

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF WATER	)	
SERVICE CORPORATION OF KENTUCKY	)	
ALONG WITH CORIX INFRASTRUCTURE (US)	)	CASE NO.
INC. AND SW MERGER ACQUISITION CORP.	)	2022-00396
FOR APPROVAL OF TRANSFER OF CONTROL	)	

ORDER

On November 23, 2022, Water Service Corporation of Kentucky (WSCK) Corix Infrastructure (US) Inc. (Corix US) and SW Merger Acquisition Corp. (SWMAC) (collectively, Joint Applicants) filed an application, pursuant to KRS 278.020(6) and KRS 278.020(7), requesting Commission approval to transfer ownership and control of WSCK's company by way of an upstream corporate merger of Corix US and SWMAC. As a result of the proposed acquisition, SWMAC will merge with and into Corix US, with Corix US being the surviving entity. Corix US will continue to indirectly own WSCK.

There are no intervenors to this matter. Joint Applicants responded to one round of discovery. On February 14, 2023, Joint Applicants filed a Statement Regarding Hearing This matter now stands submitted to the Commission for a decision.

## JOINT APPLICANTS

### WSCK

WSCK, a wholly owned subsidiary of Corix US,<sup>1</sup> is a jurisdictional utility that distributes and sells water to approximately 6,150 customers in Bell, Clinton and Hickman counties.<sup>2</sup>

### SWMAC

SWMAC is a Delaware corporation.<sup>3</sup> It owns 100 percent of SouthWest Water Company.<sup>4</sup> SWMAC, through its operating subsidiaries, owns and operates 18 water and wastewater utility companies in the United States.<sup>5</sup> SWMAC's water and wastewater utilities provide service to over 500,000 people in seven U.S. states.<sup>6</sup>

### Corix US

Corix US is a corporation incorporated under the laws of Delaware.<sup>7</sup> Corix US is owned by Corix Infrastructure Inc. (CII).<sup>8</sup> CII, through its operating subsidiaries, owns and operates approximately 385 water, 310 wastewater, two electricity distribution, one propane, three geothermal, one municipal, and three natural gas distribution systems in the United States and Canada. CII's water and wastewater utilities and related

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<sup>1</sup> Application at 4.

<sup>2</sup> Application at 4.

<sup>3</sup> Application at 4.

<sup>4</sup> Application at 4.

<sup>5</sup> Application at 4.

<sup>6</sup> Application at 4.

<sup>7</sup> Application at 4.

<sup>8</sup> Application at 4.

businesses serve over 800,000 people in 18 U.S. states and two Canadian provinces.<sup>9</sup>  
Corix US indirectly owns 100 percent of WSCK.<sup>10</sup>

### LEGAL STANDARD

The Commission reviews the proposed transaction pursuant to KRS 278.020(6) and KRS 278.020(7). KRS 278.020(6) provides that:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

KRS 278.020(7) provides, in relevant part, that the Commission shall approve a proposed acquisition of control upon a finding that the proposed transaction is “made in accordance with law, for a proper purpose and is consistent with the public interest.”

### PROPOSED TRANSACTION

The Joint Applicants propose a transaction through which there would be a transfer of indirect control of WSCK. Under the current corporate structure, Corix US indirectly owns WSCK. Corix US is owned by CII.<sup>11</sup> Joint Applicants stated the proposed transaction would effectively merge SWMAC and Corix US to create a larger, stronger water and wastewater company.

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<sup>9</sup> Application at 4.

<sup>10</sup> Application at 4.

<sup>11</sup> Application at 4.

