction will not reduce competition in Pennsylvania.

3. Benefits Identified in the Joint Application

According to CUPA, the Application and testimony demonstrate that the Proposed Transaction results in the following substantial affirmative benefits: (1) produce benefits arising from the advantages of a larger, more diversified company; (2) improve CUPA's access to capital needed to support further investment in facilities and systems that would improve service to Pennsylvania customers; (3) generate operational benefits to customers; (4) provide additional benefits over time; (5) retain the strong corporate citizenship and presence of CUPA in Pennsylvania; and (6) support effective state regulation.¹⁸

CUPA contends that the Proposed Transaction will result in enhanced financial, managerial and technical expertise for CUPA, which will benefit its customers. It combines two strong water and wastewater utility holding companies that both possess financial, technical, and managerial expertise in the water and wastewater industries while also having a shared mission

¹⁶ Application at ¶¶ 27-31.

¹⁷ Application at ¶ 32(h).

¹⁸ Application at 12.

and shared values. The Proposed Transaction is highly complementary and allows for the sharing of prudent practices and operating experiences (both at the corporate level and regionally/locally) to support the creation of a larger, stronger water and wastewater company that will support the safe, reliable and sustainable delivery of critical resources and services that will enhance the customer experience.¹⁹

At the same time, the combining companies are geographically diverse. The Proposed Transaction will build a larger platform to facilitate needed investments in the communities served by the Corix Infrastructure Inc. (CII) and SWMAC operating companies, including CUPA, while continuing to add scale and grow in the future. The newly-created Intermediate Newco will have the scale to enhance the ability of its operating utilities (in this case, CUPA) to make important infrastructure investments that provide long-term benefits for the communities it will serve in Pennsylvania. The combined company's investments in water and wastewater infrastructure improvements will further ensure high-quality service and high-quality water that is safe, reliable, sustainable, and affordable.²⁰

To that end, the Proposed Transaction will allow for improved financing terms compared to present day and will improve CUPA's access to capital needed to support further investment in facilities and systems that would improve service to Pennsylvania customers.²¹

According to CUPA, the Proposed Transaction will have operational benefits and will increase emergency response resources, which will further benefit customers. SWMAC and CII share common values centered on safety, environmental stewardship, integrity, employee empowerment, and excellence in serving their customers and delivering on their commitments to stakeholders. These shared values provide an opportunity for operational improvement that follows from sharing prudent practices and resources.²² This sharing of practices and resources will likewise reduce operational risk, as being part of a larger organization results in more

¹⁹ Application at 12-14; CUPA St. No. 1 at 7-9; CUPA St. No. 3 at 13, 15.

²⁰ Application at 12-14; CUPA St. No. 1 at 7-9; CUPA St. No. 3 at 14-15.

²¹ Application at 12; CUPA St. No. 2 at 10; CUPA St. No. 3 at 16.

²² CUPA St. No. 1 at 9; CUPA St. No. 3 at 15.

resources, such as equipment, tools, inventory, and other assets that can be shared or leveraged in response to emergencies and natural disasters. It also reduces operational risk by connecting to a broader group of vendors, providing for optionality in day-to-day operations and emergencies. For example, if a natural or man-made disaster (e.g., a tornado or cyber breach) were to disrupt CUPA operations or operations staff, CUPA would be able to draw from a larger pool of employees familiar with CUPA's processes, and these employees would be ready, willing, and able to assist CUPA's operations.²³

The sharing of prudent practices that will result from the Proposed Transaction will also improve CUPA's performance. Sharing these practices involves identifying optimal ways of efficiently performing certain tasks and operations and then implementing those practices deemed prudent. For example, the combining companies may share methods of addressing customer service complaints, compliance with environmental regulations, safety initiatives, data security programs, and operational techniques. In short, sharing of prudent practices promotes continuous improvement, which ultimately leads to benefits for customers.²⁴

CUPA further explains that the Proposed Transaction will also provide affirmative public benefits because it will be seamless to customers and will provide continuity of management and operations. CUPA will continue to operate and charge duly authorized rates under the terms of service previously approved by the Commission as a Pennsylvania public utility subject to the continuing jurisdiction of the Commission.²⁵ The Proposed Transaction will likewise retain the strong corporate citizenship and presence of CUPA in Pennsylvania.²⁶

CUPA expects that there will be financial benefits as a result of the Proposed Transaction as well. For example, CUPA expects that the combination of two boards of directors into a single board and the combination of two executive leadership teams into a single team will reduce costs. Because these costs – board governance and senior executive – are subsequently

²³ CUPA St. No. 1 at 10.

