

**DAMON R. TALLEY, P.S.C.**

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**DAMON R. TALLEY**

**ATTORNEY AT LAW**

March 20, 2006

Ms. Beth O'Donnell  
Executive Director  
Public Service Commission  
PO Box 615  
Frankfort, KY 40602

**RECEIVED**

MAR 22 2006

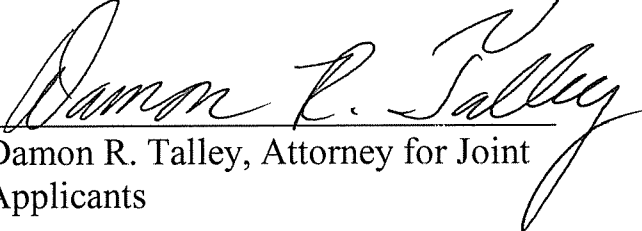
PUBLIC SERVICE  
COMMISSION

RE: Case No. 2005-00433  
Transfer Application  
Proposed Transfer of Stock from  
Nuon Global Solutions USA BV  
to Hydro Star, LLC

Dear Ms. O'Donnell:

Enclosed for filing are the original and eight (8) copies of the Notice of Filing of regulatory approvals from other jurisdictions.

Yours truly,  
DAMON R. TALLEY, P.S.C.

  
Damon R. Talley, Attorney for Joint  
Applicants

DRT:ms

Enclosures

cc: David Spenard, Attorney General's Office

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

IN THE MATTER OF:

MAR 22 2006

THE JOINT APPLICATION OF )  
NUON GLOBAL SOLUTIONS USA, BV, )  
NUON GLOBAL SOLUTIONS USA, INC., )  
AIG HIGHSTAR CAPITAL II, LP, )  
HYDRO STAR, LLC, UTILITIES, INC. )  
AND WATER SERVICE CORPORATION )  
OF KENTUCKY FOR APPROVAL OF AN )  
INDIRECT CHANGE IN CONTROL OF A )  
CERTAIN KENTUCKY UTILITY PURSUANT )  
TO THE PROVISIONS OF KRS 278.020 (5) )  
AND (6) AND 807 KAR 5:001 (8) )

PUBLIC SERVICE  
COMMISSION

CASE No. 2005-00433

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NOTICE OF FILING

OF

REGULATORY APPROVALS

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Come the Joint Applicants, Nuon Global Solutions USA, B.V. (“Nuon BV”), Nuon Global Solutions USA, Inc. (“Nuon USA”), AIG Highstar Capital II LP (“Highstar”), Hydro Star, LLC (“Hydro Star”), Utilities, Inc. (“Utilities”) and Water Service Corporation Of Kentucky (“Water Service”), (the “Joint Applicants”), by counsel, and give notice that they are filing with the Commission certain regulatory approvals from other jurisdictions.

1. Attached are the regulatory approval orders from the following jurisdictions:

- A. Florida: See Tab 1
- B. Illinois: See Tab 2
- C. Nevada: See Tab 3
- D. New Jersey: See Tab 4
- E. Pennsylvania: See Tab 5

2. Regulatory approvals from Sarasota County, Florida; Louisiana; Mississippi; Tennessee; and Virginia were filed with the Commission on December 20, 2005.<sup>1</sup>

3. Approval by the North Carolina Utilities Commission is the only regulatory approval which has not yet been obtained. Approval from North Carolina is expected to be forthcoming before March 24, 2006. A copy of the approval will be provided to the Commission as soon as it is obtained.

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<sup>1</sup> See Response of Joint Applicants to First Data Request of Commission Staff, Case No. 2005-00433, Question 5, filed December 20, 2005.

Respectfully submitted this 21<sup>st</sup> day of March, 2006.

**DAMON R. TALLEY, P.S.C.**

BY:   
**DAMON R. TALLEY**

**DAMON R. TALLEY, P.S.C.**

**PO BOX 150**

**HODGENVILLE, KY 42748**

**270-358-3187 FAX: 270-358-9560**

**COUNSEL FOR NUON BV, NUON USA,**

**HIGHSTAR, HYDRO STAR,**

**UTILITIES, INC. AND WATER**

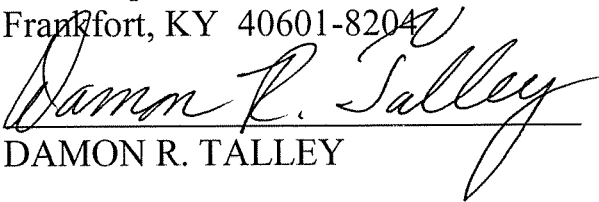
**SERVICE**

**drtalley@alltel.net**

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing pleading was served by first class U.S. Mail, postage prepaid, this 21<sup>st</sup> day of March, 2006 to the following:

Honorable David E. Spenard  
Assistant Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204

  
**DAMON R. TALLEY**

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for authority to transfer majority organizational control of Utilities, Inc. from Nuon Global Solutions USA, B.V. to Hydro Star, LLC.	DOCKET NO. 050499-WS ORDER NO. PSC-06-0094-FOF-WS ISSUED: February 9, 2006
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The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

ORDER GRANTING MOTION TO DISMISS  
AND  
APPROVING APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL  
CONTROL  
REISSUED

BY THE COMMISSION:

This Order replaces Order No. PSC-06-0093-FOF-WS in its entirety, to correct certain technical errors in its publication.

BACKGROUND

On July 25, 2005, Utilities, Inc. (Utilities, Inc. or company) filed an Application for authority to transfer majority organizational control of the company from Nuon Global Solutions USA, B.V. (Nuon) to Hydro Star, LLC (Hydro Star). The application proposes the transfer of the issued stock of Utilities, Inc., which in turn controls the stock of 16 utilities that provide water and wastewater service in Florida, from Nuon to Hydro Star by early 2006, after all regulatory approvals have been obtained. In all, the transaction involves over 80 subsidiary operating companies of Utilities, Inc. in 17 states. A list of the Commission-regulated utilities that Utilities, Inc. owns is included in Attachment A. Utilities, Inc. asserts that the acquisition of Nuon's stock by Hydro Star does not entail any change in direct ownership or control of the Florida utilities and will not cause any change in management or loss of operational expertise. Because of the size and scope of the stock transfer, Utilities, Inc. filed a Petition for variance or waiver of Rules 25-30.037(3)(i), (j) and (k), and 25-30.030(4)(c), (5), (6) and (7), Florida

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION OF

Administrative Code, the Commission's rules governing transfers. The requested waivers were granted by Order No. PSC-05-1155-PAA-WS, issued November 18, 2005.<sup>1</sup>

Utilities, Inc. provided notice of its stock transfer petition to the customers of its operational utilities on August 1 and 2, 2005. We received a letter from one customer of Pennbrooke Utilities regarding that utility's water conservation programs. We also received an "Objection to Application of Utilities, Inc. for Authority for Transfer of Majority Organizational Control to Hydro Star, LLC and Request for Public Hearing" from Michael J. Duggar, Esq., a customer of Wedgefield Utilities. The Pennbrooke customer indicated that he did not wish to formally contest the transfer of majority organizational control of the utility holding companies, but would pursue his conservation concerns informally. Mr. Duggar, however, confirmed that he was requesting an administrative hearing to contest the stock transfer based on his concerns with Wedgefield's water quality.

Utilities, Inc. filed a response to Mr. Duggar's objection on October 24, 2005, and on November 7, 2005, Utilities, Inc. filed a copy of its November 4, 2005, letter to Mr. Duggar. In both filings, Utilities, Inc. provided a detailed description of the water quality issues at Wedgefield Utilities, Wedgefield's proposal to the Department of Environmental Protection (DEP) to improve its water quality, and the approximate time and cost to implement the proposal. On November 9, 2005, Utilities, Inc. filed a Motion to Dismiss or, in the Alternative, for Summary Disposition of Objection, a Motion to Bifurcate Proceeding, and a Request for Oral Argument. Mr. Duggar did not respond to any of those motions.

We have jurisdiction over this matter pursuant to section 367.071, Florida Statutes. We grant Utilities, Inc.'s motion to dismiss the objection, and we dispose of Utilities, Inc.'s other motions as moot.<sup>2</sup> In light of our decision to grant the motion to dismiss, we have also carefully reviewed the application for transfer of majority organizational control and we approve it. Our reasons for these decisions are explained in detail below.

### DECISION

#### **The Motion to Dismiss**

The subject matter of this proceeding involves the proposed transfer of the issued stock of Utilities, Inc. from its parent company, Nuon, to a new parent company, Hydro Star. The proceeding does not affect the direct ownership, operational control or regulatory status of any of the 16 Florida water and wastewater companies that Utilities, Inc. itself owns, including Mr. Duggar's utility, Wedgefield. The transfer of control between the grandparent companies is two steps removed from the operating utility, and Utilities, Inc. asserts that the transfer will not cause any change in management or operational expertise. On the basis of these facts, Utilities, Inc.'s

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<sup>1</sup> Consummating Order No. PSC-05-1216-CO-WS finalized Order No. PSC-05-1155-PAA-WS on December 13, 2005.

<sup>2</sup> At our January 24, 2006, Agenda Conference, when we considered this application and the motion to dismiss, we determined that oral argument on the motions was not necessary to our understanding of the issues, and we denied Utilities, Inc.'s request for oral argument.

motion to dismiss challenges the sufficiency of the facts Mr. Duggar alleges to demonstrate that he has standing to object to this stock transfer.

In his objection, Mr. Duggar states that the proposed transfer is important to him and other customers of Wedgefield Utilities, because the Department of Environmental Protection (DEP) has indicated that the utility's water quality exceeds DEP's present standards for levels of trithalomethane (TTHM), and Wedgefield has not acted promptly and effectively to resolve this water quality matter. Therefore, the objection argues, since Utilities, Inc.'s stock transfer application asserts that no change will occur in the operational and managerial expertise of the utilities it owns, the application should be denied. The objection also states that the application should be denied because Hydro Star and its affiliated investment entities do not have experience in operating water and wastewater utilities.

The objection also states that the Utilities, Inc. application does not adequately comply with the requirements of Rule 25-30.037(3)(p), Florida Administrative Code, which provides that an application for authority to transfer shall include the following information:

(p) A statement from the buyer that after reasonable investigation, the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by the Department of Environmental Protection (DEP) or, if the system is in need of repair or improvement, has any outstanding Notice of Violation of any standard set by the DEP or any outstanding consent orders with the DEP, the buyer shall provide a list of the improvements and repairs needed and the approximate cost to make them, a list of the action taken by the utility with regard to the violation, a copy of the Notice of Violation(s), a copy of the consent order and a list of the improvements and repairs consented to and the approximate cost to make them.

Mr. Duggar contends that the statement that "the relevant Regulated Entities are working with the DEP to formulate compliance plans" contained in Utilities, Inc.'s application does not meet the requirements of the Commission rule. Mr. Duggar requests that the application be rejected due to the lack of operational utility experience of the buyer and its failure to provide concrete safeguards to protect the health safety and well-being of the citizens it proposes to serve. The objection states that the Petitioner, Mr. Duggar, would consider acceptance of the application for the stock transfer if the applicant supplemented its application with sufficient information required by subsection (p) of Rule 25-30.037, Florida Administrative Code, and if the applicant was ". . . in full compliance with all standards for one full year prior to the transfer." (Objection p. 5.) We find that with its response to Mr. Duggar's objection on October 24, 2005, and its November 4, 2005, letter to Mr. Duggar, Utilities, Inc. has provided more than sufficient detail about Wedgefield's water quality, actions taken and estimated costs to meet DEP's requirements to comply with our rule.

Utilities, Inc.'s Motion to Dismiss or in the alternative for summary disposition requests that we either dismiss Mr. Duggar's objection or summarily dispose of it as moot, without further necessity for hearing. As grounds for its motion to dismiss, Utilities, Inc. asserts that the facts alleged in the objection fail to demonstrate standing to participate in this administrative

proceeding under the two-part test established in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981). In Agrico, the Court held that to demonstrate a substantial interest entitled to a formal hearing in an administrative proceeding, the petitioner must show both an injury in fact of sufficient immediacy to warrant a hearing, and that the alleged injury is of the type or nature which the proceeding is designed to protect.

Utilities, Inc. asserts that Mr. Duggar's objection fails to meet either prong of the Agrico test. Utilities, Inc. states that the objection does not demonstrate an injury in fact due to elevated levels of TTHMs, because DEP has assured customers of Wedgefield Utilities that their health is not jeopardized, and therefore "the presence of TTHMs in the quantities that exist in Wedgefield's water do not result in any injury of sufficient immediacy to warrant a public hearing." Utilities, Inc. also asserts that the injury alleged -- noncompliant water quality in the Wedgefield system -- is beyond the scope of this stock transfer proceeding, regulated by the DEP, and therefore not an injury which the proceeding is designed to protect. Citing Order No. PSC-98-1640-FOF-WS, issued December 7, 1998, in Docket No. 980957-WS, In re: Application for transfer of majority organizational control of Sanlando Utilities Corporation, Utilities, Inc. states that the primary focus of this proceeding is whether the stock transfer is in the public interest, and whether the buyer is willing and able to fulfill the commitments, obligations and representations of the utility. The approval or disapproval of this transfer will not affect the actions Wedgefield takes to comply with DEP regulations. While the Commission requires information on the status of compliance with DEP standards, and assurance from the buyers that they will fulfill the commitments of the utility, DEP is the agency with primary jurisdiction of the TTHM issue.

While Utilities, Inc. argues that Mr. Duggar's concerns do not provide standing to protest this stock transfer, Utilities, Inc. does suggest that there are other forums before the Commission to address those concerns.