Following the proposed transaction, CII and an affiliate or affiliates of CII will own 50 percent of Corix US, and SWMAC Holdco, an entity that will be formed by SWMAC's shareholders before closing, will own the other 50 percent of Corix US.<sup>12</sup> Corix US, in turn, will indirectly own and control all the CII water, wastewater and related businesses and the SWMAC water and wastewater businesses.<sup>13</sup>

The proposed transaction will merge SWMAC with and into Corix US, with Corix US being the surviving entity.<sup>14</sup> As a result of this step, SWMAC Holdco will acquire 50 percent of Corix US's stock, Corix US will acquire the outstanding stock of SouthWest currently owned by SWMAC, and Corix US will continue to indirectly own WSCK.<sup>15</sup> Corix US then will transfer all of the outstanding equity of SouthWest and certain Corix US entities to Intermediate Newco.<sup>16</sup> In exchange for this contribution of stock, Intermediate Newco will issue stock to Corix US and assume all of Corix US's third-party debt, with Intermediate Newco being a wholly owned subsidiary of Corix US.<sup>17</sup> Thus, upon consummation of the proposed transaction: CII and an affiliate or affiliates of CII will own 50 percent of Corix US's stock; and SWMAC Holdco will own the remaining 50 percent of Corix US's stock. Corix US will own all of the stock of Intermediate Newco, and Intermediate Newco will indirectly own all of the utility operating subsidiaries comprising

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<sup>12</sup> Statement Regarding Hearing at 3.

<sup>13</sup> Joint Applicants stated that, "To prepare for the Proposed Transaction, CII and Corix US (the "Corix Parties") and IIF Subway, SWMAC, and SouthWest (the "SouthWest Parties") will undertake pre-closing restructuring transactions," and attached a description of the pre-closing restructuring transactions as Appendix A to the Application.

<sup>14</sup> Application at 7; see also Direct Testimony of Steven Lubertozi starting at Line 175

<sup>15</sup> Application at 7.

<sup>16</sup> Application at 7.

<sup>17</sup> Application at 7–8.

the CII water, wastewater and related businesses, as well as the SWMAC water and wastewater businesses.<sup>18</sup>

Joint Applicants stated the proposed combination takes place above the utility operating company level and clarified the proposed business combination does not involve the transfer of WSCK's stock or its assets; nor will the stock or assets of WSCK be pledged or encumbered as a result of the proposed transaction.<sup>19</sup>

Joint Applicants pledged that WSCK will maintain offices and facilities consistent with its obligation to serve customers and intends to maintain a local presence in Kentucky.<sup>20</sup> It is proposed that Justin Kersey will become President of WSCK after closing and the Chief Executive Officer of the combined company will be Rob MacLean, the current CEO of SWMAC and SouthWest.<sup>21</sup> As of closing, it is proposed that the combined company will be governed by a board of nine directors: the combined company's CEO, four shareholder representatives, and four independent directors, one of whom will be the chair.<sup>22</sup>

The Transaction Agreement requires certain conditions to be satisfied in order to close the proposed transaction. Joint Applicants acknowledged these conditions include, but are not limited to, obtaining all applicable government approvals and consents. The final closing is anticipated to occur in late 2023.<sup>23</sup>

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<sup>18</sup> Application at 8.

<sup>19</sup> Application at 8.

<sup>20</sup> Application at 8.

<sup>21</sup> Application at 8.

<sup>22</sup> Application at 8.

<sup>23</sup> Application at 9.

## DISCUSSION AND FINDINGS

### Approval Pursuant to KRS 278.020(6)

Joint Applicants argued that CII and SWMAC – separately and combined – possess the requisite financial, technical, and managerial expertise to own and operate water and wastewater utilities in the Commonwealth. CII provides water, wastewater and related utility and municipal services to approximately 800,000 people in 18 U.S. states, including Kentucky, and two Canadian provinces.<sup>24</sup> CII’s subsidiaries employ approximately 800 people in the water, wastewater and related businesses who operate 385 water, 310 wastewater, two electricity distribution, one propane, three geothermal, one municipal, and three natural gas distribution systems in the United States and Canada.<sup>25</sup> SWMAC’s operating subsidiaries provide water and wastewater utility services to approximately 500,000 people in seven U.S. states – Alabama, California, Florida, Louisiana, Oregon, South Carolina, and Texas.<sup>26</sup> SWMAC’s subsidiaries have approximately 500 employees operating approximately 170 water systems and 50 wastewater systems across those seven states.<sup>27</sup> Joint Applicants explained the combined company will have more than 1,300 employees serving more than 1.3 million people across 20 U.S. states and two Canadian provinces.<sup>28</sup>

Joint Applicants claimed the increased scale and enhanced financial foundation of the proposed combined company will improve WSCK’s ability to make significant, long-

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<sup>24</sup> Application at 11.