²⁴ CUPA St. No. 1 at 10.

²⁵ CUPA St. No. 1 at 6-7.

²⁶ Application at 12; CUPA St. No. 1 at 5-7.

allocated through the corporate allocation process to individual utilities (including CUPA) and reflected in customer rates, CUPA expects customers to benefit as the net savings are allocated to individual utilities and reflected in rates in future proceedings.²⁷

While the Proposed Transaction is not driven by operational synergies, CUPA also anticipates the ability to produce longer-term financial benefits as the integration of CII's and SWMAC's water and wastewater businesses occurs methodically and systematically over time, where improved efficiency and the integration of administrative and general functions should result in cost savings. CUPA will address any costs and benefits of integration in future ratemaking proceedings, and customers will benefit from those improved operations.²⁸

Taken together, CUPA believes that, over time, these lower costs (and/or the ability to better control costs as a larger entity) will help CUPA keep its water and wastewater utility rates lower than the rates would have been in the absence of the Proposed Transaction.

Additionally, the increased scale, expertise and financial resources that will result from the Proposed Transaction will provide further affirmative public benefits by positioning the Company for continued growth in Pennsylvania. The Company has continued to expand its presence in Pennsylvania through acquisitions, such as the service territory now known as Tamiment, f/k/a Pennsylvania Utility Company. As the Commission recognized, CUPA acquired Tamiment in 2019 in a state of disrepair and, prior to seeking a rate increase for Tamiment customers, had already made significant upgrades, repairs, and replacements. According to CUPA, this merger will only improve the Company's ability to continue to grow its operations in Pennsylvania and enhance local scale, purchasing power, and operational efficiencies.²⁹

In addition to these affirmative public benefits that will result from the Proposed Transaction, CUPA identified specific commitments that the combined companies have made to protect CUPA's customers:

²⁷ Application at 14; CUPA St. No. 1 at 9; CUPA St. No. 3 at 13-16.

²⁸ CUPA St. No. 3 at 16.

²⁹ Application at 14-15; CUPA St. No. 1 at 7; CUPA St. No. 3 at 16.

- CUPA will continue to provide high-quality water and wastewater utility services to CUPA's customers.
- CUPA will continue to maintain a strong local presence in Pennsylvania in terms of employees, facilities and offices, and community support.
- The combined companies have incurred and will incur transaction costs. The combined companies, including CUPA, will not seek to recover transaction costs from customers.
- While the Proposed Transaction is not driven by net financial synergies, the combined companies anticipate that the business combination will improve efficiency and the integration of administrative and general functions should result in cost savings.⁶ The integration of CII's water, wastewater and related businesses with SWMAC's water and wastewater business will be a significant, prolonged undertaking. The combined companies acknowledge that costs and benefits associated with integration will be addressed in future ratemaking proceedings.
- CUPA will not guarantee any debt or credit instrument of Intermediate Newco or any affiliate of CUPA unless such debt is incurred for the specific purpose of CUPA's system or operations.⁷ CUPA will obtain any necessary Commission approvals related to issuing securities pursuant to 66 Pa.C.S. § 1901.
- The proceeds of any debt incurred by CUPA will only be used for purposes specific to the CUPA system or operations.
- CUPA will not transfer any material asset to Intermediate Newco or an affiliate except in an arm's length transaction and in compliance with the laws of the Commonwealth of Pennsylvania and subject as necessary to first obtaining Commission approval.
- The combined company will be established with a target investment grade capital structure profile and operated in a way that is consistent with maintaining an investment grade profile.
- The combined company, including CUPA, will refrain from any involuntary reduction in force related to the combination for the first 12 months after the transaction closes.
- CUPA will present any new affiliated interest and/or shared services agreements to the Commission for approval pursuant to the Commission's rules.³⁰

³⁰

CUPA St. No. 3-R at 23-24.

