

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

Joint Application of Corix Utilities (Illinois))
LLC; Hydro Star, LLC; Utilities, Inc.;)
and Water Service Corporation of Kentucky)
for the Transfer and Acquisition)
of Control Pursuant to KRS 278.020) Case No. 2012-00133

APPLICATION FOR APPROVAL OF TRANSFER AND ACQUISITION OF CONTROL

Corix Utilities (Illinois) LLC (“Corix Utilities”); Hydro Star, LLC (“Hydro Star”); Utilities, Inc. (“UI”); and its Kentucky utility subsidiary, Water Service Corporation of Kentucky (“WSCK”) (collectively “Applicants”) jointly apply to the Public Service Commission of Kentucky (“Commission”) pursuant to KRS 278.020(5) and (6) and 807 KAR 5:001, Section 8, for approval of the indirect transfer of control of WSCK.

INTRODUCTION

1. The Applicants seek approval of an indirect transfer and acquisition of control of WSCK that would result from the consummation of the transaction contemplated by that certain Purchase and Sale Agreement (the “PSA”), dated as of February 17, 2012, between Corix Utilities and the Highstar Capital Fund II, L.P. and certain of its affiliates and co-investors¹ (“Highstar”). Pursuant to the PSA, Corix Utilities will acquire 100% of the membership interests in Hydro Star from the Highstar affiliates (hereafter, the “Proposed Transaction”).

¹ The affiliates and co-investors of Highstar Capital Fund II, L.P. that are parties to the PSA are Highstar Capital II Prism Fund, L.P.; Hydro Star Interco, LLC; and American General Life Insurance Company. Highstar owns 100% of the outstanding membership interests in Hydro Star.

2. KRS 278.040 vests in the Commission exclusive jurisdiction over the rates and service of public utilities in Kentucky.

3. KRS 278.020 requires Commission review and approval of any acquisition or transfer of control of a Kentucky public utility. It, in part, provides:

(5) 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.

(6) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefore, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.

THE PARTIES AND THEIR AFFILIATES

4. WSCK is a Kentucky corporation organized under KRS Chapter 271B. All of the capital stock of WSCK is owned by UI. The mailing address of WSCK is 2335 Sanders Road, Northbrook, Illinois, 60062. WSCK is a public utility as defined by KRS 278.010(3)(d).

5. A copy of the Articles of Incorporation of WSCK has been previously filed with the Commission in *Aqua/KWS, Inc.*, Case No. 2002-00142 (Ky. PSC June 14, 2002), which was the proceeding in which UI's acquisition of WSCK was approved by the Commission. WSCK will maintain its separate corporate existence after the Proposed Transaction is consummated.

6. WSCK currently owns, operates, and maintains potable water production, treatment, storage, transmission, and distribution systems for the purpose of furnishing potable water for residential, commercial, and industrial users in the environs of the cities of Middlesboro (Bell County) and Clinton (Hickman County), Kentucky. It currently serves approximately 7,376 water connections.² WSCK is a public utility as defined by KRS 278.010(3)(d).

7. UI is the direct owner of all issued and outstanding capital stock of WSCK, which, as previously noted, it acquired pursuant to the approval granted by the Commission in *Aqua/KWS, Inc.*, Case No. 2002-00142 (Ky. PSC June 14, 2002). UI will maintain its separate corporate existence and will remain the direct parent of WSCK after the Proposed Transaction is consummated.

8. UI is a corporation formed under the laws of the State of Illinois, with its principal office located at 2335 Sanders Road, Northbrook, Illinois 60062. It is one of the largest privately-owned water utility and water service companies in the United States, providing water and

² Annual Report of Water Service Corporation of Kentucky to the Public Service Commission of Kentucky for the Year Ended December 31, 2010, at 21.

wastewater services to approximately 290,000 residential customer equivalents in fifteen states, including Kentucky.

9. A copy of the Articles of Incorporation of UI and amendments thereto were filed with the Commission in *Aqua/KWS, Inc.*, Case No. 2002-0142 (Ky. PSC June 14, 2002).

10. Hydro Star, through its wholly owned subsidiary Hydro Star Holdings Corporation, is the sole shareholder of UI. Hydro Star is a Delaware limited liability company and maintains its principal executive offices at 277 Park Avenue, 45th Floor, New York, New York 10172. A copy of Hydro Star's Certificate of Formation was filed as Exhibit 1 to the Application submitted on August 2, 2005 in *Nuon Global Solutions USA, BV*, Case No. 2005-00323.