<sup>25</sup> Application at 11.

<sup>26</sup> Application at 11.

<sup>27</sup> Application at 11.

<sup>28</sup> Application at 11.

term investments required to continue providing quality water services to the communities served by WSCK.<sup>29</sup> They further claimed the combined company's investments in water infrastructure improvements will ensure best-in-class service and high-quality water that is safe, reliable, sustainable and affordable.<sup>30</sup> Joint Applicants stated that the proposed transaction would benefit WSCK's customers in the following ways:<sup>31</sup>

- The pre- and post-transaction financial conditions of WSCK's corporate parents will be similar;
- WSCK's access to capital will be enhanced following the proposed transaction;
- Corix Regulated Utilities (US) Inc.—WSCK's direct parent—will continue to have the ability to access the debt capital market to issue long-term bonds and to obtain bank credit facilities, should it choose to do so; and
- Potential benefits in the form of future cost savings for WSCK due to the increased scale of the combined enterprise.

Given the increased scale and enhanced financial foundation that is expected as a result of the proposed merger, Joint Applicants claimed customers will see many benefits and cost efficiencies based on economies of scale, which will allow for investment in infrastructure. Based on these assertions, combined with the background experience of the parties in the water and wastewater industries, the Commission finds that Joint Applicants have the financial, technical, and managerial abilities to provide reasonable utility service.

#### Approval Pursuant to KRS 278.020(7)

Joint Applicants claimed the proposed transaction will be in accordance with law and only consummated once all requisite regulatory approvals are obtained.<sup>32</sup> They

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<sup>29</sup> Application at 11.

<sup>30</sup> Application at 11.

<sup>31</sup> Statement Regarding Hearing at 9; see also Direct Testimony of Ellen Lapson.

<sup>32</sup> Application at 12.

further claimed the proposed transaction is for a proper purpose because it is intended to be a merger of equals that will benefit those entities, as well as their operating utilities, which will ensure that WSCK's customers will continue to receive safe, reliable drinking water.<sup>33</sup>

Joint Applicants claimed the proposed transaction is in the public interest, as it will result in the combination of two strong water and wastewater utility holding companies that both possess financial, technical, and managerial expertise in the water and wastewater industries while also having a shared mission and values.<sup>34</sup> In regard to the "public interest" standard identified in KRS 278.020(7), the Commission has described the standard as follows:

[A]ny party seeking approval of a transfer of control must show that the proposed transfer will not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the Commission's imposition of reasonable conditions on the acquiring party. The acquiring party should also demonstrate that the proposed transfer is likely to benefit the public through improved service quality, enhanced service reliability, the availability of additional services, lower rates, or a reduction in utility expenses to provide present services. Such benefits, however, need not be immediate or readily quantifiable.<sup>35</sup>

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<sup>33</sup> Application at 12.

<sup>34</sup> Application at 13.

<sup>35</sup> Application at 10, citing Case No. 2002-00018, *Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GMBH* (Ky. PSC July 10, 2002) (Rehearing Order), at 9, (quoting Initial Order dated May 30, 2002); see also Case No. 2007-00419, *Application of DLR Enterprises, Inc. and Cow Creek Gas, Inc. for Approval of the Transfer of Certain Assets Formerly Owned and Controlled by Sigma Gas Corporation* (Ky. PSC Nov. 21, 2007), at 6, ("The Commission has previously held that a transfer is in the 'public interest' if it does not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the Commission's imposition of reasonable conditions on the acquiring party.").