4. Benefits Identified in the Settlement

In recognition that not all Parties to the proceeding agreed that all of the benefits identified in the Application satisfied the prevailing legal standards noted above, the Settlement has layered the following additional substantial affirmative public benefits of the Proposed Transaction.

a. Operational Stability (Joint Petition ¶¶ 49-50)

Office Location. In its testimony, OCA raised concerns that, as filed, the Proposed Transaction lacked commitments to ensure that new ownership will not negatively impact CUPA's operations. Of particular concern, CUPA did not commit to how long it will keep its headquarters in East Stroudsburg or in Pennsylvania. As OCA witness DeAngelo explained, because CUPA is the only public utility subsidiary of the combining companies that is located in Pennsylvania, it is important for the combining companies to show their commitment to Pennsylvania customers by keeping CUPA's principal office in Pennsylvania and in East Stroudsburg.³¹ While CUPA indicated it has no plans to relocate the office and also provided assurances that it will always require a location to base Pennsylvania employees and store utility equipment and materials, it argued that relocation of the office might become necessary in the future for CUPA to properly manage day-to-day operations.³²

Accordingly, CUPA has agreed that it "will maintain its principal business address in East Stroudsburg, Pennsylvania unless relocation of the office is necessary for CUPA to properly manage day-to-day operations."³³ This benefits customers by ensuring a local office is available and the location of the office will not change unless necessary for day-to-day operations, thus providing stability for customers. OCA submits that corporate presence and public access to the utility, as this condition provides, is valuable to both the utility and the public in general.

³¹ OCA St. 1 at 6.

³² CUPA St. No. 1R at 2; CUPA St. 4R at 2; OCA St. 1SR at 5.

³³ Joint Petition ¶ 49.

Access to Capital. OCA also raised the concern that the Proposed Transaction did not ensure that CUPA would have access to capital to support investment adequate to maintain service to customers. OCA was concerned that, as a subsidiary, CUPA would not be able access capital that is not provided by the corporate parents.³⁴ CUPA responded that post-transaction, it will have access to the same sources of debt capital as it does today and may also have additional access to sources that have relationships with its new affiliates.³⁵

While CUPA's response does not fully address OCA's concern, the Parties agreed to a stronger commitment by CUPA that it will (1) continue to maintain sufficient staff, facilities, and operating skills consistent with its obligation to serve customers in Pennsylvania, (2) meet the service needs of its customers in accordance with the Public Utility Code and applicable provisions of the Commission's regulations, and (3) have access to capital needed to support continued prudent investment in its facilities, systems, and staff that will improve service to Pennsylvania customers. This commitment will contribute to operational stability and the provision of safe and adequate water and wastewater service post-restructuring. Customers benefit from prudent investment in facilities, systems and staff through both improved service. Moreover, ensuring adequate access to capital may result in lower costs to customers over the long run.

b. Billing and Customer Service (Joint Petition ¶¶ 51-53)

Volumetric rates. Currently, CUPA charges wastewater customers in its Utilities Inc. of Pennsylvania (UIP) service territory flat rates for service.³⁶ This was an issue raised in CUPA's recent base rate case. In its Opinion and Order approving the settlement of that proceeding, the Commission supported the expansion of metered rates to the UIP customers, stating:

³⁴ OCA St. 1 at 5-6; OCA St. 1SR at 3-4.

³⁵ CUPA St. 3RJ at 8.

³⁶ OCA St. 1 at 7-8.