11. One hundred percent of Hydro Star's issued and outstanding membership interests (hereafter, the "Company Interests") are held by Highstar.³

12. Corix Utilities is a limited liability company organized under the laws of Delaware and is engaged in the business of water, wastewater, and energy utilities and utility-related products and services. Its office address is 11020 West Plank Court #100, Wauwatosa, WI 53226. A copy of its Certificate of Formation is attached as Exhibit 1.⁴

13. All of the outstanding membership interests of Corix Utilities are held by a second tier subsidiary of Corix Infrastructure Inc. ("Corix Infrastructure"), a Canadian company which, together with subsidiaries, is referred to as the Corix Group. The Corix Group is currently engaged

³ Although the owners of the Company Interests are not parties to this proceeding, if the Commission determines that it or other parties are lawfully entitled to obtain information in the custody or control of Highstar that is relevant to any material issue in this proceeding, such information can be made available subject to appropriate protection of confidential or proprietary information.

⁴ A certificate of formation for a limited liability company under Delaware law is the effective equivalent of the articles of incorporation for a corporation. The filing of this certificate of formation should satisfy the requirement set forth in 807 KAR 5:001, Section 8(3). To the extent that the Commission finds otherwise, the Applicants respectfully request a deviation be granted to allow the application to be filed without an articles of incorporation, pursuant to 807 KAR 5:001, Section 14. To support this request, Applicants state that because Corix Utilities is a limited liability company, no "articles of incorporation" exists for Corix Utilities and in lieu thereof, Corix Utilities has provided the effective equivalent, which is its "certificate of formation."

in water, wastewater, and energy utility and utility service operations in 14 states (Alaska, California, Colorado, Illinois, Michigan, Missouri, New Hampshire, New Jersey, New York, Oklahoma, Texas, Virginia, Washington, and Wisconsin). A description of the operations of the Corix Group is provided in Exhibit 2.⁵

14. Corix Infrastructure is fully committed to providing Corix Utilities with the necessary financial backing and expertise in the industry to ensure that, after the consummation of the Proposed Transaction, Corix Utilities' operating subsidiaries continue to provide safe, reliable utility service at reasonable rates.

THE TRANSACTION

15. Pursuant to the PSA, Corix Utilities will acquire the Company Interests from Highstar. The PSA is attached to this Application as Exhibit 3. The Applicants request that the Commission treat the PSA as confidential, pursuant to the petition for confidentiality simultaneously filed with this Application.

16. The consummation of the Proposed Transaction is conditioned upon (i) the expiration or early termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"); (ii) receipt of any other required permits or consents or regulatory approvals, including those of the state public utility or service commissions or other governmental and/or regulatory authorities in those jurisdictions where prior approval of the Proposed Transaction is required; (iii) Corix Infrastructure's receipt of clearance from the Committee on Foreign Investment in the United States ("CFIUS"); and (iv) the satisfaction or waiver of all other requisite conditions precedent to closing, as set forth in Article VII of the PSA. The parties intend to

⁵ Although Corix Infrastructure is not a party to this proceeding, if the Commission determines that it or other parties are lawfully entitled to obtain information in the custody or control of Corix Infrastructure that is relevant to any material issue in this proceeding, such information can be made available subject to appropriate protection of confidential or proprietary information.

consummate the transaction as soon as practicable after expiration or termination of the HSR Act waiting period, receipt of all other requisite governmental and/or regulatory permits and approvals, receipt of CFIUS clearance, and the satisfaction or waiver of all other requisite conditions precedent.

17. It is possible that, after the Proposed Transaction is consummated, Corix Infrastructure will cause Corix Utilities to merge with and into Hydro Star, thereby eliminating one of the intermediate holding companies through which Corix Utilities will hold its interest in UI and, through UI, its interest in WSCK.

18. The Proposed Transaction will occur at the holding company level and will not affect the ownership structure or operations of WSCK or any other operating companies owned by UI.

19. As previously explained, after the Proposed Transaction is consummated, WSCK will continue to be a wholly-owned subsidiary of UI, will maintain its separate corporate existence, and will continue to be a Kentucky public utility subject to the jurisdiction and regulation of the Commission under KRS Chapter 278. A copy of the pre- and post-closing organizational charts is attached as Exhibit 4.

