

STATE CORPORATION COMMISSION

AT RICHMOND, October 15, 2012

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2012 OCT 15 P 2: 53

PETITION OF

COLCHESTER UTILITIES, INC.,

CASE NO. PUE-2012-00047

For finding that Transfers Act approval
is not required in connection with its indirect
change of control

JOINT PETITION OF

HIGHSTAR CAPITAL II PRISM FUND, L.P.,
HIGHSTAR CAPITAL FUND II, L.P.,
HYDRO STAR INTERCO LLC,
AMERICAN GENERAL LIFE INSURANCE COMPANY,
HYDRO STAR, LLC,
CORIX UTILITIES (ILLINOIS) LLC,

and

COLCHESTER UTILITIES, INC.

For approval under the Utility Transfers Act

ORDER

On April 17, 2012, Colchester Utilities, Inc. ("Colchester"), filed a petition ("Petition") with the State Corporation Commission ("Commission"), which requests that the Commission find that approval under Chapter 5 of Title 56 ("Utility Transfers Act") of the Code of Virginia ("Code") is not required for the indirect change of control of Colchester. Alternatively, Highstar Capital II Prism Fund, L.P., Highstar Capital Fund II, L.P., Hydro Star Interco LLC, American General Life Insurance Company, Hydro Star, LLC ("Hydro Star"), Corix Utilities (Illinois) LLC ("Corix Utilities"), and Colchester seek Commission approval of the indirect change of control of Colchester pursuant to the Utility Transfers Act ("Joint Petition").

Colchester owns facilities that provides sewerage services to the residential subdivision known as Harborview located in Fairfax County, Virginia (the “County”). Colchester does not bill the residents of the subdivision; rather, it sends one bill to the County and the County bills the residents for the sewerage service based upon the County’s rates. It is understood by Colchester that the County charges the residents of Harborview the same rate as it charges other similarly situated residents of the County for sewerage service. Colchester does not hold a certificate of public convenience and necessity (“CPCN”) and is not organized as a public service corporation and, therefore, its rates and services are not regulated by the Commission.

Colchester is a direct, wholly owned subsidiary of Utilities, Inc. (“Utilities”). Utilities is an Illinois corporation that is a holding company for approximately 75 operating subsidiaries that provide water and/or waste water services to approximately 290,000 customer equivalents in 15 states. In Virginia, Utilities also owns Massanutten Public Service Corporation, a Virginia public utility company that provides water and waste water service to the Massanutten ski resort area. Over the past decade, Utilities has experienced two changes of control. The first occurred in 2001 and the second in 2005.

Hydro Star is a limited liability company organized in the state of Delaware that is engaged in the acquisition and ownership of water and waste water related infrastructure businesses. Hydro Star is the direct parent company of Hydro Star Holdings Corporation (“HS Holdings”). HS Holdings also is a Delaware corporation and is the sole shareholder of Utilities.

Highstar Capital II Prism Fund, L.P., Highstar Capital Fund II, L.P., Hydro Star Interco LLC, and American General Life Insurance Company (collectively, the “Sellers”) are the controlling members of Hydro Star and, therefore, have ultimate ownership of Colchester.

Corix Utilities is a Delaware limited liability company and was created for the purpose of entering into the proposed transaction described below. All of the outstanding membership interests of Corix Utilities are held by a second tier subsidiary of Corix Infrastructure Inc. (“Corix”), a Canadian company that, together with its subsidiaries, is referred to as the “Corix Group.” The Corix Group is engaged in various water, waste water, energy, utility, and utility service operations.

The primary owners of the Corix Group are certain affiliates of British Columbia Investment Management Corporation (“BC Investment”) and CAI Capital Management Inc. (“CAI Capital”). BC Investment manages over \$90 billion in a globally diversified portfolio of investments on behalf of various pension funds and other investors. CAI Capital is a private equity fund with over \$1.3 billion in North American investments.