We concur with the Joint Petitioners that there is no question that volumetric billing is preferable to flat rate billing, as it provides better price signals and promotes conservation. In addition to encouraging the conservation of water and wastewater services, volumetric billing also results in a more equitable distribution of the variable costs of wastewater service among ratepayers.^[37]

As a term of that settlement, CUPA agreed to reach out to the utility that provides water service to customers in the UIP service territory by February 14, 2022, to establish an ongoing arrangement to obtain monthly volumetric usage data for the purpose of proposing metered rates. However, that commitment was contingent on CUPA obtaining the customer usage data by March 1, 2023 in usable format.³⁸

In this proceeding, OCA renewed its recommendation that CUPA propose metered rates for UIP customers in its next base rate proceeding.³⁹ As of April 2023, CUPA had received one month of data, which it determined to be in usable format, and was in the process of negotiating a contract to obtain additional historical data from the customers' water provider.⁴⁰ In his rebuttal testimony, CUPA witness Hill discussed that CUPA needs historical usage data to project future usage and to design rates.⁴¹

CUPA has agreed to “undertake commercially reasonable efforts to obtain the information that it needs to develop and bill volumetric rates for wastewater customers who do not receive water service from CUPA in the service territory formerly known as Utilities, Inc. of Pennsylvania.”⁴² This term furthers and renews a settlement term from CUPA's prior base rate proceeding. CUPA was unable to obtain the data necessary to propose volumetric rates within the timeline proposed in the base rate case settlement. The Settlement here thus extends and

³⁷ *Pa. Pub. Util. Comm'n v. Cmty. Utils. of Pa., Inc. – Water Div.*, Docket R-2021-3025206 at 68-69 (Opinion and Order entered Jan. 13, 2022) (*2022 Order*).

³⁸ *2022 Order* at 15; OCA St. 1, App. B. at 7-8; OCA St. 1SR at 7.

³⁹ OCA St. 1 at 8; OCA St. 1SR at 6-7.

⁴⁰ OCA St. 1SR at 7, App. I (CUPA supplemental response to OCA Set I-4).

⁴¹ CUPA St. 1R at 3.

⁴² Joint Petition at ¶ 51.

renews CUPA's commitment to use commercially reasonable efforts to obtain the necessary data and propose volumetric rates for customers, which would provide customers greater control over the cost of wastewater utility bills. OCA also supports this settlement term, noting that together the Settlement provisions help to ensure that metered rates are established for UIP customers as soon as possible. If that does not happen in the next base rate case, then CUPA will be subject to frequent reporting requirements so the Commission and OCA can monitor its efforts.

Call Center Customer Service. OCA also provided recommendations in this proceeding regarding customer service. As explained by OCA witness DeAngelo, CUPA's call centers are located in North Carolina, Florida, and Illinois – and not in Pennsylvania.⁴³ It is important the customer service representatives are familiar with Pennsylvania-specific rights and protections.⁴⁴ CUPA has committed that, at closing, the current process for customer call handling will continue to be in place, i.e., when CUPA customers contact customer service, they are directed to a customer service representative responsible for customers in Pennsylvania. This stability in customer service benefits customers and leads to better outcomes for customer calls. This settlement terms also helps to ensure that customer service does not degrade as a result of the merger.

Tamiment Customer Meeting. OCA raised an additional concern about customer service, noting that between January 2022 and January 2023, CUPA received 63 complaints and inquiries from customers in the Tamiment service territory about a variety of service issues, including water quality, high and low pressures, outages, and water and sewer breaks.⁴⁵ OCA recommended the Commission should require CUPA to hold a public meeting in the Tamiment service territory within 60 days after entry of an order in this proceeding, as a condition of Commission approval of the Proposed Transaction. OCA also recommended that Corix US representatives should attend the meeting who have knowledge and authority to respond to questions and concerns regarding high bill complaints, water quality, training for call center representatives, and other issues identified in advance by the Glen at Tamiment Property Owners

⁴³ OCA St. 1 at 8.

⁴⁴ *Id.* at 9.

⁴⁵ OCA St. 1 at 9-10, App. D; OCA St. 1SR at 8-9.