20. No rate or tariff changes are being requested and none are anticipated as a consequence of the Proposed Transaction. The management and operational staff of WSCK are anticipated to remain unchanged following the proposed transaction. Thus, the transaction will have no adverse impact upon WSCK's customers.

21. As previously explained, after the Proposed Transaction is consummated, UI will continue to be the parent of WSCK and will continue to be managed by experienced, competent officers and directors.

22. Corix Utilities is not seeking to recover from the customers of WSCK any transaction costs or acquisition premiums relating to the Proposed Transaction. WSCK will not seek to create a regulatory asset as a result of the Proposed Transaction.

23. There will be no rate increases to customers as a result of this transaction.

24. There will be no change in day-to-day operations of WSCK and no impact on customer service for WSCK as a result of the Proposed Transaction.

**THE TRANSACTION MEETS THE REQUIREMENTS
FOR APPROVAL UNDER KRS 278.020(5) AND (6)**

25. Corix Utilities has the financial, technical, and managerial abilities to provide reasonable service and the transaction is being made in accordance with law, for a proper purpose, and is consistent with the public interest. Accordingly, the Commission should approve the transaction pursuant to KRS 278.020(5) and (6).

26. Corix Utilities, as part of the Corix Group, has the financial ability to support UI and WSCK in providing continued reasonable service, as required for Commission approval of the transfer pursuant to KRS 278.020(5).

a. Corix Utilities, as part of the Corix Group, is well financed with stable long term funding and solid access to debt financing, capital markets, and geographic diversity. Ensuring ready access to capital funds to support growth and the continued maintenance of critical infrastructure is vitally important and increasingly so in today's turbulent financial markets. This transaction addresses this issue directly.

b. The Corix Group collectively manages over \$750 million in assets and generated cumulative revenue of approximately \$540 million in 2011. The Corix Group

employs over 2,200 employees across North America. The consolidated financial statements of the Corix Group for the year ended December 31, 2011 are attached to this Application as Exhibit 5. The Applicants request that the Commission treat this information as confidential, pursuant to the petition for confidentiality filed with this application.

- c. The primary owners of Corix Infrastructure are certain affiliates of British Columbia Investment Management Corporation and CAI Capital Management, Inc., two large and stable members of the North American investment community. British Columbia Investment Management Corporation manages over \$85 billion in a globally diversified portfolio of investments including a significant portion of pension funds. CAI Capital Management, Inc., is a private equity fund with over \$1.3 billion in North American investments.
- d. With its affiliation with the Corix Group, WSKK will continue to have access to capital market financing at favorable rates.

27. Corix Utilities, as part of the Corix Group, has the technical ability to support UI and WSKK in continuing to provide reasonable service, as required for Commission approval of the transfer pursuant to KRS 278.020(5).

- a. As previously explained, the Corix Group is currently engaged in water, wastewater, and energy utility and utility service operations in 14 states and the previously identified Exhibit 2 provides a description of all of its operations.
- b. One of Corix Infrastructure's subsidiaries, Corix Infrastructure (US) Inc., owns, through subsidiaries, 100% of Fairbanks Sewer and Water, Inc., which provides water and sewer service to 80,000 residents in the greater Fairbanks, Alaska, area

and 50% of Doyon Utilities LLC, which has twelve utilities that provide water and sewer service to approximately 50,000 people on three United States military bases in Alaska.

- c. A member of the Corix Group was selected by the University of Oklahoma to purchase a fifty-year concession to invest in and to design, build, operate and maintain six utility systems serving 30,000 on-campus students. This multi-utility operation includes water and sewer systems, a central heat and power plant, district energy system, chilled water production and distribution system, and electrical and natural gas distribution systems.
- d. In Canada, members of the Corix Group own and operate 164 utility systems serving approximately 200,000 residents.
- e. Members of the Corix Group are also in the business of providing measurement and metering services to municipalities, utilities, and cooperatives throughout North America.
- f. The Corix Group operates thirty-eight utility products branches across North America, which distribute a full line of pipes, valves, meters, pumps, irrigation equipment, service, and repair products and other components that are used to transport drinking water and wastewater. The Corix Group also serves the oil, gas, and industrial products sectors by providing measurement and control equipment.
- g. The Proposed Transaction will not result in any changes in the day-to-day operations of WSCK. A list of the names, job titles and certification classifications of the current operating personnel of WSCK is attached as Exhibit

6. The certified operators listed in Exhibit 6 will continue to operate WSCK after the proposed transaction.

h. After the Proposed Transaction is consummated, the staffs of UI and WSCK, which will remain unchanged, will continue to have the technical ability necessary to operate WSCK.