#### Analysis and Conclusion

The standard to be applied in disposing of a motion to dismiss a petition for an administrative hearing is similar to the standard of review for a motion to dismiss in a judicial forum, which is whether, with all factual allegations in the objection taken as true and construed in the light most favorable to the petitioner, the petition states a cause of action upon which relief may be granted. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1<sup>st</sup> DCA 1993).<sup>3</sup> Rule 28-106.201(2), Florida Administrative Code, specifies three key requirements for a petition for hearing:

- (1) . . . an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (2) a statement of the specific rules or statutes the petitioner contends require a reversal or modification of the agency's proposed action;

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<sup>3</sup> Rule 28-106.204(2), Florida Administrative Code, specifically authorizes motions to dismiss in the administrative context.



(3) a statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The threshold question for any request to participate in a formal administrative proceeding is whether the petitioner has a substantial interest that will be affected by the proceeding and thus has standing to participate. If that threshold is not met, then the petitioner has failed to state a cause of action on which we can grant relief.

We find that Mr. Duggar has not alleged facts sufficient to show that he has a substantial interest in the outcome of this stock transfer proceeding. Certainly Mr. Duggar and all customers of Wedgefield Utilities have an interest in the quality of Wedgefield's water, but that interest is not one that will be substantially affected by the outcome of this proceeding either way, whether we approve or disapprove the transfer of Utilities Inc.'s stock from one holding company to another. Wedgefield will remain the regulated operating utility with primary responsibility to resolve any water quality issues in its system. For that reason, the objection has not alleged an injury of sufficient immediacy that can be resolved by a hearing in this case, and therefore has not met the first prong of the Agrico test.

The case of Ameristeel v. Clark, 691 So. 2d 473 (Fla. 1997), makes this point well. In that case, Ameristeel, an industrial customer of Florida Power & Light Company (FPL) in Duval County petitioned to intervene in a proceeding before the Commission to approve a territorial agreement between FPL and the Jacksonville Electric Authority (JEA). Ameristeel wished to have its plant served by JEA, which at the time had lower rates than FPL. The Commission denied Ameristeel's petition to intervene for lack of standing. Among other reasons, the Commission found that Ameristeel's plant was located in a part of FPL's territory that would not be affected by the proposed territorial agreement. Under the Agrico standard Ameristeel could not demonstrate an injury in fact of sufficient immediacy to warrant participation in the territorial agreement proceeding, because whether or not the agreement was approved, Ameristeel's plant would remain in FPL's service territory. The Florida Supreme Court upheld that analysis, saying, at page 478:

Ameristeel has been an FPL customer since it located its plant in FPL's service territory in 1974 and its position as a customer of FPL remains the same under the new territorial agreement approved by the Commission. Thus, Ameristeel has failed to meet the first prong of the Agrico test for standing because its corporate interests remain completely unaffected and in no way injured by the JEA-FPL territorial agreement.

See also our recent decision in Order No. PSC-06-0033-FOF-TP, issued January 10, 2006,<sup>4</sup> where we dismissed for lack of standing the Communications Workers of America's request for a hearing on Sprint's request for approval of a transfer of control.

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<sup>4</sup> Docket No. 050551-TP, In Re Joint application for approval of transfer of control of Sprint-Florida, Incorporated, holder of ILEC Certificate No. 22, and Sprint Payphone Services, Inc., holder of PATS Certificate No. 3822, from Sprint Nextel Corporation to LTD Holding Company, and for acknowledgment of transfer of control of Sprint Long Distance, Inc., holder of IXC Registration No. TK001, from Sprint Nextel Corporation to LTD Holding Company.

Mr. Duggar's objection does not meet the second prong of the Agrico test, either, because, as Utilities, Inc. states in its motion, his stated interest in the proceeding, resolution of Wedgefield's water quality problems, is not the type of interest this stock transfer proceeding is designed to protect, and the substance of that issue will not be addressed in the proceeding. The purpose of this proceeding is to ensure that the new corporate owners of Utilities, Inc. have the resources and commitment to the financial and operational viability of Utilities, Inc. and that therefore the transfer serves the public interest. That proceeding only involves Utilities, Inc.'s operating utilities indirectly. Concerns about Wedgefield's water quality can and should be addressed by means of a customer complaint against Wedgefield, a utility rate case or other Commission investigatory proceeding, or before DEP.

Our decision to grant Utilities, Inc.'s motion to dismiss renders moot Utilities, Inc.'s alternative motions for summary disposition or to bifurcate the proceeding to approve the transfer of majority organizational control for all Utilities, Inc.'s operational utilities except Wedgefield.

### **The Transfer of Majority Organizational Control**

We find, as explained below, that the transfer of majority organizational control of Utilities, Inc. from Nuon Global Solutions USA, B.V. to Hydro Star, LLC. is in the public interest, and we approve it effective January 24, 2006. On May 14, 2005, the parties entered into the agreement for Hydro Star to purchase 100% of the stock in Utilities, Inc. from Nuon. The closing, which is contingent upon securing multiple regulatory approvals, is anticipated to occur in the first quarter of 2006. The application for transfer complies with the governing statute, section 367.071, Florida Statutes, and the requirements of Rule 25-30.037, Florida Administrative Code. Pursuant to Rule 25-9.044(1), Florida Administrative Code, the rates and charges approved for Utilities, Inc.'s Florida utility subsidiaries shall continue unchanged until we authorize a change in a subsequent proceeding.

The application contained a statement that, after reasonable investigation, the utility systems appear to be in satisfactory condition and in compliance with all applicable standards set by the DEP, with the exception of five systems. Utilities, Inc. has indicated that it is working with the DEP to formulate compliance plans for those systems. These compliance issues are the result of new rules imposed by DEP. Attachment B is a DEP letter to a customer of Wedgefield stating that the water is safe to drink. Furthermore, Utilities, Inc. has indicated that Wedgefield Utilities installed new water treatment processes for its system in mid December to control TTHMs, with DEP approval.

The application contains a statement describing how the transfer is in the public interest, including a summary of the buyer's experience in water and wastewater operations and a showing of the buyer's financial ability. According to the application, the seller no longer wants to be in the utility business and is divesting all of its assets in the United States due to the declining value of the dollar against the Euro. AIG Highstar Capital II, L.P. (Highstar II), the sole member of Hydro Star, and its affiliates are seeking to make substantial investments in water and wastewater assets as a complement to their existing U.S. energy asset portfolio. The acquisition of majority control of Utilities, Inc. by Hydro Star will not result in any change in

management of Utilities, Inc. The current Utilities, Inc. management has been providing quality water and wastewater service to all of the Florida systems for approximately 30 years. By combining Utilities, Inc.'s management approach and regulatory expertise with the financial resources and support of Hydro Star, Utilities, Inc. will continue to have the ability to provide consistent and uninterrupted service to its customers. With regard to Hydro Star's financial ability, Highstar II and Hydro Star have access to extensive resources to fund the operations of the regulated entities. Highstar II and its affiliates will provide funding in the form of inter-company loans to Hydro Star on an as needed basis. As of March 31, 2005, Highstar II total assets were approximately \$102,861,000.

The utility is current on annual reports and regulatory assessment fees (RAFs) through 2004. Since no changes are taking place at the utility subsidiary level the responsibility for filing all RAFs and annual reports for 2005 and the future will remain the responsibility of Utilities, Inc.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Utilities, Inc.'s Motion to Dismiss is granted, and the Motion for Summary Disposition of Objection and the Motion to Bifurcate Proceeding are rendered moot. It is further

ORDERED that the Application for authority to transfer majority organizational control of Utilities, Inc. from Nuon Global Solutions USA, B.V. to Hydro Star, LLC. is approved. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 9th day of February, 2006.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

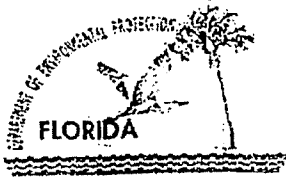
Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

**ATTACHMENT A**

**Utilities, Inc.  
 List of Subsidiaries – 100% wholly-owned**

Subsidiary Name	County Operations	Certificate No.
Alafaya Utilities, Inc.	Seminole	379-S
Cypress Lakes Utilities, Inc.	Polk	509-S; 592-W
Labrador Utilities, Inc.	Pasco	530-S; 616-W
Lake Placid Utilities, Inc.	Highlands	414-W; 347-S
Lake Utility Services, Inc.	Lake	465-S; 496-W
Mid-County Services, Inc.	Pinellas	081-S
Miles Grant Water and Sewer Company	Martin	352-W; 308-S
Sanlando Utilities, Inc.	Seminole	189-S; 247-W
Tierra Verde Utilities, Inc.	Pinellas	058-S
Utilities, Inc. of Eagle Ridge	Lee	369-S
Utilities, Inc. of Florida	Seminole	278-W; 225-S
	Pasco	229-S; 107-W
	Marion	305-S; 410-W
	Pinellas	204-W
	Orange	040-W
Utilities, Inc. of Hutchinson Island	Martin	291-S; 336-W
Utilities, Inc. of Longwood	Seminole	232-S
Utilities, Inc. of Pennbrooke	Lake	400-S; 466-W
Utilities, Inc. of Sandalhaven	Charlotte	495-S
Wedgfield Utilities, Inc.	Orange	341-S; 404-W

ATTACHMENT B



Jeb Bush  
Governor

Department of  
Environmental Protection

Central District  
3319 Maguire Boulevard, Suite 232  
Orlando, Florida 32803-3767

Colleen Castille  
Secretary

August 5, 2005

Ms. Wanda J. Harding  
23030 Ardon Avenue  
Orlando, FL 32833

OCD-PW-05-0662

Re: Wedgfield Utilities, Inc.


Dear Mr. Harding:

We received your letter on August 1 (dated July 29, 2005) and I am responding to it. Despite the statements you made in your letter regarding the quality of drinking water at Wedgfield Utilities, the water is adequate and safe to drink. If it were not, the Department would have directed the utility to discontinue providing the water when the analyses of Trihalomethanes (THMs) became known.

THMs are low risk, suspect carcinogens with a long latency period. This means that they are believed to cause cancer if they are consumed in large quantities of high concentrations for long periods of time. Maximum Contaminant Level or MCL, whose exceedance triggered the Public Notification, assume a consumption of 2 liters per day over a lifetime. The MCL is the level below which THMs are not believed to cause ANY adverse health effects. This means that a short-term exceedance will not result any adverse health effects.

Pursuant to Chapters 62-555 and 62-550, *Florida Administrative Code*, the utility will make the proper adjustments to the drinking water processes at the plant to ensure that the level of the THMs do not exceed the 80 mg/l MCL. We expect a study identifying these changes to be forthcoming followed by their implementation. Be assured, the Department will monitor these changes to make sure that they are done in a timely fashion. A meeting has been scheduled for August 17 to discuss health concerns about the THMs.

I appreciate your concern but must emphasize that your water is safe to drink. If bottled water or an additional treatment system is purchased, then that is an individual decision that the consumer has made but one not mandated by either the Utility or the Department.

Sincerely,  


Richard S. Lott, P.G., P.E.  
Program Manager - Drinking Water

Cc: Paul Morrison, FDEP  
Patrick Flynn, Utilities Inc. [p.c.flynn@utilitiesinc-usa.com]

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Hydro Star, LLC; Nuon Global :  
Solutions USA, B.V.; Utilities, Inc., :  
Each of the 24 Illinois Operating :  
Subsidiaries of Utilities, Inc. : 05-0522  
:  
Joint Application for Approval :  
of Reorganization. :

ORDER

By the Commission:

**I. PROCEDURAL HISTORY**

On August 17, 2005, Hydro Star, LLC ("HS"), Utilities, Inc. ("UI"), Nuon Global Solutions USA, B.V. ("NGS") and each of the 24 Illinois Operating Subsidiaries of Utilities, Inc. ("UI Operating Subsidiaries") (collectively, "Applicants") filed a verified Joint Application with the Illinois Commerce Commission ("Commission") for approval of a proposed transaction pursuant to Section 7-204 of the Illinois Public Utilities Act ("Act"), 220 ILCS 5/7-204.

Pursuant to proper notice, hearings were held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois on September 14, and November 30, 2005. The Applicants and the Staff of the Commission appeared through counsel. Steven M. Lubertozzi, Director of Regulatory Accounting for Utilities, Inc., presented direct and supplemental testimony in support of the Joint Application. Staff direct testimony was provided by: Thomas Griffin, Accountant in the Accounting Department of the Financial Analysis Division; William D. Marr, Water Engineer in the Water Department of the Financial Analysis Division; and Sheena Kight, Senior Financial Analyst in the Finance Department of the Financial Analysis Division. No Petitions to Intervene were filed and no other appearances entered. At the conclusion of the hearing on November 30, 2005, the record was marked "Heard and Taken".

**II. DESCRIPTION OF THE PROPOSED REORGANIZATION**

The Joint Application states that UI is a wholly-owned subsidiary of Nuon Global Solutions USA, Inc. ("NGSI"), which in turn is a wholly-owned subsidiary of NGS. As a result of discussions between HS and NGS concerning the possible acquisition of NGSI by HS ("the Transaction"), HS and NGS entered into a Stock Purchase Agreement ("Agreement") dated May 14, 2005. Pursuant to and in accordance with the terms of the Agreement, every issued and outstanding share of NGSI stock will be acquired by

HS. According to Applicants, as a result of the Transaction, the separate corporate existence of UI shall continue, UI shall remain a wholly-owned subsidiary of NGS, and NGS shall be a wholly-owned subsidiary of HS. From and after the effective time of the Transaction, all rights, duties and obligations of UI existing before the Transaction will continue and UI will remain the owner of the UI Operating Subsidiaries. The Applicants assert that UI will continue to maintain its headquarters in Northbrook, Illinois and will retain its current management. With respect to the UI Operating Subsidiaries, the Applicants indicate that the Transaction occurs entirely "above the holding company level," that is, none of the assets or securities of UI or of any UI Operating Subsidiary will be transferred or sold as a result of the Transaction. The Transaction will change only the ultimate owner of the stock of NGS.