Joint Applicants acknowledged that, while CII and SWMAC do not expect significant net financial synergies to result from the proposed combination, the companies do expect, over time, to be able to identify and achieve cost savings as a result of future integration.<sup>36</sup> Joint Applicants claimed customers will receive the benefits of these efforts, net of integration costs, in future rate proceedings. Joint Applicants ultimately argued the Commission should approve the proposed acquisition even if they cannot demonstrate an immediate net benefit to customers, because in the present case, WSCK's customers will recognize the benefits of the proposed transaction over time, including: benefits arising from the advantages of a larger, more diversified company; improvement of WSCK's access to capital needed to support further investment in facilities and systems that would improve service to Kentucky customers; generation of operational benefits to customers; additional benefits over time; retention of the strong corporate citizenship and presence of WSCK in Kentucky; and support of effective state regulation.<sup>37</sup>

In support of their argument that the proposed transaction is consistent with the public interest, Joint Applicants stated, among other things, that WSCK will continue to actively support and maintain a presence in the communities it serves.<sup>38</sup> In addition, Corix US and SWMAC committed to refrain from any involuntary reductions in force related to the combination for 12 months after the proposed transaction closes to ensure continuity of service and support for its employees.<sup>39</sup> Joint Applicants claimed the combination is

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<sup>36</sup> Application at 18.

<sup>37</sup> Application at 13.

<sup>38</sup> Application at 13–14.

<sup>39</sup> Application at 14.

expected to produce financial benefits, such as reductions in costs of board governance, senior executives, and audits, which will benefit customers systematically over time.<sup>40</sup> Joint Applicants also stated there would be no immediate impact on WSCK's rates, and that the Commission's regulation of WSCK would not be affected.<sup>41</sup>

Joint Applicants also listed the following commitments :

a) WSCK will continue to provide high-quality water utility service to WSCK's customers.

b) WSCK will continue to maintain a strong local presence in Kentucky in terms of employees, facilities and offices, and community support.

c) The Joint Applicants have incurred and will incur transaction costs. The Joint Applicants will not seek to recover transaction costs from customers.

d) While the Proposed Transaction is not driven by net financial synergies, the Joint Applicants anticipate that the business combination will improve efficiency and the integration of administrative and general functions should result in cost savings. The integration of CII's water, wastewater, and related businesses with SWMAC's water and wastewater business will be a significant, prolonged 17 undertaking. The Joint Applicants acknowledge that costs and benefits associated with integration will be addressed in future ratemaking proceedings.

e) Without the Commission's prior approval, WSCK will not guarantee any debt or credit instrument of Intermediate Newco or any affiliate of WSCK unless such debt is incurred for the specific purpose of WSCK's system or operations.

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<sup>40</sup> Application at 15.

<sup>41</sup> Application at 15.

f) The proceeds of any debt incurred by WSCK will only be used for purposes specific to WSCK's system or operations.

g) Unless it first obtains the Commission's approval, WSCK will not transfer any material asset to Intermediate Newco or an affiliate except in an arm's length transaction and in compliance with the laws of the Commonwealth of Kentucky.

h) The combined business will be established with a target investment grade capital structure profile and operated in a way that is consistent with maintaining an investment grade profile.

i) The combined company will refrain from any involuntary reductions in force related to the combination for the first 12 months after the Proposed Transaction closes.

j) WSCK will present any new affiliated interest and/or shared services agreements to the Commission for approval pursuant to the Commission's rules.<sup>42</sup>

The Commission has reviewed the commitments proposed by Joint Applications and finds that with the revisions and additions developed in the processing of the case and set forth in an Appendix to this Order, the commitments are necessary to ensure the continuity of safe and reliable service to WSCK's customers. The Commission further finds that the commitments with revisions and additions developed in the processing of this case are necessary to ensure there are no adverse effects to WSCK or its customers as a result of the proposed transaction.

Further, the Commission finds that, because Corix US<sup>43</sup> will not become a utility under the Commission's jurisdiction as a result of the proposed transaction, there is a

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<sup>42</sup> Application at 16–17.

<sup>43</sup> Because SWMAC will merge into Corix US, with Corix US as the surviving entity, Corix US is the party to this proceeding who will be responsible for carrying out the commitments.

need for Corix US to agree that it will be subject to the Commission's jurisdiction for the limited purposes of any investigation or enforcement action arising under any of the Corix US commitments established by this Order. Consequently, a commitment to that effect is included in the Appendix as Regulatory Commitment 13.