28. Corix Utilities, both individually and as a consequence of its association with the Corix Group, has the managerial ability to support UI and WSCK in continuing to provide reasonable service, as required for Commission approval of the transfer pursuant to KRS 278.020(5).

a. The Corix Group's senior management team averages in excess of 20 years of utility experience and has a successful track record of utility operations. The names and professional biographies of the Corix Group's management personnel are provided in Exhibit 7.

b. The Corix Group has extensive experience in successfully transitioning operating utilities into the Corix Group. Since 2008, the Corix Group has purchased and integrated several unique utility systems valued at over \$500 million and added to its workforce over 230 new employees associated with acquired systems. *See Exhibit 2 at 2.*

c. As previously explained, it is anticipated that there will be no changes to the local management of WSCK as a result of the Proposed Transaction and, therefore, the WSCK staff will continue to have the managerial ability necessary to operate WSCK and furnish reasonable utility service.

29. WSCK and UI have demonstrated a commitment to providing safe and reliable service to WSCK's customers at just and reasonable rates. This commitment will not change as a result of the

proposed transaction. Upon completion of the proposed transaction, WSCK will continue to own and operate all of its water treatment and distribution facilities and pledges to provide the same level of excellent service to its customers that it has historically achieved.

30. The transfer is being made in accordance with law, as required for Commission approval of the transfer pursuant to KRS 278.020(6).

- a. As previously explained, the Proposed Transaction will be consummated in accordance with the terms of the PSA, which was entered into by each of the parties thereto as of February 17, 2012.
- b. Under the terms of the PSA, closing on the Proposed Transaction is subject to obtaining necessary regulatory approvals. *See* Exhibit 3 at Section 6.7 and Article VII.

31. The transfer is being made for a proper purpose, as required for Commission approval of the transfer pursuant to KRS 278.020(6).

- a. The transaction will bring WSCK and UI into a corporate family that has a substantial presence in the water and wastewater industries.
- b. The transaction will ensure WSCK's and UI's ready access to capital funds to support growth and the continued maintenance of critical infrastructure.

32. The transfer is consistent with the public interest, as required for Commission approval of the transfer pursuant to KRS 278.020(6).

- a. Corix Utilities and its affiliates are experienced utility owners and operators. Corix Utilities is fit, willing, and able to finance, own, and operate WSCK.
- b. Because the Proposed Transaction will occur at the holding company level, WSCK's customers will experience a seamless transition in the ownership of

Hydro Star and will not experience any adverse impact on any services provided by WSCK.

- c. The members of the Corix Group believe in maintaining a strong local community presence and being a long-term, committed partner in the communities where they operate. Corix Utilities plans to maintain its local presence in the communities in which UI and WSCK currently have operations.
- d. As previously explained, WSCK's corporate existence will not be altered as a result of the Proposed Transaction, it will continue to be subject to the jurisdiction of the Commission under KRS Chapter 278, and, therefore, the Commission will retain the same ratemaking and regulatory authority over WSCK under Kentucky law that it presently has.
- e. As previously explained, Corix Utilities is not seeking to recover from customers of WSCK any transaction costs or acquisition premiums relating to the Proposed Transaction, and no rate or tariff changes are being requested or are anticipated as a result of the Proposed Transaction.
- f. As previously explained, after the Proposed Transaction is consummated, WSCK will continue to be managed by, and benefit from, the professionals available at both WSCK and UI, who will be augmented by the additional professional expertise available through their association with the Corix Group.
- g. After the Proposed Transaction is consummated, UI will continue to provide WSCK with access to capital.
- h. As part of the Corix Group, WSCK and UI will have access to a wide spectrum of technical and industry expertise in all facets of sustainable water, wastewater, and

energy systems, including innovative technologies, operating tools, and regulatory resources required to develop sustainable multi-utility services.

33. To the extent, if at all, it may be required by law, the Applicants seek approval of a potential consolidation of Hydro Star and Corix Utilities that may occur following the consummation of the Proposed Transaction. The Applicants do not believe that Commission approval for such a consolidation is required under KRS 278.020 because the consolidation is an internal transaction that will not result in the control of a utility being acquired or relinquished. However, if Commission decided that approval is, nonetheless, required, Applicants request that the Commission grant such approval based upon the information provided in this Application, which establishes that the surviving entity in the consolidation will have the financial, technical, and managerial ability to ensure continued reliable service and that the consolidation is in accordance with law, for a proper purpose, and is consistent with the public interest.