According to the Joint Application, because the proposed Transaction will occur entirely at the parent company level, it does not involve or require the sale, assignment or transfer of any property of the UI Operating Subsidiaries. Applicants state that the UI Operating Subsidiaries will continue to hold all the licenses and authorizations they held prior to the Transaction. Applicants affirm that none of the rates, terms or conditions for the provision of water and sewer public utility services applicable to the UI Operating Subsidiaries (which are on file with and approved by the Commission) will change as a result of the Transaction. Applicants further state that no operations, lines, plant, franchise or permits of the UI Operating Subsidiaries will be merged with the lines, plant, franchises or permits of any other company. Applicants state that there will be no cost savings from the proposed Transaction. Applicants also indicate that they will not seek to recover any costs of the Transaction through rates.

### **III. SECTION 7-204 OF THE ACT**

The Transaction described in the Joint Application and summarized in Section II of this Order constitutes a "reorganization" as defined under Section 7-204 of the Act and, therefore, Commission approval is required. Section 7-204(b) of the Act provides that the Commission shall not approve any reorganization if the Commission finds that the reorganization will adversely affect the utility's ability to perform its duties under the Act. More specifically, Section 7-204(b) of the Act states that in reviewing any proposed reorganization, the Commission must find that:

- (1) the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service;
- (2) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers;
- (3) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for rate-making purposes;



- (4) the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;
- (5) the utility will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities;
- (6) the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction; and
- (7) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.

Additionally, Section 7-204(c) of the Act states that the Commission shall not approve a reorganization without ruling on (i) the allocation of any savings resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated.

#### **IV. APPLICANTS' POSITION**

Applicants contend that the proposed Transaction will be in compliance with the requirements of Section 7-204(b) of the Act. Applicants state generally that nothing in the proposed Transaction will adversely affect the UI Operating Subsidiaries' ability to perform their duties under the Act.

With specific regard to Section 7-204(b)(1) of the Act, Applicants state that the Transaction will not diminish the ability of the UI Operating Subsidiaries to provide adequate, reliable, efficient, safe and least-cost public utility service to the customers in the respective UI Operating Subsidiaries' service territories. Mr. Lubertozi testifies that the Transaction will not affect the UI Operating Subsidiaries' day-to-day business operations or the provisioning of services to their customers.

With respect to Section 7-204(b)(2) of the Act, Applicants aver that the Transaction will not result in any unjustified subsidization of non-utility activities by the utility or its customers. Regarding Section 7-204(b)(3) of the Act, Applicants maintain that the proposed Transaction will not impact the ability of the UI Operating Subsidiaries to fairly and reasonably to allocate their costs and facilities between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities that the UI Operating Subsidiaries may properly include when setting rates for rate-making purposes in compliance with Section 7-204(b)(3) of the Act. Mr. Lubertozi testifies that the UI Operating Subsidiaries will remain subject to the cost allocation requirements of all Commission regulations, as they are today.

Concerning Section 7-204(b)(4) of the Act, Applicants assert that the Transaction will not impair the UI Operating Subsidiaries' ability to raise necessary capital. The Transaction will be effected by a stock purchase at the parent company level. UI will

continue to be responsible for raising capital and the Transaction will have no adverse impact on the ability of UI to either raise capital on reasonable terms or to maintain a reasonable capital structure.

With respect to Section 7-204(b)(5) of the Act, Applicants state that, following the completion of the proposed Transaction, the UI Operating Subsidiaries will continue to be subject to the jurisdiction of the Commission, and, therefore, would continue to be subject to all applicable laws, regulations, rules, decisions and policies governing regulated public utilities. Regarding Section 7-204(b)(6) of the Act, Mr. Lubertozi testifies that nothing in the proposed Transaction could result in any adverse effect on competition in the markets over which the Commission has jurisdiction. As for Section 7-204(b)(7) of the Act, Mr. Lubertozi avers that the Transaction will not result in any local rate increase.

Concerning Section 7-204(c) of the Act, Applicants project that the UI Operating Subsidiaries will not realize any cost savings through the Transaction. Any Transaction savings that do occur with respect to expenses of the UI Operating Subsidiaries will be passed on to rate-payers in later rate proceedings. Mr. Lubertozi testifies that Applicants will not seek to recover through rates any costs that they may incur in accomplishing the proposed Transaction.

## **V. COMMISSION STAFF'S POSITION**

Staff reviewed the Joint Application, Mr. Lubertozi's direct and supplemental testimony and responses to Staff Data Requests. Based upon that review, Staff concludes that the Transaction will satisfy the requirements of Section 7-204 of the Act.

With specific regard to Section 7-204(b)(1) of the Act, Mr. Marr testifies that the Transaction will not diminish the ability of the UI Operating Subsidiaries to provide adequate, reliable, efficient, safe and least-cost public utility service to the customers in the respective UI Operating Subsidiaries' service territories. With respect to Section 7-204(b)(5) of the Act, Mr. Marr testifies that, following the completion of the proposed Transaction, the UI Operating Subsidiaries will still be subject to all applicable laws, regulations, rules, decisions and policies governing regulated public utilities. Regarding Section 7-204(b)(6) of the Act, Mr. Marr testifies that nothing in the proposed Transaction could result in any significant adverse effect on competition in those markets over which the Commission has jurisdiction.

In summary, Mr. Marr recommends that the Commission find that the proposed Transaction meets the requirements of Sections 7-204(b)(1), (b)(5), and (b)(6) of the Act.

With respect to Section 7-204(b)(2) of the Act, Mr. Griffin testifies that the proposed Transaction will not result in any unjustified subsidization of non-utility activities by the utility or its customers. Regarding Section 7-204(b)(3) of the Act, Mr. Griffin testifies that the proposed Transaction will not impact the ability of the UI Operating Subsidiaries to fairly and reasonably allocate their costs and facilities between utility and non-utility activities in such a manner that the Commission may

identify those costs and facilities that the UI Operating Subsidiaries may properly include for rate-making purposes. With respect to Section 7-204(b)(7) of the Act, Mr. Griffin testifies that the Transaction is not likely to result in any adverse rate impacts on the UI Operating Subsidiaries' retail customers.

Concerning Section 7-204(c) of the Act, Mr. Griffin testifies that it is reasonable that the UI Operating Subsidiaries will not realize any cost savings in connection with the Transaction because the Transaction is a stock purchase transaction and will not affect the operations of the UI Operating Subsidiaries. Mr. Griffin notes that, to the extent any future unexpected savings are realized, they should be passed on to rate-payers in later rate proceedings. Mr. Griffin also testifies that he agrees with Applicants' position that they will not seek to recover any costs that they may incur in accomplishing the proposed Transaction.

With respect to the Applicants' accounting treatment of Transaction costs, Mr. Griffin testifies that the UI Operating Subsidiaries appropriately will record all Transaction-related costs in Account 426, "Miscellaneous Non-Utility Expense." Mr. Griffin further testifies that the Joint Application complies with all of the requirements of Sections 7-204A(a)(1)-(6) of the Act.

In summary, Mr. Griffin recommends that the Commission find that Applicants are in compliance with Sections 7-204(b)(2), 7-204(b)(3), 7-204(b)(7) and 7-204A(a)(1)-(6) of the Act.

Staff witness Kight presents evidence regarding the financial implications of the proposed Transaction. Ms. Kight states that as the owner of the capital stock of UI Operating Subsidiaries and the conduit through which they will access capital markets, UI must maintain a level of financial strength sufficient to raise capital on reasonable terms. Her review of UI's funds from operations interest coverage, total debt to total capital, and funds from operations to total debt ratios for 2003 and 2004 indicates each is at or above the benchmarks set by Standard & Poor's ratings agency for a credit rating of BBB. Ms. Kight also testifies that the Transaction will not alter the UI Operating Subsidiaries' capital structure, and that the current capital structure of approximately 60% debt and 40% equity is reasonable. Thus, Ms. Kight concludes that the proposed Transaction will not significantly impair the UI Operating Subsidiaries' ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure, as required by Section 7-204(b)(4) of the Act.

With respect to Section 6-103 of the Act, Ms. Kight testifies that the balance sheet and capitalization of the UI Operating Subsidiaries will not change as a result of the proposed Transaction. In relation to Section 7-204A(a)(7) of the Act, Ms. Kight testifies that the UI Operating Subsidiaries forecasted capital requirements for the years 2006-2009, attached as Exhibit D to the Joint Application, satisfies the minimum requirement for such information.

In summary, Ms. Kight recommends that the Commission find that Applicants have satisfied the requirements of Sections 7-204(b)(4), 6-103 and 7-204A(a)(7) of the Act.

## VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, and being fully advised in the premises, is of opinion and finds that:

- (1) Each of the UI Operating Subsidiaries is an Illinois corporation engaged in the business of providing public utility water and/or sewer service to the public in Illinois and, as such, is a public utility as defined by the Act;
- (2) the Commission has jurisdiction over the UI Operating Subsidiaries and the subject matter of this proceeding;
- (3) the findings of fact and conclusions herein are fully supported by the record and are hereby adopted as findings of fact;
- (4) the Applicants have satisfied the information requirements of Section 7-204A(a) of the Act;
- (5) the proposed Transaction satisfies the provisions in Sections 7-204(b)(1)-(7) of the Act as follows:
  - (I) the proposed Transaction will not diminish the UI Operating Subsidiaries' ability to provide adequate, reliable, efficient, safe and least-cost public utility service;
  - (II) the proposed Transaction will not result in the unjustified subsidization of non-utility activities by the UI Operating Subsidiaries or their customers;
  - (III) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the UI Operating Subsidiaries for rate-making purposes;
  - (IV) the proposed Transaction will not significantly impair the UI Operating Subsidiaries' ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;
  - (V) the UI Operating Subsidiaries will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities;
  - (VI) the proposed Transaction is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction; and

- (VII) the proposed Transaction is not likely to result in any adverse rate impacts on retail customers.
- (6) the terms of the Transaction are reasonable and HS should be authorized to acquire the outstanding shares of Utilities, Inc.'s parent, NGSi; as a result of the Transaction, the separate corporate existence of Utilities, Inc., shall continue, Utilities, Inc., shall remain a wholly-owned subsidiary of NGSi and NGSi will be a wholly-owned subsidiary of HS;
- (7) Any cost savings that result from the Transaction should not increase the revenue requirement in any future UI Operating Subsidiary rate filing;
- (8) Utilities, Inc., should be authorized to make accounting entries on its books to reflect the Transaction, and should be directed to record Transaction costs in Account 426, "Miscellaneous Non-Utility Expense";
- (9) The UI Operating Subsidiaries should not be allowed, in this proceeding or any other proceeding, to recover any costs incurred in accomplishing the proposed Transaction;
- (10) There are no anticipated cost savings from the proposed Transaction; therefore, no savings should be allocated;
- (11) the Applicants' proposed Transaction should be approved and authorized.

IT IS THEREFORE ORDERED that consent and approval are granted to Applicants to carry out all actions reasonably necessary to effectuate the Transaction described in this Order, including the "Stock Purchase Agreement" between Hydro Star, LLC and Nuon Global Solutions USA, B.V.

IT IS FURTHER ORDERED that any cost savings that result from the Transaction shall not increase the revenue requirement in any future rate filing of any UI Operating Subsidiary.

IT IS FURTHER ORDERED that the rates, rules, regulations and conditions of service applicable to the service areas of the UI Operating Subsidiaries shall remain the same as those currently on file with the Commission, until such time as any changes thereto are approved by the Commission.

IT IS FURTHER ORDERED that Utilities, Inc., shall make the necessary accounting entries to reflect the Transaction, and that Transaction costs be recorded in Account 426, "Miscellaneous Non-Utility Expense."

IT IS FURTHER ORDERED that the UI Operating Subsidiaries shall not be allowed to recover, in this or any other proceeding, any costs incurred in accomplishing the Transaction.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Illinois Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission on this 25<sup>th</sup> day of January, 2006.

(SIGNED) CHARLES E. BOX

Chairman

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Joint application of Utilities, Inc. ("UI") and Hydro Star, LLC ("Hydro Star") for approval of a transaction in which Hydro Star will acquire Nuon Global Solutions USA, Inc.'s common stock ownership in UI that owns Sky Ranch Water Service Corp.; Spring Creek Utilities Co.; Utilities, Inc. of Central Nevada and Utilities, Inc. of Nevada.

Docket No. 05-10023

At a general session of the Public Utilities Commission of Nevada, held at its offices on February 16, 2006.

PRESENT: Chairman Donald L. Soderberg  
Commissioner Carl B. Linvill  
Commissioner Jo Ann P. Kelly  
Commission Secretary Crystal Jackson

**ORDER**

The Public Utilities Commission of Nevada ("Commission") makes the following findings of fact and conclusions of law:

1. On October 20, 2005, Utilities, Inc. ("UI") and Hydro Star, LLC ("Hydro Star") filed with the Public Utilities Commission of Nevada ("Commission") a Joint Application, designated as Docket No. 05-10023, for approval of a transaction in which Hydro Star will acquire Nuon Global Solutions USA, Inc.'s common stock ownership in UI that owns Sky Ranch Water Service Corp.; Spring Creek Utilities Co.; Utilities, Inc. of Central Nevada and Utilities, Inc. of Nevada (collectively referred to as "the Nevada Utilities"). The purpose of this filing is to obtain Commission authorization of a transaction in which Hydro Star will purchase all of Nuon Global Solutions USA, Inc.'s outstanding common stock from Nuon Global Solutions USA B.V. Nuon Global Solutions USA, Inc. currently holds all of the outstanding common stock of UI, which owns four water and wastewater utilities that operate in Nevada.

2. This Joint Application is filed pursuant to the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code, Chapters 703 and 704, including but not limited to NRS 704.329.

Docket No. 05-10023

Page 2

3. The Commission issued a public notice of this matter in accordance with state law and the Commission's Rules of Practice and Procedure.