Association or customers. Additionally, within 60 days after the meeting, CUPA should file a report at this docket summarizing its actions to address questions and complaints raised during the meeting.⁴⁶ Paragraph 54 of the Settlement fully adopts OCA's recommendation. As OCA explained, holding a public meeting is a reasonable condition for approval of the Proposed Transaction:

it will provide a benefit to customers in CUPA's Tamiment service area, where there have been a number of complaints. The meeting will provide an opportunity for CUPA to hear from and respond to those customers' concerns, in addition to demonstrating the utility's stated commitment to providing high-quality service. Furthermore, the report filed post-meeting will allow the Commission and stakeholders to monitor CUPA's response and will provide information that can inform review of CUPA's service quality in the next base rate case.^[47]

CUPA has agreed to hold a customer meeting in the Tamiment service territory within 60 days after entry of an order approving the Proposed Transaction that is open to the public and will allow for in-person and virtual participation and will include Corix US representatives who have knowledge and authority to respond to questions and concerns regarding high bill complaints, water quality, training for call center representatives, and other issues identified in advance. This outreach and interaction with customers will benefit customers who may have questions about their service and bills and provides an open forum for discussion to give customers information and to help them better understand their water and wastewater utility service and billing.

c. Low-Income Programming (Joint Petition at ¶¶ 54-57)

CUPA notes that the Public Utility Code does not currently require CUPA, a water and wastewater utility, to provide assistance to low-income households. However, as part of the Settlement, CUPA has agreed to several innovations to assist low-income households in its service territory. OCA supports these program changes and modifications.

⁴⁶ OCA St. 1 at 10.

⁴⁷ *Id.*

Low Income Rates and Retroactive Application of Low-Income Rates. Currently, CUPA has a low-income rate pilot program for residential water customers that provides a 35% discount to regular residential volumetric rates and has committed to propose a similar program for wastewater customers in its next base rate case.⁴⁸ OCA raised several concerns regarding CUPA's low-income programming in its testimony. OCA observed that CUPA designed discounted rates on the assumption that 420 customers would participate monthly.⁴⁹ According to CUPA, 16 customers have requested participation and CUPA is reviewing those customers for eligibility. No CUPA customer has started receiving a bill discount.⁵⁰

In response to the last concern, OCA recommended and CUPA agreed that it will apply the low-income discount retroactively to the bills of customers who requested participation in the program if CUPA determines that they are eligible to participate.⁵¹ This is reasonable given the length of time some customers have waited to enroll.

CUPA proposed, and the Commission approved, a low-income rate pilot program for water customers in CUPA's last base rate case. In the Settlement, CUPA has agreed to propose low-income water and wastewater rates in its next two base rate cases. This Settlement term provides a benefit to low-income customers because CUPA is now committed to proposing in its next two base rate cases low-income rates to assist customers with financial hardship.

CUPA explained that to implement its current low-income rate pilot program for water customers, CUPA had to contract with a third-party to conduct eligibility review and determination. Getting a third-party contracted to conduct this process took time, and extended beyond the date on which CUPA began accepting applications for the low-income program. CUPA has agreed as a Settlement term to retroactively apply the low-income rate for eligible customers to the date on which the customer applied for the program. This Settlement term

⁴⁸ 2022 Order at 16; CUPA St. 1 at 7.

⁴⁹ OCA St. 1 at 11, App. E (CUPA response to OCA Set I-6).

⁵⁰ *Id.*, App. F (CUPA's Low Income Quarterly Update for Fourth Quarter 2022.) Further, nine of the 16 applicants requested participation prior to April 29, 2022. *Id.*, App. G.

⁵¹ OCA St. 1 at 12; Settlement ¶ 55.

benefits eligible customers in that the low-income rate will apply as of the date on which the customer applied for the program; the time it took to get a third-party in place to review and determine eligibility will not prevent eligible customers from receiving the low-income rate as of the date on which they applied.

Arrearages Management Program. CUPA has agreed to propose an arrearage management program in its next base rate case for both water and wastewater customers. This will benefit customers with arrearages by helping them get on track with paying utility bills and thus benefiting all customers by providing a mechanism to reduce uncollectible account balances while maintaining service.