34. The Applicants do not believe that filing a tariff Adoption Notice pursuant to the provisions of 807 KAR 5:011, Section 11, is required as a result of this transaction because WSCK will remain the “utility” as defined by KRS 278.010(3), none of WSCK’s rates will change as result of the Proposed Transaction, and, therefore, there will not be any change in the “operating utility” that triggers the need for an Adoption Notice. However, if the Commission were to determine that 807 KAR 5:011, Section 11, applies to this transaction, Applicants request that the Commission approve a deviation under 807 KAR 5:011, Section 14, to relieve the Applicants from the requirements of 807 KAR 5:011, Section 11. To the extent necessary, the Applicants submit that good cause exists because none of WSCK’s rates will change as a result of the Proposed Transaction.

35. Applicants request that the Commission expedite its approval of the application. Failure to expedite this review could have negative consequences for Corix Utilities and UI. The

acquisition will not result in any negative or material impact of any kind on WSCK and will allow WSCK to continue to provide safe and efficient utility operations. Expedited approval is appropriate from a regulatory perspective because there will be no rate change resulting from this acquisition and no change in the name, corporate offices, or day-to-day management of WSCK. The acquisition will be seamless to consumers and employees.

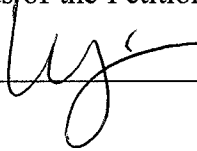
WHEREFORE the Applicants respectfully request that the Commission enter a final order approving the indirect transfer and acquisition of control of WSCK by Corix Utilities pursuant to KRS 278.020(5) and (6) on the basis that Corix Utilities has the financial, technical, and managerial abilities to provide reasonable service and that the proposed transaction is in accordance with law, for a proper purpose, and is consistent with the public interest.

LIST OF EXHIBITS

1. Corix Utilities' Certificate of Formation
2. Description of operations for the Corix Group.
3. Purchase and Sale Agreement (confidential)
4. Pre and post-closing organizational charts
5. Corix Infrastructure's Consolidated Financial Statements (confidential)
6. WSCK operating personnel
7. Corix management personnel and biographies

VERIFICATION

The Affiant, Lisa Sparrow, being first duly sworn, deposes and states: (1) that she is the Chief Executive Officer of Utilities, Inc., an applicant in this case; (2) that she is authorized to make this verification on behalf of the applicants; (3) that she has read the forgoing Petition and has noted the contents thereof; and (4) that the contents of the Petition are true and accurate to the best of her knowledge and belief.



NOTARY CERTIFICATE

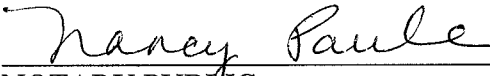
STATE OF ILLINOIS

COUNTY OF COOK

Subscribed, acknowledged and sworn to before me by Lisa Sparrow on this
11th day of April, 2012.

My commission expires: 3-2-2015.

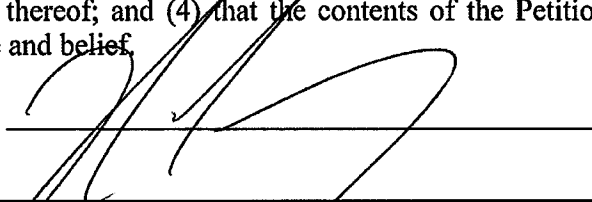




NOTARY PUBLIC

VERIFICATION

The Affiant, Hamish Cumming being first duly sworn, deposes and states: (1) that he is an Executive Vice President of Corix Utilities (Illinois) LLC, an applicant in this case; (2) that he is authorized to make this verification on behalf of the applicants; (3) that he has read the forgoing Petition and has noted the contents thereof; and (4) that the contents of the Petition are true and accurate to the best of his knowledge and belief.




NOTARY CERTIFICATE

PROVINCE OF British Columbia

CITY OF Vancouver

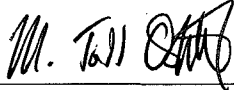
Subscribed, acknowledged and sworn to before me by Hamish Cumming this
11th day of April, 2012.

My commission expires: N/A


NOTARY PUBLIC

MELANIE CHEESMAN
BARRISTER & SOLICITOR
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Respectfully submitted,



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