4. The Regulatory Operations Staff of the Commission ("Staff") is participating in this proceeding as a matter of right.

5. On January 4, 2006, a duly noticed prehearing conference was held in this matter and a hearing was scheduled for February 23, 2006.

6. On February 2, 2006, Hydro Star, UI, the Nevada Utilities and Staff filed a Stipulation and Settlement Agreement ("Stipulation"), attached hereto and incorporated herein as Attachment 1, recommending that the Commission approve the transaction based on the Stipulation.

7. On February 6, 2006, Staff filed Attachment A to the Stipulation which was inadvertently omitted from the Stipulation. Attachment A is attached hereto and incorporated herein as Attachment 2.

8. The Commission concludes that it is in the public interest to accept the Stipulation, and approve the Joint Application as modified by the Stipulation.

THEREFORE, based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED that:

1. The Stipulation and Settlement Agreement at Attachment 1 and 2 are ACCEPTED.

2. The Joint Application of Utilities, Inc. ("UI") and Hydro Star, LLC ("Hydro Star") for approval of a transaction in which Hydro Star will acquire Nuon Global Solutions USA, Inc.'s common stock ownership in UI that owns Sky Ranch Water Service Corp.; Spring Creek Utilities Co.; Utilities, Inc. of Central Nevada and Utilities, Inc. of Nevada is APPROVED AS MODIFIED by the Stipulation.



Docket No. 05-10023

Page 3

3. Except as specifically set forth herein, the Commission's approval of this Stipulation does not constitute approval of, or precedent regarding, any legal or factual issue in this proceeding.

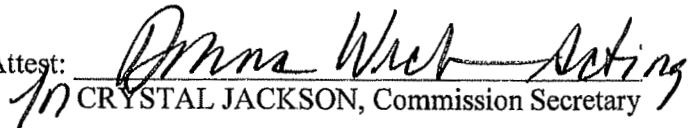
4. The Commission retains jurisdiction for the purpose of correcting any errors that may have occurred in the drafting or issuance of the Order.

By the Commission,

  
DONALD L. SODERBERG, Chairman

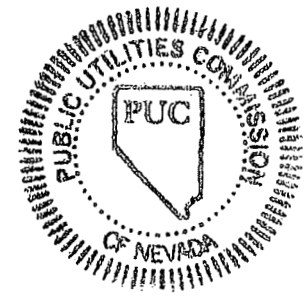
  
CARL B. LINVILL, Commissioner

  
JO ANN P. KELLY, Commissioner

Attest:   
CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

(SEAL) 2/28/06



# ATTACHMENT 1

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

ooOoo  
The Joint Application of Hydro Star, LLC,  
Utilities, Inc., Sky Ranch Water Service Corp.,  
Spring Creek Utilities Company, Utilities, Inc. of  
Central Nevada and Utilities, Inc. of Nevada for  
Approval of a Transaction in Which Hydro Star,  
LLC, will Acquire Nuon Global Solutions USA,  
Inc.'s Common Stock Ownership in Utilities, Inc.

Docket No. ~~05-10035~~ <sup>05-10023</sup>

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**STIPULATION AND SETTLEMENT AGREEMENT**

**Recitals**

WHEREAS, on October 20, 2005, Hydro Star, LLC ("Hydro Star"), Utilities, Inc. ("UI"), Sky Ranch Water Service Corp. ("Sky Ranch"), Spring Creek Utilities Company ("Spring Creek"), Utilities, Inc. of Central Nevada ("UI-Central Nevada") and Utilities, Inc. of Nevada ("UI-Nevada" and, together with Sky Ranch, Spring Creek and UI-Central Nevada, the "Nevada Utilities") filed a joint application (the "Application") requesting approval of a transaction in which Hydro Staff, LLC would acquire the common stock of Nuon Global Solutions USA, Inc. (the "Transaction");

WHEREAS, the Public Utilities Commission of Nevada (the "Commission") noticed the Application in compliance Nevada law;

WHEREAS, the Regulatory Operations Staff ("Staff") has completed its investigation of the Application and determined that the Transaction is in the public interest.

NOW, THEREFORE, Hydro Star, UI, the Nevada Utilities and Staff (collectively, the "Parties"), in consideration of the mutual promises set forth below, agree as follows:

**Agreement**

1. The Transaction, which involves the substitution of one shareholder -- Hydro Star -- for another shareholder -- Nuon Global Solutions USA B.V. -- will have no adverse effect on the Nevada Utilities' customers.

2. Hydro Star shall not seek recovery of any premium it paid for the stock of Nuon

1 Global Solutions USA, Inc. ("Nuon Global"). Hydro Star shall not use "push down" accounting  
2 with regard to any premium it paid for the stock of Nuon Global. Hydro Star shall not assess or  
3 charge any of the Nevada Utilities with any cost incurred by Hydro Star in connection with the  
4 Transaction or the Application.

5 3. While Hydro Star has no plans to make administrative, operational or personnel  
6 changes at UI or with the Nevada Utilities, Hydro Star will have a significant interest in the  
7 efficient and economic operation of UI and the Nevada Utilities when it becomes the sole  
8 majority shareholder of Nuon Global. Accordingly, Hydro Star and UI intend to review UI's  
9 budgeting and operating practices and procedures. As part of this review, the companies will  
10 explore potential changes in those practices and procedures that might facilitate or expedite the  
11 process by which UI reviews and approves potential capital investments.

12 4. UI has created the position of Regional Vice President. There are three Regional  
13 Vice Presidents, who report to UI's Corporate Vice President of Operations, and are officers of  
14 the operating subsidiaries that they manage. The current Regional Director reports to the  
15 Regional Vice President. Exhibit A contains more information about the duties and  
16 responsibilities of the Regional Vice President. UI hired Paul Burriss to serve as the Regional  
17 Vice President for the West and Midwest regions, effective January 9, 2006. Mr. Burriss will be  
18 based in Nevada.

19 5. The Regional Vice President will be responsible for, among other things,  
20 identifying and managing opportunities for improvement within the region assigned to the  
21 Regional Vice President. Such responsibilities, in the case of Nevada, include evaluating and  
22 responding to the concerns raised by regulatory agencies, identifying infrastructure needs for  
23 each of the Nevada utilities, as well as planning, coordinating the design of and securing  
24 corporate authorization for system improvements in a timely manner in order to provide  
25 reasonable and adequate service in each of the Nevada utilities.

26 6. Hydro Star acknowledges that Staff has raised concerns about the operations of  
27 the Nevada Utilities and that those concerns are identified in more detail in Staff's Petition for  
28 Commission to Investigate Utilities, Inc. of Central Nevada for its Water and Sewer Operations

1 designated as P.U.C.N. Docket No. 05-12029. Nothing in this Stipulation shall adversely affect  
 2 any position that any Party may take in that proceeding. If the Commission approves this  
 3 Stipulation, nothing in the Commission's approval of this Stipulation shall be determined to  
 4 prejudice or affect the resolution of any issue in that proceeding.

5 7. The Parties shall advocate that the Commission adopt this Stipulation.

6 8. This Stipulation shall have no precedential value and, with the exception of Hydro  
 7 Star's commitments in Section 2, nothing herein shall adversely affect any position that any  
 8 Party might take in any other ratemaking or regulatory proceeding. Accordingly, this Stipulation  
 9 shall not be referred to or introduced as evidence in any other judicial or administrative  
 10 proceeding, except as is necessary to remedy action inconsistent with Hydro Star's commitment  
 11 as set forth in Section 2. If the Commission issues an order approving the Transaction based on  
 12 the Stipulation, no Party shall file a petition for judicial review of such order.

13 9. The provisions of this Stipulation are not severable and, in the event this  
 14 Stipulation is not approved by the Commission, it shall be deemed withdrawn without prejudice  
 15 to any claims of contentions which may have been made in this proceeding by any party, and it  
 16 shall not be admissible as evidence or in any way described or discussed in any proceeding  
 17 hereafter.

18 10. This Stipulation may be signed in one or more counterparts, and may be executed  
 19 by signatures provided by electronic facsimile (i.e. "fax copies"), which facsimile signatures  
 20 shall be as binding and effective as original signatures.

21 11. The Stipulation constitutes the entire agreement between the Parties.

22 12. The Stipulation shall not be modified or amended except by written agreement of  
 23 all of the Parties.

**Utilities, Inc. and the Nevada Utilities**

24 Dated: February 2, 2006 By: Shawn M. Elicegui  
 Shawn M. Elicegui, Esq.

**Hydro Star, LLC**

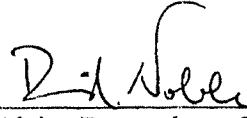
25 Dated: 2/2/06 By: Patrick V. Fagan  
 Patrick Fagan, Esq.

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**Public Utilities Commission of Nevada  
Regulatory Operations Staff**

Dated: 02/02/06

By:   
 Alaina Burtenshaw, Staff Counsel  
 Dave Noble, Assistant Staff Counsel

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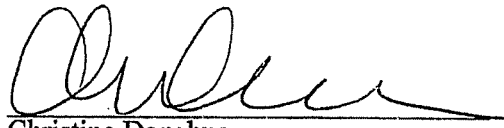
**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Lionel Sawyer & Collins, and not a party to, nor interested in, the within action; and that on February 2, 2006, I caused a true and correct copy of the enclosed Stipulation and Settlement Agreement to be hand delivered to the following parties:

Dave Noble, Esq.  
PUBLIC UTILITIES COMMISSION OF NEVADA  
1150 E. Williams Street  
Carson City, Nevada 89701

Patrick V. Fagan  
ALLISON, MACKENZIE, RUSSELL, PAVLAKIS,  
WRIGHT & FAGAN LTD.  
402 N. Division Street  
Carson City, Nevada 89702

Dated this 2<sup>nd</sup> day of February, 2006.

  
Christine Donahue

## ATTACHMENT 2



**STATE OF NEVADA  
PUBLIC UTILITIES COMMISSION OF NEVADA**

KENNY C. GUINN  
*Governor*

1150 East William Street  
Carson City, Nevada 89701-3109  
Policy (775) 684-6107 • Fax (775) 684-6110  
Staff (775) 684-6101 • Fax (775) 684-6120  
<http://puc.state.nv.us>



RURAL NEVADA  
557 W. Silver Street, No. 205  
Elko, Nevada 89801  
(775) 738-4914 • Fax (775) 778-6928

SOUTHERN NEVADA OFFICE  
101 Convention Center Dr., Suite 250  
Las Vegas, Nevada 89109  
(702) 486-2600 • Fax (702) 486-7206

February 6, 2006

Crystal Jackson  
Commission Secretary  
Public Utilities Commission of Nevada  
1150 East William Street  
Carson City, Nevada 89701

RE: Docket No. 05-10023  
Stipulation and Settlement Agreement / Attachment A

Dear Ms. Jackson,

On February 2, 2005, the parties in the above-referenced matter filed a Stipulation and Settlement Agreement ("Stipulation"). While the Stipulation referenced an Attachment A, the document was not included with the filing. I have enclosed Attachment A as part of the Commission's review and consideration of the Stipulation. If you have any questions or concerns, please contact me at your earliest convenience.

Sincerely,

David Noble  
Assistant Staff Counsel

Enclosure

cc: Shawn Elicegui, Esq.  
Patrick Fagan, Esq.

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OFFICE OF THE SECRETARY  
PUBLIC UTILITIES COMMISSION  
CARSON CITY, NEVADA

## Attachment A

### Utilities Inc. Regional Vice President

Location: Reno, NV or Pahrump, NV

Position Description: Position is responsible for directing the safe, efficient and profitable operation of the Western and Midwestern Region assets.

#### Duties/Responsibilities

- Partial P&L responsibility
- Lead operations team to be in compliance with all applicable local, state and federal regulations
- Maintain assets in good operating condition
- Responsible for developing capital plan to meet customer growth and adherence to that plan
- Margin review analysis to ensure efficient operations
- Stewardship of legal issues and cases
- Foster and ensure safe work environment
- New business development
- Manage relationships with the community
- Manage and provide leadership for staff of approximately 40 people.
- Provide information to national headquarters and manage management expectations
- Stay abreast of local environment and upcoming regulation

#### Minimum Skills/Qualifications

- Strong interpersonal skills to deal with a wide variety of groups, including operators, management, customers, local politicians, regulatory agencies, media, etc.
- Strong oral and written communications skills
- Strong leadership skills
- Problem solver
- Forward thinking and planner
- Flexible
- Basic financial skills and understanding (income statement, capital investments, etc.)
- Technical aptitude is a plus
- Bachelor's degree required, master's degree preferred
- Familiarity with regulated industries a plus

**PROOF OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by electronic mail to the recipient's current electronic mail address and mailing a copy thereof, properly addressed to:

Shawn Elicegui, Esq.  
LIONEL SAWYER & COLLINS  
1100 Bank of American Plaza  
50 West Liberty Street  
Reno, NV 89501  
[elicegui@lionelsawyer.com](mailto:elicegui@lionelsawyer.com)

Patrick V. Fagan, Esq.  
ALLISON MACKENZIE et al  
402 North Division Street  
Carson City, NV 89702-0646  
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DATED at Carson City, Nevada, on the 6<sup>th</sup> of February 2006.



\_\_\_\_\_  
An employee of the Public Utilities  
Commission of Nevada



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

IN THE MATTER OF THE JOINT PETITION  
OF UTILITIES, INC. AND MONTAGUE )  
WATER AND SEWER COMPANIES FOR  
APPROVAL OF A CHANGE IN CONTROL OF  
CERTAIN NEW JERSEY PUBLIC UTILITIES

WATER  
DECISION AND ORDER  
DOCKET NO. WM05090800

(SERVICE LIST ATTACHED)

BY THE BOARD:

On September 1, 2005, Montague Water Company ("Montague Water") and Montague Sewer Company ("Montague Sewer") (collectively "MW&S") public utility companies located in the State of New Jersey, and Utilities, Inc., the parent company of MW&S ("Joint Petitioners"), filed a Verified Joint Petition ("Joint Petition"), with the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1, requesting that the Board approve the Stock Purchase Agreement ("Agreement"), dated May 14, 2005, between Hydro Star, LLC, a Delaware Limited Liability Company ("Hydro Star"), and Nuon Global Solutions USA B.V., a private limited liability company formed under the laws of the Netherlands ("Nuon"). The Agreement provides for the indirect acquisition by Hydro Star of equity ownership of Utilities, Inc. by acquiring all of the issued and outstanding shares of Nuon Global Solutions USA, Inc., ("Nuon USA"), direct parent of Utilities, Inc., now owned by Nuon.