Increasing Low-Income Program Enrollment. To address low participation in CUPA's low-income programs, OCA recommended that CUPA take several steps intended to increase understanding and awareness about the discounted rate program and support enrollment.⁵² CUPA agreed to OCA's recommendations with minor modifications. Specifically, within 30 days after entry of an order approving the Proposed Transaction, CUPA will:

- Send to all residential water customers a bill insert containing information about CUPA's low-income program, eligibility requirements, and how to enroll.
- Add and maintain updated information on CUPA's website about the bill discount program in its current or future forms that is readily accessible from the home page.
- Provide reasonable training to customer service representatives about the CUPA low-income program, including eligibility criteria and ways to enroll.

This settlement provision benefits customers by providing additional customer contacts and means of accessing information about the low-income program, including information provided via bill inserts, CUPA's website, and training call center representatives.

⁵² OCA St. 1 at 11; OCA St. ISR at 9-10.

Expansion of Low-Income Rate Eligibility. OCA also pointed out that CUPA limited its low-income rate pilot program to customers at or below 100% of FPL.⁵³ OCA recommended that, the Commission should require that CUPA establish a hardship program that applies one-time (per year) assistance grants directly to water and wastewater bills for customers income at or below 200% of the federal poverty guidelines (FPL).

For purposes of settlement, in lieu of a hardship program, CUPA agreed that, in its next base rate case, CUPA will propose to increase eligibility for the low-income program from 100% to 200% of the FPL. This compromise responds to OCA's concern about CUPA customers who are between 101% and 200% of FPL and, combined with the other conditions of the Settlement, helps to ensure that the Proposed Transaction will benefit CUPA customers, by helping more customers to maintain their service. This eligibility expansion will allow the low-income rates to benefit more customers, helping those customers who may not be eligible for governmental assistance programs that only provide eligibility for those with income up to 100% of the FPL.

d. Rate Protections (Joint Petition ¶¶ 58-64)

Transaction Costs and Acquisition Adjustment. OCA raised concerns that, as filed, the Proposed Transaction could increase rates for CUPA customers by requiring them to pay for transaction costs, termination fees and damages under Section 10.2(c) of the Transaction Agreement, acquisition adjustments, and a goodwill adjustment or financing goodwill.⁵⁴ OCA recommended that CUPA record no transaction costs on the books or include them in rates, including but not limited to rate base, operating expenses, or capital structure.⁵⁵

The Settlement addresses each of these concerns, in full or part, through CUPA's commitment that it will not seek to recover transaction costs, incentive and retention payments related to the transaction, termination fees, acquisition adjustments, or any entries that will

⁵³ OCA St. 1 at 13.

⁵⁴ OCA St. 1 at 5-6; OCA St. 1SR at 2-3.

⁵⁵ *Id.* at 5.

impact CUPA's rate base for ratemaking purposes. To the extent that any aspect of the transaction does impact non-rate base components of the CUPA ratemaking formula, such as cost of capital, OCA and OSBA reserve the right to challenge the reasonableness, prudence and basis of the claim, impact or adjustment. CUPA will identify, for at least the first two rate cases post-closing, if the cost of capital claimed for establishing water and wastewater rates for CUPA reflects any risk adjustment associated with its corporate parents or any affiliate not regulated by the Commission, or any equity or debt issued to finance goodwill. In addition, Settlement Paragraph 62 requires that until and unless the company enters into a new affiliate interest agreement after closing, CUPA will continue to use its existing affiliate interest agreement to allocate corporate shared services costs. CUPA must present any new affiliate interest agreements to the Commission for its approval pursuant to Section 2102 of the Public Utility Code.⁵⁶

CUPA notes that it has agreed to a specific and broad definition of transaction costs and that CUPA will not seek to recover such costs from customers. There is no statutory prohibition on CUPA seeking recovery of such costs in its next base rate case, so CUPA's agreement not to seek recovery of these costs from customers is a direct rate savings benefit to customers. Further, CUPA's agreement not to seek such an acquisition adjustment pursuant to 66 Pa.C.S. § 1327 is a direct rate savings benefit to customers.