For the reasons set forth below, the Commission finds that the Proposed Transaction is in accordance with law, for a proper purpose, and will be consistent with the public interest only if Joint Applicants adhere to the commitments discussed in this Order and developed through the processing of this proceeding. The Commission concludes that the proposed transaction is in accordance with the law, as Joint Applicants have pledged it will only be consummated once all requisite regulatory approvals are obtained. The Commission also concludes the proposed transaction is for a proper purpose, as it is intended to be a merger of equals that will benefit those entities, as well as their operating utilities, ultimately to ensure that WSCK's customers will continue to receive safe, reliable drinking water. The Commission further concludes the proposed transaction is consistent with the public interest and should be approved. As pledged by the Joint Applicants, the proposed transaction is expected to provide benefits to customers over time, there is no immediate effect on WSCK's rates, and Joint Applicants have made commitments, among others, such as maintaining a strong local presence in WSCK's service area, and not seeking to recover transaction costs from customers. The Commission notes that the arguments in support of a finding that the proposed transaction is consistent with the public interest turn primarily upon the commitments Joint Applicants made and were developed throughout this proceeding.

For the reasons discussed above, the Commission finds that the acquisition should be approved on the condition that the Chief Executive Officers of Joint Applicants shall file under oath, within ten days of the date of service of this Order, a written acknowledgement accepting and agreeing to be bound by the party-specific commitments specifically enumerated in the Appendix to this Order.

IT IS THEREFORE ORDERED that:

1. Joint Applicants' request for approval of the acquisition as set forth in the joint Application is approved conditioned on the Chief Executive Officers of Joint Applications filing written acknowledgement accepting and agreeing to be bound by the party-specific commitments enumerated in the Appendix to this Order.

2. Within ten days of service of this Order, the respective Chief Executive Officers of Joint Applicants shall file under oath a written acknowledgement accepting and agreeing to be bound by the party-specific commitments specifically enumerated in the Appendix to this Order.

3. Within five days of consummation of the acquisition, Corix US shall file a written notice setting forth the date of acquisition.

4. Within 20 days of the consummation of the acquisition, Corix US shall file the journal entries it proposes to record the acquisition. The acquisition shall be recoded in accordance with the Uniform System of Accounts.

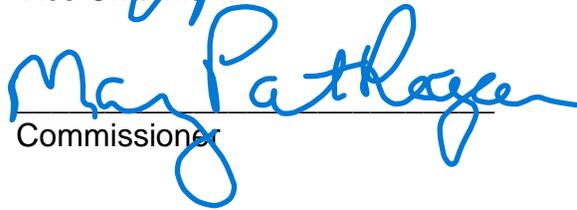
5. Any document filed pursuant to ordering paragraphs 3 and 4 shall reference this case number and shall be retained in the post-case correspondence file.

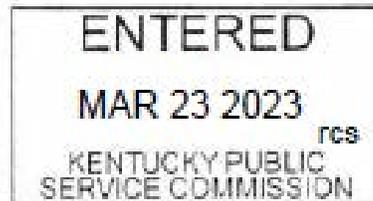
6. This case remains open pending compliance with ordering paragraph 2.

PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner



ATTEST:

  
\_\_\_\_\_  
Executive Director

## APPENDIX

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2022-00396 DATED MAR 23 2023

#### REGULATORY COMMITMENTS

##### Corix US<sup>44</sup>

1. Corix US commits to maintaining WSCK's historic levels of community involvement, charitable contributions, low income funding, and economic development efforts in WSCK's current operating areas.
2. Corix US commits to having an independent director residing in Kentucky on WSCK's post-closing board of directors.
3. Corix US commits that it will not utilize push-down accounting in any manner arising from the transaction contemplated in this case.
4. Corix US commits that WSCK will not be required to pledge any of its assets to finance the debt or any purchases of its affiliates.
5. Corix US commits that WSCK will not be required to grant liens or encumbrances, or otherwise pledge any of its assets to finance any or all of the costs of the transaction.
6. Corix US commits that WSCK will not be exposed to any increased insurance premiums in the event the Commission approves the transaction.

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<sup>44</sup> The Commission would note that none of the commitments provided in the Appendix are tied to SWMAC, rather to Corix US, as it is the Commission's understanding from Joint Applicants' assertions that SWMAC will be merged with and into Corix US, effectively extinguishing that entity, and therefore SWMAC would not be able to effectuate the commitments.