PROCEDURAL HISTORY

Utilities, Inc. is a corporation of the State of Illinois with its principal offices located in Northbrook, Illinois. Utilities, Inc. provides water and wastewater services to more than 300,000 residential customer equivalents in 16 states, including New Jersey. Utilities, Inc. is the direct owner of all issued and outstanding capital stock of Montague Water Company and Montague Sewer Company. Montague Water Company provides service to 712 end use water customers in Montague Township. Montague Sewer Company provides service to 226 active sewer service connections in Montague Township.

Hydro Star, a Delaware limited liability company, is a subsidiary of AIG Highstar Capital II, L.P. ("Highstar II"). Highstar II is a group of private equity funds that invest primarily in energy infrastructure and related assets and businesses, including the water and wastewater industries. Highstar II is sponsored by AIG Global Investment Group, an indirect subsidiary of American International Group, Inc., ("AIG") with its principal office located in Houston, Texas. According

to Utilities Inc., this means that in the case of AIG and Highstar II, AIG stands behind the obligations of AIG Highstar II GP, L.P., the general partner of Highstar II.

The Joint Petition seeks the Board's approval of an Agreement which provides that Hydro Star will acquire the stock of Utilities, Inc., the parent of MW&S, through its ownership of Nuon, USA.

*The Agreement provides that all of the issued and outstanding common stock of Nuon USA will be acquired by Hydro Star in exchange for cash consideration. This will make Hydro Star the sole shareholder in Nuon USA which owns all of the issued and outstanding shares of Utilities, Inc. Under the terms of the Agreement, Utilities, Inc. will continue its corporate existence as a wholly-owned subsidiary of Nuon USA.*

The Joint Petitioners filed their petition seeking approval of the transaction under N.J.S.A. 48:2-51.1, which provides that:

No person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliate or parent corporation or organization, or through the purchase of shares, the election of a board of directors, the acquisition of proxies to vote for the election of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void.

The Joint Petitioners also provided information required by N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10.

### STIPULATION

Since the filing of the Joint Petition, Board Staff and the Ratepayer Advocate ("RPA") served extensive and detailed discovery requests for information and supplemental requests upon the Joint Petitioners, which were responded to by the Joint Petitioners.

A public hearing was held by the Board on November 19, 2005 at the Municipal Building in Montague Township for the purpose of receiving comments from the public on the proposed transaction. Legal Specialist Joseph Quirolo, Esq., presided over the hearing. At the public hearing, counsel to the Joint Petitioners made a presentation describing the proposed transaction. Mayor Joseph Barbagallo, of Montague Township, appeared and asked a number of questions regarding rates and economics, but did not oppose the stock sale. No motions to intervene were filed.

Subsequently, the Joint Petitioner, Board Staff and the RPA (collectively, "the Parties") engaged in settlement discussions and entered into a Stipulation. The Parties agreed that the Joint Petition, exhibits, the responses to data requests, and the transcripts of the public hearing should be included as part of the record in this case, and recommended that the Board make the necessary determination to approve the Stipulation resolving this Joint Petition based on the record to this proceeding which the Parties state provides sufficient credible support for the Stipulation.

In recommending that the Board adopt the Stipulation, the Parties noted that in considering the factors set forth in N.J.S.A. 48:2-51.1, they were mindful of the fact that the utilities in question are water and sewer monopolies. With regard to the information evaluation required under N.J.S.A. 48:2-51.1 and based upon the Joint Petition, discovery, and conferences among the Parties, the Parties stipulated to the following:

Competition: MW&S will continue to operate in their current franchise territories under the same market conditions which currently exist. Montague Water serves about 712 customers in a portion of Montague Township, Sussex County and Montague Sewer provides 276 of the water customers with sewer service. As noted below, the principal reason for the transaction is to provide MW&S and Utilities, Inc. with a stronger, more viable competitive position. Hydro Star's financial expertise and experience will enable MW&S and Utilities, Inc. to compete more effectively for capital and human resources than the prior, foreign owner. Furthermore, Utilities, Inc. will be better able to compete for the provision of water services to small, troubled systems which have been its traditional market, and to municipalities interested in transferring their systems or their service obligations to private water companies, and for the potential acquisitions of other small water companies.

Customer Rates: The transaction will not have any impact on the existing rates for MW&S. MW&S will continue to operate under their existing tariffs and rate structures; Hydro Star's access to capital and commitment to system improvements will assure that customers will receive fair value. There will be no immediate changes in their balance sheets or financial positions as a result of this transaction. Future rates will be dependent upon the results of operations of MW&S and any actions taken by this Board with respect to any rate application.

Employees: Operating personnel will remain the same, but Hydro Star's new management team is better situated than the prior foreign managers to lead MW&S and Utilities, Inc. In the absence of approval of this transaction, MW&S will be left under the ultimate ownership and control of Nuon, a diversified energy company operating only in Netherlands, Germany and Belgium, that seeks to divest its ownership interests in these two New Jersey utilities in the water and wastewater business. Local ownership will be more focused on service and financial issues. The Agreement does not contemplate any changes in the existing management and officers of Utilities, Inc. or MW&S, but does provide (i) that existing employee benefits or substantially similar benefits will continue for a period of at least two years; (ii) that Utilities, Inc. employees will receive full credit for service if and when they become covered by a Hydro Star benefit; (iii) that any "pre-existing condition" limitation contained in a Hydro Star plan will be waived as to Utilities, Inc. employees; and (iv) that all prior deductible payments made by Utilities, Inc. employees will be recognized by Hydro Star.

Provision of Safe and Adequate Service: Overall, Hydro Star will provide better incentives for maintaining and improving service than an absent, foreign owner. First, approval of this transaction will leave MW&S under the Utilities, Inc. umbrella; able to avail themselves of the accumulated expertise and capital strength of that entity, as well as the financial expertise, access to capital markets and prior regulatory experience of the Highstar entities. Furthermore, the Parties agree that the transfer of control will, among other things: (1) return ultimate ownership and control of MW&S to a local, that is United States, entity rather than a foreign corporation; (2) provide improved access to growth and expansion capital; (3) transfer ownership to a motivated owner; and (4) continue the association of MW&S with utilities with Utilities, Inc. management. Indeed, the association of these two companies with Hydro Star will benefit the employees and shareholder of Utilities, Inc. and will promote the public interest by returning ownership of Utilities, Inc.'s valuable infrastructure assets to a U.S.-based company the investments of which in other infrastructure assets will help to assure continued security and increase opportunities for internal and acquisition growth in the water and wastewater market through additional investment.

Although the petition was not filed under N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10, the Parties considered the requirements of those sections. The regulations require applicants to provide information regarding the reasons for the stock transfer, an explanation of any anticipated

changes in the board of directors, officers, managers, and company policies and a description of the qualifications of management. The Stipulation further provides that, with regard to the information required under N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10, the Joint Petition, discovery, and conferences among the Parties establish:

Reasons for Transaction: The principal reason for the stock transfer is to provide Utilities, Inc. and MW&S with a stronger, more viable competitive position. The purchase of Nuon USA by Hydro Star complements Highstar II's existing infrastructure portfolio. Highstar II's limited partners seek investments in stable businesses with relatively predictable, steady cash flow; characteristics that make the investment by Highstar II in Utilities, Inc. consistent with its investors' mandate.

Management, Officers and Board of Directors: The Agreement does not contemplate any changes in the existing management and officers of Utilities, Inc. or MW&S. MW&S will continue to have proven management experience and capability to provide safe, adequate and proper service to the public.

No Change in Utility Policies: The Agreement does not contemplate any immediate changes in MW&S policies with respect to service to customers, employees, operations, financing, accounting, capitalization, rates, depreciation, maintenance, or other matters affecting the public interest or utility operations.

Qualifications of Management: The Agreement does not contemplate any changes in the existing management and officers of either Utilities, Inc. or MW&S. As stated above, MW&S will continue to have proven management experience and capability to provide safe, adequate and proper service to the public.

In the Stipulation, the Parties requested that the Board approve the Stipulation in its entirety and issue an appropriate Decision and Order adopting the Stipulation and granting the relief sought in the Joint Petition, subject to the conditions as set forth therein, which have been incorporated in the Board's findings and orders below.

The Board, having considered the record in this matter, HEREBY FINDS that:

The proposed transaction is in accordance with law and, with the implementation of the provisions set out in the Stipulation as conditions to this Order is in the public interest. The proposed conditions set forth in the Stipulation entered into by the Parties appear reasonable and appropriate and, in conjunction with existing statutes, provide the Board with sufficient means to properly regulate the operations of MW&S. In considering the proposed transaction and the criteria required to be evaluated by N.J.S.A. 48:2-51.1, particularly as to the impacts on competition, rates of ratepayers affected by the acquisition of control, and the provision of safe and adequate utility service at just and reasonable rates, the Board is mindful that the affected utilities provide services to customers in their franchise territories, which are subject to traditional public utility regulation as noncompetitive, monopoly services, and that no reduction in the number of providers of competitive services or other risks to a competitive marketplace are at issue in the Board's consideration herein. In the circumstances presented herein, and based upon the record in this proceeding and subject to the conditions set forth in this Order, the Board finds that positive benefits to customers and the State, as more fully described in the Stipulation and set forth above, will result from approval of this transaction. Furthermore, there will be no adverse impact on any of the criteria set forth in N.J.S.A. 48:2-51.1.

After careful review of the record of this proceeding including the Joint Petition, exhibits, the transcript of the public hearing, and the Stipulation of the Parties, the Board HEREBY ADOPTS

the Stipulation attached, hereto, as its own, incorporating by reference the terms and conditions as if fully set forth at length herein. The conditions set forth in the Stipulation, which the Board HEREBY ADOPTS and ORDERS, are as follows:

- a) Petitioners shall not allocate, push down, or assign any purchase, goodwill or any premium reflected in the purchase price of the stock to MW&S, either directly or indirectly, for ratemaking purposes. Such items shall not be passed on to or funded by customers of MW&S after the proposed transaction. No acquisition adjustment amount, as defined in the Board-approved Uniform System of Accounts, related to the within transaction, shall be recovered from the customers of MW&S.
- b) If any sale by Hydro Star of the stock or assets of MW&S, Utilities, Inc. or Nuon USA result in a proposed acquisition adjustment to the rate base of MW&S, then any adjustment made at the time of the sale will be for accounting purposes only and not for ratemaking purposes. A decision as to the impact of the acquisition on New Jersey ratepayers will be made by the Board in the next base rate case filed by MW&S following the sale. In the next base rate proceeding MW&S shall have the burden of demonstrating whether, and to what extent, the costs associated with this transaction should be allocated to MW&S customers.
- c) No transaction costs (financial, legal, change in control agreement payments and investment services), shall be passed on to, recovered from, or funded by customers of MW&S. No administrative costs incurred by Hydro Star nor any of its general or limited partners, will be allocated to MW&S, either directly or indirectly from other subsidiaries or affiliates.
- d) Subject to the execution, where appropriate, of acceptable confidentiality agreements, the Joint Petitioners shall provide the Board and the RPA reasonable access to the books and records of Utilities, Inc. and to the books and records of any of its regulated or non-regulated subsidiaries or affiliates, for the purposes of review of whether there has been a proper allocation of costs to MW&S. or for any other purpose the Board may deem appropriate. Nothing, herein, shall be construed to limit the authority of the Board pursuant to N.J.S.A. 48:2-16 et seq.
- e) MW&S shall maintain all applicable water quality standards and to maintain or improve water and sewer service standards including, but not limited to, the following: service related interruptions and employee response time thereto, and customer complaint and customer inquiry response time. MW&S shall maintain adequate resources to continue to be responsive to questions from customers and regulatory agencies.
- f) Upon closing of the transaction, Joint Petitioners shall inform the Board of the date of which the change in control shall have been consummated.
- g) In the next rate proceedings, should MW&S seek to recover in rates costs allocated by Utilities, Inc., its parent, or any of its subsidiaries or affiliates, MW&S shall provide the Parties with a written explanation, supported by sufficient credible evidence, of the method of allocating such costs.
- h) Subject to the execution, where appropriate, of acceptable confidentiality agreements, copies of the tax returns of Utilities, Inc. or any other entity consolidated with MW&S for the purpose of federal income taxes, shall be made available to the Board to the extent the Board determines that the information contained therein is necessary to resolve any



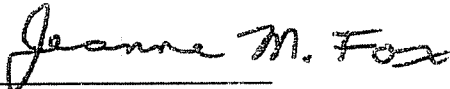
regulatory or financial issues impacting MW&S. This provision shall not impair the rights of any of the Parties in any other proceeding.