Rate Case Litigation Terms. CUPA has agreed to various terms that preserve issues and evidence for future rate cases. These terms benefit OCA, which is an advocate for residential customers, by providing OCA with greater ability and information to challenge claims in future base rate proceedings that OCA may not agree are just and reasonable, thus benefiting customers.

Cumulatively, these provisions will help to protect Pennsylvania customers from rate increases resulting from the proposed merger. Accordingly, OCA and CUPA agree that these provisions provide a benefit.

⁵⁶ 66 Pa.C.S. § 2102.

e. Merger Benefits in Other Jurisdictions

OCA also noted in its testimony that the Proposed Transaction requires 15 regulatory approvals in the United States and two in Canada and the majority of those applications are still pending.⁵⁷ OCA recommended that, CUPA should afford Pennsylvania customers favorable commitments that CUPA provided in other jurisdictions. The Settlement addresses this recommendation, in part, by adopting two commitments that the merging entities made in other jurisdictions.⁵⁸ Paragraphs 63 and 64 of the Settlement provide:

63. Within sixty (60) days after the Proposed Transaction closes, CUPA will file a report with the Commission, copied to OCA and OSBA, notifying them of the date the Transaction was completed/closed.

64. For five years after the closing date, CUPA will track and quantify all the benefits (both qualitative and quantitative) customers in its service territory are receiving under its new ownership. CUPA will submit that information in any future base rate case in which such tracked benefits accrue in the test years applicable to the particular rate filing(s).

Information regarding merger benefits will assist the Commission and interested Parties to review and evaluate CUPA's rate case claims post-merger. As with the other provisions addressing information that CUPA will provide regarding claims for risk adjustment, financing for goodwill, and allocations for corporate shared services costs, OCA submits that these provisions provide a benefit by helping to protect Pennsylvania customers from rate increases resulting from the proposed merger.

D. Conclusion

The Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues raised by the Parties in this matter.

⁵⁷ OCA St. 1 at 15-16, App. D; OCA St. 1SR at 12, App. H; OCA Exh. D-1.

⁵⁸ OCA Exh. D-1.

Thus, the Settlement is consistent with the Commission’s rules, practices and procedures encouraging and promoting negotiated settlements.⁵⁹

As described above, the Settlement provides affirmative public benefits to customers, including specific benefits for low-income customers. The Settlement adds customer benefits that were not proposed in the Application, including proposing low-income rates in CUPA’s next two base rate cases for water and wastewater customers, proposing an arrearages management program in its next base rate case for water and wastewater customers, taking steps to increase low-income program enrollment, and expanding low-income rate eligibility to 200% of the FPL.

The General Assembly charged OCA with specific legal obligations to carefully scrutinize all aspects of a utility acquisition. OCA has a statutory obligation to protect the interest of consumers of public utility service.⁶⁰ As evidenced by its active and extensive participation in all aspects of this case, OCA has discharged its statutory obligations. OCA’s full support of the Settlement demonstrates the Settlement’s terms and conditions are just, reasonable, and in the public interest.

In view of these factors, the Application, as modified by the Settlement is in the public interest and will be approved.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Application. 66 Pa.C.S. § 1102(a)(3); 52 Pa. Code § 69.901(b)(1).

2. The Commission may issue a certificate of convenience only upon a finding or determination 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).

⁵⁹ See, 52 Pa. Code §§ 5.231, 69.391, 69.401.

⁶⁰ See, 71 P.S. §§ 309-1, *et. seq.*

3. The Commission must find that a Proposed Transaction would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972); *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007).

4. The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (citing, *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered Apr. 1, 1996); *Pa. Pub. Util. Comm’n v. CS Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991)).

5. Parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. Pub. Util. Comm’n v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

6. It is the Commission’s policy to encourage settlements. 52 Pa. Code §§ 5.231, 69.401.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Full Settlement filed on May 24, 2023 at Docket Nos. A-2022-3036745 and A-2022-3036745, is approved in its entirety and without modification.

2. That the proposals set forth in the November 9, 2022 Application of Community Utilities of Pennsylvania Inc., for Certificates of Public Convenience under Section