7. Corix US commits that WSCK will not be exposed to any additional contributions to any pension or medical plans, etc., for employees than it otherwise would not have faced but for the approval.

8. Corix US commits to ring-fencing of WSCK such that WSCK would be insulated from Corix US's or any of its affiliates' non-utility lines of business.

9. Corix US commits that if Corix US and/or any of its affiliates are the sources for any charges to WSCK, Corix US agrees to allow the Commission to audit the accounting records of those affiliates.

10. Corix US commits it will not cross-subsidize between their regulated and non-regulated businesses.

11. Corix US commits that it will not achieve merger savings at the expense of degrading the adequacy and reliability of WSCK's retail water service.

12. Corix US commits that the proposed transaction will not result in any write-ups, write-offs, or restatements of financial results.

13. Corix US commits that it will be subject to the Commission's jurisdiction for the limited purposes of any investigation or enforcement action arising under any of the Corix US commitments established by this Order.

#### Corix US and WSCK

14. Corix US and WSCK commit that neither WSCK nor its ratepayers, directly or indirectly, will incur any additional costs, liabilities, or obligations in conjunction with the proposed transaction.

15. Corix US and WSCK commit that they will not seek to recover costs associated with the proposed transaction in WSCK's rates.

16. Corix US and WSCK commit that they will file an application and seek Commission approval prior to entering into any agreement with a service company other than its existing agreement.

17. Corix US and WSCK commit that WSCK will give clear and conspicuous notice to its customers prior to any change in services resulting from the contemplated transaction.

18. Corix US and WSCK commit that WSCK ratepayers will not be asked to contribute to costs associated with operating any SWMAC utility or SWMAC affiliate.

19. Corix US and WSCK commit that WSCK will not guarantee the credit of any affiliates if the transaction is approved.

20. Corix US and WSCK commit that neither WSCK nor its ratepayers will directly or indirectly incur any additional costs, liabilities, or obligations in conjunction with the proposed transaction in connection with the repayment and refinancing of closing indebtedness.

21. Corix US and WSCK commit that WSCK will not (a) guarantee debt or credit facilities of Corix US or any Corix US affiliate; (b) mortgage utility assets on behalf of an affiliate; and (c) loan funds or otherwise extend credit to any affiliate.

22. Corix US and WSCK commit that, in the event an employee is terminated as a result of the proposed transaction any severance paid to such an employee would be considered a transaction cost and would not be recovered through WSCK's rates.

23. Corix US and WSCK commit to provide the names of all directors of WSCK's post-closing board of directors, together with a short biographical description of each board member.

24. Corix US and WSCK commit that they will maintain WSCK's corporate office, and its books and records, within WSCK's service territory.

25. Corix US and WSCK commit that the accounting and ratemaking treatments of WSCK's excess deferred income taxes will not be affected by the proposed transaction.

26. Corix US and WSCK commit that WSCK's customers will experience no adverse change in service if the proposed transaction is approved.

27. Corix US and WSCK will track any synergies that results from the integration of Corix US's water, wastewater, and related businesses with SWMAC's water and wastewater business. The tracked synergies will be addressed in WSCK's future rate case proceedings.

28. Corix US and WSCK commit that WSCK ratepayers will not be responsible for any termination, and/or other fees or expenses paid should the contemplated transaction not be consummated.

29. Corix US and WSCK commit that WSCK will not incur any indebtedness or pledge any assets to finance any part of the proposed transaction.

\*Water Service Corporation of Kentucky  
c/o Water Service Corp  
500 West Monroe Street, Suite 3600  
Chicago, IL 60661-3779

\*James W Gardner  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street  
Suite 1400  
Lexington, KENTUCKY 40507

\*Rebecca C. Price  
Sturgill, Turner, Barker & Moloney  
155 East Main Street  
Lexington, KENTUCKY 40507

\*M. Todd Osterloh  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street  
Suite 1400  
Lexington, KENTUCKY 40507

\*Valerie T. Herring  
Attorney  
Taft Stettinius & Hollister LLP  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MINNESOTA 55402-215