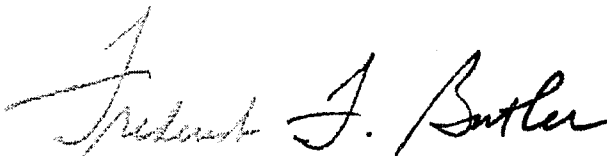
- i) The corporate headquarters of Utilities, Inc. shall remain in the United States.
- j) No layoffs or involuntary severance, except for cause, shall take place at MW&S for two years following the close of the transaction. A temporary reduction in employment levels shall not constitute a violation of this provision.
- k) Within sixty days of closing, MW&S will inform customers of the consummation of the transaction and of the continuing oversight of the Board and the New Jersey Department of Environmental Protection, the continued compliance with all New Jersey laws and regulations, and the continuity of the customer service and customer relations procedures of MW&S. For a period of twelve months following the closing of the transaction, MW&S shall file quarterly reports with the Board listing all customer complaints received during the prior quarter.
- l) MW&S shall maintain capital structures, dividend policies and use their best efforts to achieve financial target ratios consistent with at least the retention of Utilities, Inc.'s current debt quality and ratings. Any lowering of these debt qualities or ratings, resulting in the debt instruments of Utilities, Inc. falling below investment grade shall be reported to the Board within 24 hours.
- m) MW&S shall maintain a level of capital investment and best operating practices sufficient to ensure safe, adequate and proper service in compliance with applicable regulations and statutes and in accordance with prudent utility practice.
- n) MW&S will continue to implement and construct capital projects necessary for the provision of safe, adequate and proper service.
- o) For a minimum of five years following the date of this Order, the majority of the individuals comprising the current Board of Directors of MW&S shall remain in place, unless they leave the employ of Utilities, Inc. In the event that a majority of the Board members resign from Utilities, Inc. within the five year period, then the new Board of Directors of MW&S shall include at least one member who is a regional representative of Utilities, Inc. familiar with the New Jersey operations.
- p) MW&S shall file a report with the Board fully describing any changes in the corporate structure and corporate relationships of Utilities, Inc. in sufficient detail to allow the Board's Division of Audits to monitor affiliate relationships.
- q) MW&S shall not disclose confidential customer information, including names, addresses, and phone numbers to any affiliate of Utilities, Inc. for marketing or non-utility business purposes.
- r) The authority granted herein shall become null and void if the transaction is not completed within one hundred and eighty (180) days of the date of receipt of all required approvals.

Pursuant to N.J.S.A. 48:2-51.1, the Board HEREBY APPROVES the indirect acquisition by Hydro Star of equity ownership of Utilities, Inc. by acquiring all of the issued and outstanding shares of Nuon Global Solutions USA, Inc. subject to compliance with the foregoing conditions.

DATED: 3/3/06

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
CONNIE O. HUGHES  
COMMISSIONER

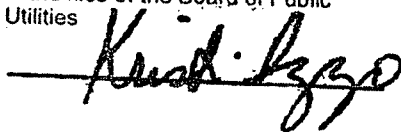
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
CHRISTINE V. BATOR  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



## SERVICE LIST

### In the Matter of the Joint Petition of Utilities, Inc. and Montague Water and Sewer Companies for Approval of a Change in Control of Certain New Jersey Public Utilities

Docket No. WM05090800

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PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Application of Penn Estates Utilities, Inc.,	A-210072F0003
Utilities, Inc. of Pennsylvania and	A-230063F0003
Utilities, Inc. - Westgate for Approval of Stock	A-230013F0004
Transfer Leading to a Change in Control of their	A-210093F0002
Parent Corporation, Utilities, Inc.	

**F I N A L     O R D E R**

In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Angela T. Jones dated January 31, 2006, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the terms and conditions contained in the Joint Petition for Approval of Proposed Settlement submitted by Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, and Utilities, Inc. - Westgate and the Office of Consumer Advocate approving the application for stock transfer are approved.

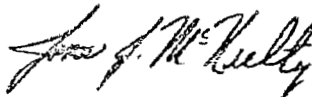
2. That pursuant to the terms of the settlement agreement, the Office of Consumer Advocate's Protest at Docket Nos. A-210072F0003, A-230063F0003, A-230013F0004, and A-210093F0002 is withdrawn.

3. That upon entry of the Pennsylvania Public Utility Commission's order approving the settlement signed by the Office of Consumer Advocate the Applicants Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, and Utilities, Inc. - Westgate at Docket Nos. A-210072F0003, A-230063F0003, A-230013F0004, and A-210093F0002, the proceeding shall be marked closed by the Secretary's Bureau.

4. That the Commission's Bureau of Fixed Utility Services is requested to implement any follow-up activities regarding the subject matter at the docket including: (1) new

format of bill; (2) enforcement of the Commission's regulation regarding the new tariffed rates for the Utilities, Inc. - Westgate customers.

BY THE COMMISSION,



James J. McNulty  
Secretary

(SEAL)

ORDER ENTERED: **FEB 27 2006**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Penn Estates Utilities, Inc.,	:	A-210072F0003,
Utilities, Inc. of Pennsylvania and	:	A-230063F0003,
Utilities, Inc. – Westgate for Approval of Stock	:	A-230013F0004,
Transfer Leading to a Change in Control of their	:	A-210093F0002
Parent Corporation, Utilities, Inc.		

**ERRATA NOTICE**

This is to advise all parties of record that the Initial Decision issued on February 16, 2006 in the above-captioned proceeding contains a typographical error. Please delete “and Commonwealth Telephone Company” from Page 8, Ordering Para. 3.

The Initial Decision on the PA PUC website will be corrected as indicated above. Please correct your copy of the Initial Decision.

This does not change the Exception/Reply Exception period established by the Commission’s service letter.



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

ISSUED: February 16, 2006

A-210072F0003  
A-230063F0003  
A-230013F0004  
A-210093F0002

TO ALL PARTIES

Application of Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania and Utilities, Inc. - Westgate for Approval of Stock Transfer Leading to a Change in Control of their Parent Corporation, Utilities, Inc.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Angela T. Jones. This decision is being issued and mailed to all parties on the above specified date.

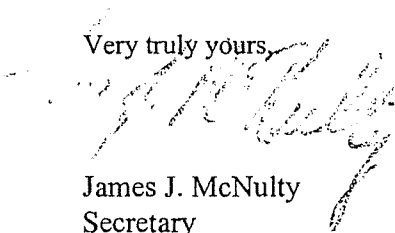
If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2<sup>ND</sup> FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within **twenty (20) days** of the issuance date of this letter.** The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

  
James J. McNulty  
Secretary

Encls.  
Certified Mail  
Receipt Requested  
MMB

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Penn Estates Utilities, Inc.,	:	A-210072F0003,
Utilities, Inc. of Pennsylvania and	:	A-230063F0003,
Utilities, Inc. – Westgate for Approval of Stock	:	A-230013F0004,
Transfer Leading to a Change in Control of their	:	A-210093F0002
Parent Corporation, Utilities, Inc.		

**INITIAL DECISION**

Before  
Angela T. Jones  
Administrative Law Judge

**HISTORY OF THE PROCEEDINGS**

On August 17, 2005, the Joint Application of Penn Estates Utilities, Inc. (“PEUT”), Utilities, Inc. of Pennsylvania, (“UIP”) and Utilities, Inc. – Westgate (“UIW”) (collectively, “Applicants”) was filed with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) requesting approval of the transfer of stock of the parent corporation. The Applicants are subsidiaries of Utilities, Inc, which is a wholly owned subsidiary of Nuon Global Solutions USA, Inc. (“NGSU”). The proposed acquisition is for Hydro Star to acquire 100% of the stock of NGSU from Nuon Global Solutions USA, BV (“NGSU BV”). NGSU and NGSU BV were both organized as direct wholly owned subsidiaries of N.V. Nuon (“Nuon”) prior to the 2001 merger of Nuon Acquisition Sub Inc. (“Acquisition Sub”) into Utilities, Inc. Prior to the 2001 merger, Nuon’s interest in Acquisition Sub was contributed to NGSU and Nuon’s interest in NGSU was contributed to NGSU BV. As a result of the 2001 merger, Utilities Inc. became a wholly owned subsidiary of NGSU, which is a wholly owned subsidiary of NGSU BV, which is a wholly owned subsidiary of Nuon. NGSU and NGSU BV have no business or operations other than their ownership of Utilities, Inc.



The transaction at issue in this proceeding will be accomplished through a shareholder substitution between NGSU BV and Hydro Star, LLC. Hydro Star will acquire 100% of NGSU's stock from NGSU BV. The result is that Utilities, Inc will indirectly become a wholly owned subsidiary of Hydro Star and the Applicants will become indirect wholly owned subsidiaries of Hydro Star. Hydro Star and NGSU BV entered into a stock purchase agreement on May 14, 2005 which has been approved by the Boards of Directors of NGSU BV and the management of Hydro Star.

Applicants assert that the stock transfer is in the public interest, will not affect the Commission's regulatory authority over them and will be transparent to their customers. The Applicants further assert that the approval of the stock transaction will not effect the safe, reliable and continuous provision of water and wastewater services to Applicants' customers. Applicants state that Utilities, Inc. will continue to provide the same level of support with the ability of Hydro Start to increase financial capabilities to UI, which will in turn yield benefits and capabilities to Applicants.

Additionally Applicants contend that all current management teams, system operators and customer service personnel will remain in place resulting in no immediate impact on jobs in Pennsylvania. The Applicants propose that the benefit of the transaction will yield additional resources of a larger international parent company for continued reliable service to PEUI, UIP and UIW customers at current tariffed rates once the final regulatory approval is granted.

On October 3, 2005, the Office of Consumer Advocate ("OCA") filed a Protest to the Joint Application.<sup>1</sup> The OCA stated that the Joint Application must be examined pursuant to Chapter 11 of the Public Utility Code and specifically whether the certificate is "necessary or proper for service, accommodation, convenience or safety of the public." 66 Pa. C.S. § 1103(a). The OCA alleged that within the UIW service territory, customers report that the quality of water provided them does not meet the minimum standard of the Safe Drinking Water Act ("SDWA"), 27 Pa. C.S. § 3102. Water quality tests performed by a Department of Environmental Protection ("DEP")

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<sup>1</sup> OCA states counsel for Applicants stipulated to an extension of the time permitted by Commission rules for answering motions from Thursday, September 27, 2005 to Monday October 3, 2005.

certified laboratory confirm that UIW supplied water exceeded the maximum contaminant level (“MCL”) for total dissolved solids. The Commission has incorporated DEP standards for water quality into the PUC regulations, which are applicable to UIW to uphold. 52 Pa. Code §§ 65.17-65.18. The OCA alleges a violation of Section 1501 of the Public Utility Code because the UIW water exceeds the SDWA MCL for total dissolve solids and is therefore not suitable for all household purposes and is a violation of Commission regulations. 66 Pa. C.S. § 1501. While the OCA did not dispute the financial aspects of the proposed transaction, the OCA requested that a condition be placed on any approval of the stock transfer consistent with Section 1103(a) of the Public Utility Code to cure the water quality problems of UIW. 66 Pa. C.S. § 1103(a).

On September 17, 2005, Applicants submitted a Petition for Protective Order which was timely answered by OCA and denied by Order dated November 2, 2005. On October 17, 2005, the OCA filed a Motion to Consolidate this proceeding with the Vincent Horvath, et al. v. UIW, Docket Nos. C-20055305 *et al.*, which was timely answered by the Applicants and denied by Order dated November 22, 2005.

A Prehearing Conference convened on December 15, 2005, pursuant to a Hearing Notice. A procedural schedule was established and approved by Administrative Law Judge Angela T. Jones (“ALJ”). The procedural schedule for this proceeding was incorporated in a Second Prehearing Order dated December 19, 2005. Pursuant to the established procedural schedule, parties filed various testimonies and responsive testimonies.

The parties to this proceeding filed various motions pertaining to the substance of the disputed issues. Two of the motions remain outstanding<sup>2</sup> but are rendered moot due to the recommendation of approval of the Joint Petition for Settlement contained herein. On January 23, 2006, the Applicants and OCA (“Joint Petitioners”) submitted a fully executed Joint Petition for Approval of Proposed Settlement (“Settlement Petition”) for my review. The Settlement Petition was signed by the Joint Petitioners and is attached hereto as Attachment 1. This matter is ready for decision.

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<sup>2</sup> Applicants’ Motion to Strike Direct Testimony submitted by OCA and Applicant’s Motion for Summary Judgment, both filed January 12, 2006, are the outstanding motions.

## TERMS AND CONDITIONS OF THE SETTLEMENT PETITION

The Settlement Petition at Docket Nos. A-210072F0003, A-230063F0003, A-230013F0004 and A-210093F0002 indicate a means to resolve the water quality problems experienced by the customers of UIW. The Joint Petitioners agree to the following: (a) the revenue requirement to facilitate the UIW--City of Bethlehem interconnection to meet the customers' needs will be no more than \$155,168 or no more than a 72.68% increase in current revenues; (b) upon Commission approval of the settlement UIW will take the means necessary to allow full utilization of the City of Bethlehem ("City") interconnection to provide water service to current and prospective UIW customers; (c) UIW will submit no later than December 31, 2006, a short-form rate filing and customer notice of the proposed rate change needed to purchase water from the City to meet the domestic and fire protection need of UIW customers pursuant to 66 Pa. C.S. § 1308(d); (d) after the short-form rate filing<sup>3</sup>, UIW will furnish water service for domestic and fire protection purposes through the activated City interconnection, UIW will not permanently abandon its current supply sources until a backup interconnection with the City is reliably in place and UIW will charge customers for the cost of water purchased from the City according to Commission-approved tariffs; (e) OCA will review the short-form rate filing prior to submission to the Commission raising any issues informally with the aim to resolve them promptly to avoid a contested proceeding; (f) UIW will establish a Customer Advisory Board to meet at a minimum quarterly, facilitating timely communication between UIW and its customers; (g) UIW will reformat its bills<sup>4</sup> yielding a clear and concise presentation of charges within thirty (30) days of the PUC approval of a new tariff; (h) UIW will issue bills on a monthly basis within thirty (30) days of PUC approval of a new rate tariff; (i) UIW will utilize bill inserts regarding conservation information which will be provided within sixty (60) days following PUC approval of a new tariff; (j) UIW will complete remediation of the property owned by Richard and Juliette Laury at 1250 Wynnewood Drive, Bethlehem, Pennsylvania

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<sup>3</sup> The Joint Petitioners have agreed that the short-form rate filing will reflect certain accounting amortization periods and elimination of identified expenses.