The Sellers and Corix Utilities have entered into an agreement whereby the Sellers will sell all of their membership interests of Hydro Star to Corix Utilities. After the transaction is consummated, Corix Utilities will own Hydro Star and will, therefore, acquire indirect control of Colchester. After the proposed transfer, Colchester will continue to own the assets that serve the Harborview subdivision. The County will continue to be Colchester’s only customer, and the County will still establish rates. Colchester will remain a direct subsidiary of Utilities. The petitioners request that the Commission find approval of the proposed change of control is not subject to the Utility Transfers Act or, alternatively, request approval of the change of control.

The petitioners represent that the Corix Group’s business strategy is to expand its utility infrastructure footprint in North America, particularly in the United States. By acquiring Utilities, the Corix Group will add approximately 75 systems and almost 300,000 customers to their United States’ operations. For the Sellers, the proposed transfer allows them to sell their

ownership interests of Utilities to a large company with experience in the water and waste water service business.

The petitioners represent that the proposed transfer will have no adverse impact on rates. Customers will continue to be billed by the County at the County's rates. Colchester does not currently set customers rates and will not after the proposed transaction. The petitioners further represent that the proposed transfer will have no effect on the quality of service. It is anticipated that there will be no change in the management, customer service staffing, and local area staff of Colchester. The petitioners state that after the proposed transfer, Colchester will receive the same support from Utilities it currently receives.

NOW THE COMMISSION, upon consideration of this matter and having been advised by the Commission Staff, is of the opinion and makes the following findings. We find that the proposed transfer of indirect control of Colchester is subject to the Utility Transfers Act and prior approval should be received before consummating such transfer. We further find that the prior transfers of indirect control of Colchester that were a result of the changes in ownership of Utilities that occurred in 2001 and 2005 also were subject to the Utility Transfers Act. For purposes of the Utility Transfers Act, a public utility is defined as "*any* [emphasis added] company which owns or operates facilities within the Commonwealth for the . . . furnishing of sewerage facilities or water." Section 56-88.1 of the Code states that "[n]o person, whether acting alone or in concert with others, shall, directly or indirectly, acquire or dispose of control of . . . [a] public utility within the meaning of this chapter . . . without the prior approval of the Commission." The proposed and prior changes of indirect control of Colchester constitute a public utility change of control that is subject to the provisions of § 56-88 *et seq* of the Code.

We remind the petitioners to be cognizant of the Utility Transfers Act's broad application in the future.

Based on the information provided in the Joint Petition and the fact that Colchester solely provides service to a governmental entity and holds no CPCN, we find that Colchester's previous changes in control have not impaired or jeopardized the provision of adequate service to the public at just and reasonable rates. The petitioners' statutory violations of the Utility Transfers Act do not appear deliberate as evidenced by their request in this case. After the proposed transfer, Colchester will continue to be owned by Utilities and is expected to retain its current management. The rates for the residents of Harborview will still be set by the County. The County and residents of Harborview should not see any change in their service quality. Therefore, we find that the proposed transfer of control, along with the two previous transfers, should be approved.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to §§ 56-88.1 and 56-90 of the Code, the petitioners are hereby granted approval of the proposed indirect transfer of control of Colchester and the transfers of control that occurred in 2001 and 2005, as described herein.

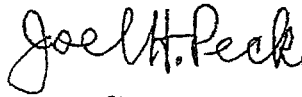
(2) The petitioners shall file a Report of Action ("Report") with the Commission in its Document Control Center within ninety (90) days after completion of the transaction. The Report shall include the date of the transaction and all legal documentation supporting the transaction. The Report shall also include a comprehensive description of Colchesters' 2001 and 2005 changes of control and any and all legal documentation related to the 2001 and 2005 transfers.

(3) There appearing nothing further to be done in this matter, it hereby is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Donald G. Owens, Esquire, Troutman Sanders LLP, Attorneys At Law, Troutman Sanders Building, 1001 Haxall Point, Richmond, Virginia 23219; and a copy shall be delivered to the Commission's Office of General Counsel and Divisions of Utility Accounting and Finance and Energy Regulation.

A True Copy
Teste:



Clerk of the
State Corporation Commission