<sup>4</sup> The reformatted bills will occur at a time to closely coincide with the change to use the City-purchased water.

18017 will occur at the earliest possible time after the Settlement is approved; and (k) as a result of the executed Settlement Petition OCA's protest is deemed withdrawn.

The Settlement Petition is proposed by the Joint Petitioners to settle the case and is made without any admission against or prejudice to any positions which any joint petitioner might adopt during subsequent litigation, including further litigation in this case or other associated formal complaints if the settlement is rejected by the Commission or if any of the Joint Petitioners withdraw from the settlement as provided in the Petition. The settlement is conditioned upon the Commission's approval of all terms and conditions contained therein. If the Commission should fail to grant such approval or should modify the terms and conditions, the settlement may be withdrawn upon written notice to the Commission and all parties within five (5) business days by any withdrawing joint petitioner and, in such event, shall be of no force and effect. In the event that the Commission does not approve the settlement or any party elects to withdraw as noted above and the proceeding continues to hearing, the Joint Petitioners reserve their respective rights to resume the proceeding for appropriate briefing and updating or supplementing the record as required.

If the Initial Decision orders the Commission to adopt the settlement as proposed, the Joint Petitioners agree to waive the filing of Exceptions. However the Joint Petitioners do not waive their rights to file Exceptions with respect to any modifications to the terms and conditions of the settlement, or any additional matters, proposed by the Initial Decision. In the event of filed Exceptions to the settlement, Joint Petitioners reserve the right to file Reply Exceptions.

The Settlement Petition is proposed by the Joint Petitioners to settle this case and shall not be cited or constituted as controlling precedent in this or any other jurisdiction. The settlement is not binding on parties that filed formal complaints against UIW at Docket Nos. C-20055305, *et al.*<sup>5</sup>

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<sup>5</sup> The complainants to those dockets are: Vincent Horvath, C-20055305; Sandy & Victor Berkey C-20055316; Richard & Juliette Laury C-20055317; Parveen & Pramila Gupta C-20055318; Anthony A. Strobel C-20055320; Elaine D. Hokenson C-20055321; George J. Raykos C-20055324; Mr. & Mrs. John Horvath

## DISCUSSION

In reviewing the settlement regarding the transfer of stock to the controlling parent of Utilities, Inc., the issue which must be addressed is whether the settlement is in the public interest.

The settlement recognizes approval of the Application without conditions which the Joint Petitioners contend is in the best interest of all parties involved in this proceeding. The indirect acquisition of Utilities, Inc. by Hydro Star will provide financial resources for the jurisdictional subsidiaries enabling the ability to address service and systems issues and growth for the future. Additionally, by keeping the Applicants' managerial and operational staff in place, the Applicants will provide consistent and uninterrupted service to the customers of the applicable service territories. Moreover, the utilities' personnel remain committed with technical expertise, knowledge and qualifications to meet the Commission's regulatory requirements as well as other applicable agency requirements to provide adequate and reasonable water and wastewater service to current and prospective customers.

Approval of the Settlement Petition will position the Applicants to expand operations and potentially replace smaller, thinly capitalized water and wastewater companies in Pennsylvania. Thus, the transaction could potentially benefit customers not currently served by the Applicants. The settlement reconciles the concerns expressed through the OCA Protest regarding the quality issues of UIW and provides a solution that is amenable to the customers, OCA and UIW. The supply of water from the City meets legal requirements and the City has agreed to sell the supply to UIW under its current resale tariff. This change in the source of water addresses quality matters and will result in no more than \$155,168 or a 72% increase in revenues according to calculations and considerations identified by OCA. Other factors agreed to by the Joint Petitioners to mitigate the effects of increased rates because of the purchased water from the City include: (a) new bill format, the presentation to more clearly show monthly

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C-20055346; Jeffrey B. Benner C-20055374; Lisa & David Balash C-20055406; Donald Wertman C-20055417; Kria & Joe Saveri C-20055470; Frederick M. Ronca C-20055494; and OCA C-20055509.

customer usages and charges; (b) frequency of billing changed to monthly from quarterly; and (c) bill inserts providing conservation information.

The statements in support filed by the Joint Petitioners state that the terms and conditions of the proposed settlement represent a fair and reasonable resolution of the issues and claims arising in this proceeding. The statements declare that the settlement is in the public interest and meets the Commission's policies promoting such resolutions. The Commission and the Joint Petitioners have avoided incurring additional time, expense and uncertainty that are inherent in further litigation. The settlement negates the need for cross-examination of witnesses, the preparation of main briefs, reply briefs, exceptions and reply exceptions, and potential appeals. Thus, the settlement as a resolution yields conservation of resources of this Commission and Joint Petitioners in avoiding a fully litigated proceeding while reaching a just, reasonable and non-discriminatory result.

For the foregoing reasons, I find that the Settlement is in the public interest and recommend its adoption in its present form without amendment. The Protest of the OCA at Docket Nos. A-210072F0003, A-230063F0003, A-2300013F0004 and A-210093F0002 is withdrawn in accordance with the Petition.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding.
2. The Joint Petition for Approval of Proposed Settlement submitted by the Applicants and OCA is in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

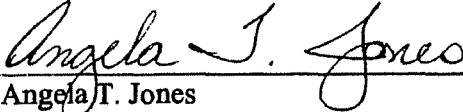
1. That the terms and conditions contained in the Joint Petition for Approval of Proposed Settlement submitted by Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, and Utilities, Inc. – Westgate and the Office of Consumer Advocate approving the application for stock transfer are approved.

2. That pursuant to the terms of the settlement agreement, the Office of Consumer Advocate's Protest at Docket Nos. A-210072F0003, A-230063F0003, A-230013F0004, and A-210093F0002 is withdrawn.

3. That upon entry of the Pennsylvania Public Utility Commission's order approving the settlement signed by the Office of Consumer Advocate the Applicants Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, and Utilities, Inc. – Westgate and Commonwealth Telephone Company at Docket Nos. A-210072F0003, A-230063F0003, A-230013F0004, and A-210093F0002, the proceeding shall be marked closed by the Secretary's Bureau.

4. That the Commission's Bureau of Fixed Utility Services is requested to implement any follow-up activities regarding the subject matter at the docket including: (1) new format of bill; (2) enforcement of the Commission's regulation regarding the new tariffed rates for the Utilities, Inc. – Westgate customers.

Dated: January 31, 2006

  
\_\_\_\_\_  
Angela T. Jones  
Administrative Law Judge

**ATTACHMENTS**



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Penn Estates Utilities, Inc.,	:	
and, Utilities, Inc. of Pennsylvania, and,	:	Docket Nos. A-210072F0003,
Utilities, Inc.- Westgate for Approval	:	A-230063F0003, A-230013F0004
of Stock Transfer Leading to a Change in	:	and A-210093F0002
Control of their Parent Corporation,	:	
Utilities, Inc.	:	

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**JOINT PETITION FOR APPROVAL OF PROPOSED SETTLEMENT**

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TO THE HONORABLE, ADMINISTRATIVE LAW JUDGE ANGELA T. JONES:

Pursuant to Section 5.232 of the Pennsylvania Public Utility Commission's ("PUC" or ("Commission")) regulations, 52 Pa. Code § 5.232, Penn Estates Utilities, Inc., Utilities Inc. of Pennsylvania and Utilities, Inc.-Westgate ("UI-Westgate" or "Company"), Protestant Office of Consumer Advocate ("OCA") (collectively "Joint Petitioners" or "Settlement Parties"), hereby submit this Joint Petition for Approval of Proposed Settlement ("Joint Petition") in this proceeding. The Joint Petitioners seek Commission approval of the terms set forth below and agree that it is in the public interest for entry of a PUC Final Order approving this Petition on or before the Commission's scheduled public meeting of March 9, 2006. Joint Petitioners further aver, in support of this Joint Petition, the following:

**A. BACKGROUND**

1. The above-captioned proceeding was commenced by the Joint Applicants who seek PUC approval of a stock transfer leading to a change in control of their parent corporation, Utilities, Inc. The OCA submitted a Protest on October 3, 2005.

2. The Protest alleges, among other things, that customers in the Utilities, Inc. – Westgate portion of the territory receive water that is poor tasting, has an unpleasant odor and is "hard," in that it damaged the pipes, fixtures and appliances in customers' homes.

3. Various motions were filed and decided by the ALJ. A Joint Petition for a Protective Order was submitted on September 17, 2005, was answered timely by the OCA and was denied by ALJ Jones' Order of November 2, 2005. The OCA's Motion to Consolidate the Application with various Formal Complaints was submitted within the Answer, was opposed by the Joint Applicants and was denied by ALJ Jones' Order of November 22, 2005.

4. Pursuant to a Prehearing Conference Order, the Prehearing Conference was convened on December 15, 2005 and a procedural schedule established and approved by ALJ Jones.

5. Since the commencement of this proceeding, the parties have engaged in productive exchanges of relevant information, obviating the need for extensive formal discovery.

6. In accordance with the Commission's Policy Statement encouraging negotiated settlement of contested proceedings, 52 Pa. Code §§ 5.231 and 69.391, the Joint Petitioners engaged in negotiations to attempt to settle the dispute raised by the OCA's Protest. These discussions resulted in this Joint Settlement Petition, which proposes a resolution of all outstanding issues in this proceeding, as set forth below.

**B. SETTLEMENT TERMS**

7. The terms and conditions comprising this Joint Petition are as follows:

- a. Utilities, Inc.-Westgate, and OCA, after extensive review and analysis, represent that the total estimated additional revenue requirement to facilitate the Utilities, Inc.-Westgate/City of Bethlehem interconnection and the purchases of water to meet all customer needs will be no more than \$155,168 or an increase of no more than approximately 72.68% over current revenues.

b. Utilities, Inc.-Westgate, upon Commission approval of this Petition and as otherwise set forth below, will make the necessary engineering, technical and administrative improvements to allow full utilization of the City of Bethlehem interconnection to provide service to all current and prospective customers in the Utilities, Inc.-Westgate service territory.

c. The Company will submit within 60 days of all state regulatory approvals necessary to consummate the change in control, but no later than December 31, 2006, a short-form rate filing and prepare and send the statutory sixty-day notice to customers pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S. §1308(d). The notice will specify that the proposed rate change is needed to effect water purchases from the City of Bethlehem to meet Westgate customers' domestic and fire protection needs in lieu of Westgate's existing sources.

d. Upon Commission approval of a Utilities, Inc.-Westgate short form rate filing (*i.e.*, without testimony) consistent with PUC regulations, that seeks a rate adjustment of no more than 72.68% for Utilities, Inc.-Westgate to furnish this service, the City of Bethlehem interconnection will be fully activated simultaneous with the approval of the compliance tariff. Through this interconnection, all UI-Westgate customers will receive water for all domestic and fire protection purposes from the City of Bethlehem. Westgate will not permanently abandon its current sources of supply unless and until a backup interconnection with the City is in place for system reliability purposes. The Company will thereafter charge all customers for the cost of water purchased from the City of Bethlehem in accordance with Commission-approved tariffs.

Consistent with discussions prior to this Joint Petition, the short-form rate filing will reflect, *inter alia*, the following:

- Amortization periods for abandoned plant associated with use of existing sources of no less than fifteen (15) years;
  - Elimination of purchased power, chemical, transportation, operator salary and taxes and benefit expense currently associated with use of existing sources.
- e. OCA will agree to review the short-form rate filing in advance of submission to the PUC and to raise any issues informally with UI-Westgate in hopes of resolving them promptly in order to avoid the delay associated with the filing of a formal complaint and an on-the-record contested proceeding.
- f. UI-Westgate agrees to establish a Customer Advisory Board ("CAB"). The proposed CAB will meet at least quarterly, or more frequently if necessary, to facilitate better and more timely communication between UI-Westgate and its customers.
- g. UI-Westgate agrees to reformat its bills in order to provide a more clear and concise presentation of water service and supply charges within thirty days of PUC approval of a new tariff. The bill format change is to coincide as closely as possible in time with the change to using City of Bethlehem purchased water in lieu of existing sources.
- h. UI-Westgate agrees to issue bills on a monthly rather than quarterly basis within thirty days of Commission approval of a new rate tariff.
- i. UI-Westgate agrees to provide conservation information through bill inserts to all customers within sixty days following PUC approval of the new tariff.

j. UI-Westgate agrees to complete the remediation of the property owned by Formal Complainants Richard & Juliette Laury at 1250 Wynnewood Drive, Bethlehem PA 18017 at the earliest possible time subsequent to the approval of this Joint Petition.

k. Upon execution of this Agreement, the OCA's Protest at Docket Nos. A-210072F0003; A-230063F0003; A-230013F0004; and, A-210093F0002, filed October 3, 2005, the subject of which regards water quality in the UI-Westgate service territory, may be deemed to be withdrawn.

**C. RESOLUTION OF PROCEEDING**

8. This Settlement is proposed by the Joint Petitioners to settle the instant application docket and is made without any admission against or prejudice to any positions that any Joint Petitioner might adopt during subsequent litigation, including further litigation in this case or other associated formal complaints, if this Settlement is rejected by the Commission or withdrawn by any of the Joint Petitioners as provided below.

9. This Settlement is conditioned upon the Commission's approval of all terms and conditions contained herein. If the Commission should fail to grant such approval or should modify the terms and conditions herein, this Settlement may be withdrawn by any of the Joint Petitioners upon written notice to the Commission and all parties within five (5) business days, and in such event, this settlement shall be of no force and effect. In the event that the Commission does not approve the Settlement or any Joint Petitioner elects to withdraw as provided above, the Joint Petitioners reserve their respective rights to request that the proceeding be resumed for the submission of briefs, reply briefs and updating or supplementing the record, as needed.

10. If the Presiding Administrative Law Judge, in the Initial Decision, recommends that the Commission adopt the Settlement as herein proposed, the Joint Petitioners agree to waive the filing of Exceptions. However, the Joint Petitioners do not waive their rights to file Exceptions with

respect to any modifications to the terms and conditions of this Joint Petition, or any additional matters, proposed by the Administrative Law Judge in the Initial Decision. The Joint Petitioners reserve the right to file Reply Exceptions to any Exceptions that may be filed.

11. The Joint Petitioners recognize that this Settlement is not binding on Formal Complainants who are parties to Docket Nos. C-20055305, *et seq.* A plain language summary of the substantive provisions of this Joint Petition is being informally provided to the Formal Complainants at Docket Nos. C-20055305, *et seq.*, by the OCA.

12. This Joint Petition shall become effective immediately upon the entry of a Final Order by the Commission ratifying and accepting this Joint Settlement Petition in its entirety without modification.

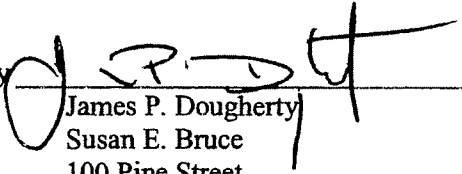
13. The Joint Petitioners agree that this Joint Settlement shall not constitute or be cited as controlling precedent in this or any other jurisdiction.

14. The Joint Petitioners submit that approval of this Joint Petition is in the public interest. In recognition of the Commission's policy in favor of seeking negotiated settlements to contested proceedings, the Joint Petitioners have reached an amicable resolution to this dispute as embodied in this Joint Petition. Approval of this Joint Petition will permit the Commission and the Settlement Parties to avoid incurring the time, expense and uncertainty of further litigation. *See* 52 Pa. Code § 69.391.

**WHEREFORE**, the Joint Petitioners respectfully request that the Commission approve the Settlement Terms proposed herein in their entirety and grant any such relief as it deems appropriate.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

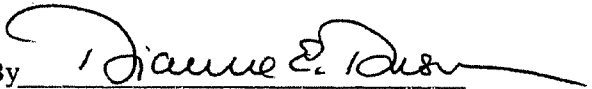
By 

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Counsel to Utilities, Inc.-Westgate

Dated: January 23, 2006

OFFICE OF CONSUMER ADVOCATE

By 

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Counsel for Irwin A. Popowsky, Consumer Advocate

Dated: January 23, 2006

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Joint Application of Penn Estates Utilities, Inc., Water and Wastewater Divisions, Utilities, Inc. of Pennsylvania, and Utilities, Inc., Westgate Division, for Approval of a Stock Transfer Leading to a Change in Control of their Parent Corporation, Utilities, Inc.</b>	<b>:</b>	<b>Docket Nos.</b>	<b>A-210072F0003;</b>
	<b>:</b>		<b>A-230063F0003;</b>
	<b>:</b>		<b>A-230013F0004; and</b>
	<b>:</b>		<b>A-210093F0002</b>
	<b>:</b>		
	<b>:</b>		
	<b>:</b>		

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**STATEMENT IN SUPPORT OF JOINT PETITION FOR SETTLEMENT**

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On January 23, 2006, Penn Estates Utilities, Inc. ("PEUI"), Utilities, Inc. of Pennsylvania ("UIP"), and Utilities, Inc.-Westgate ("Westgate") (collectively, "Joint Applicants"), and the Office of Consumer Advocate ("OCA") ("collectively, "Joint Petitioners") submitted to the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Joint Petition for Settlement ("Joint Settlement") proposing a negotiated resolution of all outstanding issues in the above-captioned proceeding. Joint Applicants hereby provide this Statement in Support, which explains the background and provisions of the Joint Settlement, and sets forth the reasons that approval, without modification, of the Joint Settlement promotes the public interest.

**BACKGROUND**

1. On August 17, 2005, Joint Applicants filed a Joint Application for Approval of Transfer of Stock of Parent Corporation ("Joint Application") seeking Commission approval of the transfer of all common stock of their grandparent corporation, Nuon Global Solutions USA, Inc. ("NGSU, Inc."), from Nuon Global Solutions USA, BV ("NGSU BV"), to Hydro Star, LLC ("Hydro Star"). This transaction does not involve any administrative or operational change at the parent corporation, Utilities, Inc. ("UI"), or at the Joint Applicants. As set forth in detail in the Joint



Application, the transfer serves the public interest and will result in a financially stable corporation that provides continuous and seamless reliable service to the Joint Applicants' customers at just and reasonable rates.

2. The OCA submitted a Protest on October 3, 2005. In its Protest, the OCA alleges, among other things, that customers in the Westgate service territory experience various water quality concerns.

3. On September 17, 2005, Joint Applicants submitted a Joint Petition for a Protective Order, which the OCA timely answered, but was subsequently denied by Order issued November 2, 2005.

4. On October 17, 2005, the OCA filed a Motion to Consolidate the above-referenced Docket Nos. A-210072F0003 *et al.* ("Joint Application Docket") with Docket Nos. C-20055305 *et al.* ("Westgate Customer Complaint Docket"). On October 28, 2005, Joint Applicants filed an Answer opposing the OCA's Motion to Consolidate, and by Order dated November 22, 2005, OCA's Motion to Consolidate was denied.

5. Pursuant to a Prehearing Conference Order, a Prehearing Conference was convened on December 15, 2005, at which a procedural schedule was established and approved by Administrative Law Judge Angela T. Jones. Pursuant to that schedule, Joint Applicants and the OCA submitted direct testimony on January 4, 2006.

6. On January 12, 2006, the Joint Applicants filed Responsive Testimony, a Motion to Strike the Direct Testimony submitted by the OCA, and a Motion for Summary Judgment. The two motions are currently outstanding, but will be rendered moot pending approval of the Joint Settlement without modification by the ALJ and the Commission.

7. On January 18, 2006, the OCA submitted its Surrebuttal Testimony.

8. On January 23, 2006, Joint Petitioners submitted the Joint Settlement.

## STATEMENT OF SUPPORT

9. The Commission has a strong policy favoring settlements. As set forth in the Commission's regulations, "[t]he Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation." 52 Pa. Code § 69.391; *see also* 52 Pa. Code § 5.231. Consistent with the Commission's policy, Joint Petitioners engaged in negotiations in an effort to settle the dispute raised by the OCA's Protest. These ongoing discussions produced the Joint Settlement submitted on January 23, 2006.

10. Joint Petitioners' settlement recognizes that approval of the Joint Application, which is the primary concern of this docket, is overwhelmingly in the best interest of all parties involved. Hydro Star's indirect acquisition of UI will provide UI and its operating subsidiaries, the Joint Applicants, with additional financial resources, thereby enhancing their ability to grow and meet their service obligations. Approval of the transaction described in the Joint Application will also provide the Joint Applicants with a greater ability to address potential service and system issues in the future, as Hydro Star has access to extensive resources to develop and fund operations. By combining UI's management approach and expertise with the financial resources and support of Hydro Star, Joint Applicants will continue to have the ability to provide consistent, uninterrupted and reliable service to their customers.

11. The Joint Applicants have already demonstrated their technical and managerial ability to provide safe and reliable water and wastewater service. The current management and operation team, which has proven its abilities to the Commission, will remain in place after the Joint Application is approved. Joint Applicants remain committed to meeting the requirements set forth by this Commission as well as all other applicable regulatory agencies, thereby assuring necessary, proper, and reasonable water and wastewater service for current and prospective customers. The managerial and technical expertise and qualifications that Joint Applicants bring to their customers thus meets the public interest standard set forth in the Commission's regulations.

12. Approval of the Joint Application will position UI to better expand its operations and potentially replace smaller, thinly capitalized water and wastewater companies in Pennsylvania in accordance with the Commission's stated objectives and policies. *See, e.g.,* 52 Pa. Code §§ 69.701 and 69.711. Therefore, the transaction will not only have a positive effect on UI's financial condition, but also benefit Pennsylvania customers, thereby further serving the public interest.

13. The Joint Settlement reflects a reasonable balance between the OCA's concerns set forth in its Protest, and the considerable public benefits associated with the transfer of ownership of Joint Applicants' parent company, UI.

14. The Joint Settlement reconciles the concerns expressed by the OCA regarding water quality issues in the Westgate service territory. The agreed-upon Westgate/City of Bethlehem interconnection provides a satisfactory resolution to this matter. The Commission's approval of the Joint Settlement without modification will not only ease Westgate customers' apprehensions regarding water quality but also afford all of the Joint Applicants' customers the benefits of a more financially sound utility structure.

15. With the OCA's withdrawal of its Protest, the Joint Settlement resolves all protests to the Joint Application. In the absence of any protests, the Commission has an opportunity to ensure the timely acceptance of the Joint Application. As approval of the Joint Application will provide significant benefits to the Joint Applicants and their customers, the timely acceptance of this Joint Settlement is soundly within the public interest.

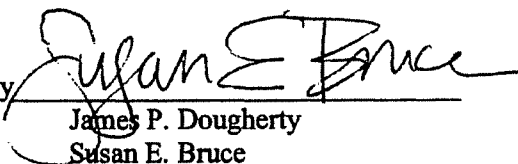
16. As set forth above, Joint Applicants submit that the Joint Settlement is in the public interest and adheres to the Commission policies promoting negotiated settlements. The Joint Settlement was achieved after numerous settlement discussions. While Joint Petitioners have invested time and resources in the negotiation of the Joint Settlement, this process has allowed the parties, and the Commission, to avoid expending the substantial resources that would have been required to fully litigate this proceeding while still reaching a just, reasonable, and non-

discriminatory result. Joint Petitioners have thus reached an amicable resolution to this dispute as embodied in the Joint Settlement. Approval of the Joint Settlement will permit the Commission and Joint Petitioners to avoid incurring the additional time, expense and uncertainty of further litigation. See 52 Pa. Code § 69.391.

**WHEREFORE**, for the public interest considerations set forth herein, Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, and Utilities, Inc.-Westgate respectfully requests that the Commission adopt the Joint Petition for Settlement without modification and approve the Joint Application as soon as reasonably possible.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Counsel to Penn Estates Utilities, Inc.,  
Utilities, Inc. of Pennsylvania, Utilities, Inc.-Westgate,  
and Utilities, Inc.

Dated: January 25, 2006

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Penn Estates Utilities, Inc.,	:	
and, Utilities, Inc. of Pennsylvania, and,	:	
Utilities, Inc. – Westgate for Approval	:	Docket Nos. A-210072F0003,
of Stock Transfer Leading to a Change	:	A-230063F0003,
in Control of their Parent Corporation,	:	A-230013F0004, and
Utilities, Inc.	:	A-210093F0002

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**The Office of Consumer Advocate  
Statement in Support of Joint Petition for Approval of Proposed Settlement**

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The Office of Consumer Advocate (“OCA”), a signatory party to the Joint Petition for Approval of Proposed Settlement (Joint Petition) in the above-captioned proceeding respectfully requests that the Administrative Law Judge and the Public Utility Commission approve the terms and conditions set forth therein. The Joint Petition resolves all issues regarding the Joint Application of the Utilities, Inc., subsidiaries requesting Commission approval of a change in control via stock transfer from their grandparent corporation, Nuon Global Solutions USA, BV to Hydro Star, LLC, a subsidiary of AIG.

The OCA submits that the proposed settlement is in the public interest. The OCA filed a Protest to the Joint Application on October 3, 2005. The Protest alleged that within one of the Utilities, Inc., territories customers complained of substandard water quality. In the service territory of Utilities, Inc. - Westgate, DEP-certified laboratory tests of the water supplied to customers in the Westgate community revealed that the Pennsylvania Safe Drinking Water secondary standard for Total Dissolved Solids was exceeded. The Public Utility Commission has incorporated by reference all DEP standards into its own regulations. 52 Pa. Code §65.17-

18. Failing to meet SDWA standards, therefore, is also a violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501 and pertinent PUC regulations.

Laboratory tests of water samples from the Westgate system also revealed that they exceeded the Environmental Protection Agency guideline for sodium of no more than 20 milligrams per liter by a substantial margin.

The OCA raised no specific issue disputing the financial aspects of the requested transfer of control, but pursuant to Section 1103(a) of the Public Utility Code, 66 Pa.C.S. §1103(a), requested that a condition be placed on any approval of the stock transfer. The requested condition was to require Utilities, Inc. - Westgate to cure these water quality problems, whether under current or future management, within a reasonable time.

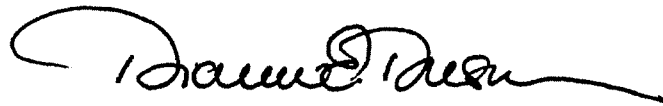
Under the terms of the Proposed Settlement, Utilities, Inc.-Westgate has agreed to abandon its current sources and to purchase 100% of its customers' needs from a neighboring utility, City of Bethlehem (City). The City has an excess supply of water that meets all legal requirements and is willing to sell water to Westgate under its current resale tariff. The OCA and the Company calculated that water purchases to meet all customer needs should result in no more than an approximate 72% increase in revenues, considering elimination of expenses associated with the use of current sources, such as chemicals, operator salaries and benefits and a portion of purchased power. Utilities, Inc. - Westgate has agreed that within sixty days of the final state regulatory approval of the stock transfer the Company will submit to the PUC a short-form rate filing requisite to completing the change from its current sources to purchased water.

The Company has agreed to several other terms which will mitigate the effects of increased bills due to the change to purchased water. The Company will use a new bill format that will provide a more clear presentation of the monthly customer charges and the customers'

usage. The Company will also issue bills monthly rather than quarterly, providing more frequent usage level signals. Conservation information will also be distributed through bill inserts within sixty days following the PUC approval of the new tariff.

The OCA submits, therefore, that the ALJ and the Commission should adopt the terms of the Joint Petition for Settlement as in the public interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dianne E. Dusman", written over a horizontal line.

Dianne E. Dusman  
Senior Assistant Consumer Advocate

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