

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION BY WATER SERVICE)
CORPORATION OF KENTUCKY,)
ALONG WITH CORIX)
INFRASTRUCTURE (US) INC. AND)
SW MERGER ACQUISITION CORP.,)
FOR APPROVAL OF TRANSFER OF)
CONTROL)

Case No. 2022-00396

STATEMENT REGARDING HEARING

Water Service Corporation of Kentucky, Corix Infrastructure (US) Inc., and SW Merger Acquisition Corp. (collectively, “Joint Applicants”), by counsel, hereby respond to the Commission’s Order dated December 21, 2022, regarding the necessity of a hearing in this matter.

I. Statement Regarding Hearing

The Joint Applicants believe that there is sufficient information in the record of this case for the Commission to approve the transfer of indirect control of Water Service Corporation of Kentucky (“WSCK” or the “Company”) by way of an upstream corporate merger as more fully described in the Application. Notably, no person sought intervention or filed comments objecting to the Application. If, however, the Commission seeks additional information through an evidentiary hearing to further support approval of this merger, the Joint Applicants will gladly participate and present witnesses in that hearing.

II. Procedural Background

On November 23, 2022, the Joint Applicants filed a verified Application, which was further supported by the written testimony of Steven M. Lubertozzi, Brian D. Bahr, Justin Kersey, and

Ellen Lapson. No person has sought intervention, nor have there been any public comments submitted in the docket of this case. On December 22, 2022, the Commission Staff issued a Request for Information, to which the Joint Applicants timely responded on January 12, 2023. No supplemental requests for information have been issued.

By Order dated December 21, 2022, the Commission extended the statutory deadline by which it is required to issue a final decision from 60 to 120 days. Accordingly, the Commission must issue a decision pursuant to KRS 278.020 no later than March 23, 2023.

III. Proposed Transaction

The Joint Applicants propose a transaction through which there would be a transfer of indirect control of WSCK, which is a utility as defined by KRS 278.010 that serves approximately 6,150 customers in Kentucky.¹ Under the current corporate structure, Corix Infrastructure (US) Inc. (“Corix US”) indirectly owns WSCK.² Corix US is owned by Corix Infrastructure Inc. (“CII”).³ The proposed transaction would effectively merge SW Merger Acquisition Corp. (“SWMAC”) and Corix US to create a larger, stronger water and wastewater company.

SWMAC is a Delaware corporation. It owns 100% of SouthWest Water Company (“SouthWest”). SWMAC, through its operating subsidiaries, owns and operates 18 water and wastewater utility companies in the United States. SWMAC’s water and wastewater utilities provide service to over 500,000 people in seven U.S. states.⁴ SWMAC is owned by IIF Subway Investment LP (“IIF Subway”) and Bazos CIV, L.P.^{5,6}

¹ Application at ¶ 3.

² *Id.* at ¶ 5.

³ *Id.* at ¶ 4. British Columbia Investment Management Corporation indirectly controls CII.

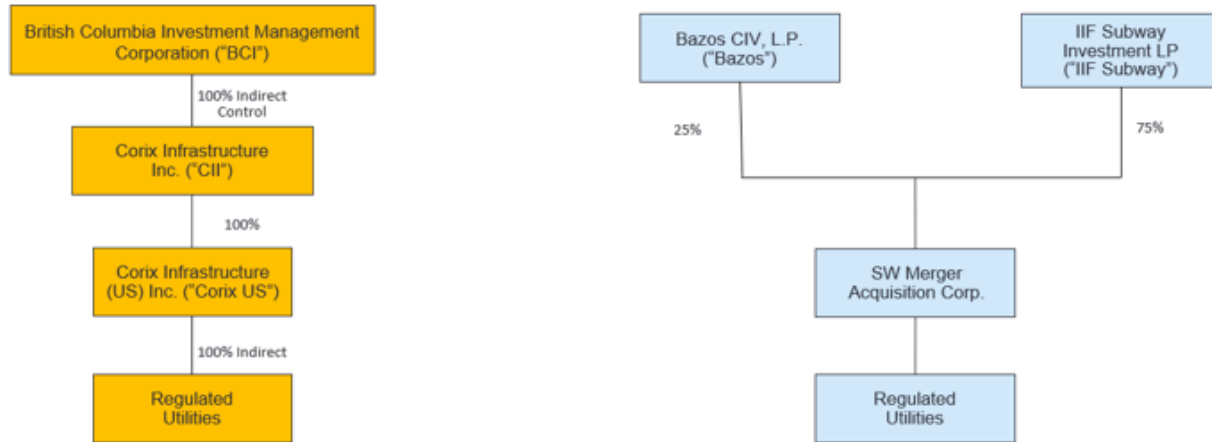
⁴ Alabama, California, Florida, Louisiana, Oregon, South Carolina, and Texas.

⁵ IIF Subway is indirectly owned by IIF US Holding 2 LP, and Bazos CIV, L.P. is indirectly owned by the German reinsurer, Munich RE (Münchener Rückversicherungs-Gesellschaft Aktiengesellschaft in München).

⁶ *See* Application at ¶ 6.

Figure 1 depicts the simplified organization of Corix US and SWMAC before the Proposed Transaction.

Figure 1



Following the transaction, CII and an affiliate or affiliates of CII will own 50% of Corix US, and SWMAC Holdco, an entity that will be formed by SWMAC’s shareholders before closing, will own the other 50% of Corix US (the “Proposed Transaction”).⁷ Corix US, in turn, will indirectly own and control all the CII water, wastewater and related businesses and the SWMAC water and wastewater businesses. To prepare for the Proposed Transaction, CII and Corix US (the “Corix Parties”) and IIF Subway, SWMAC, and SouthWest (the “SouthWest Parties”) will undertake pre-closing restructuring transactions. The pre-closing restructuring transactions are described in Appendix A to the Application.⁸

After the Corix Parties and the SouthWest Parties complete the pre-closing restructuring transactions, SWMAC will merge with and into Corix US, with Corix US being the surviving

⁷ The steps in the Proposed Transaction are further described in the Direct Testimony of Steven Lubertozzi starting at Line 175.

⁸ Application at ¶ 12.

entity. As a result of this step, SWMAC Holdco will acquire 50% of Corix US's stock, Corix US will acquire the outstanding stock of SouthWest currently owned by SWMAC, and Corix US will continue to indirectly own WSCK.⁹

Corix US then will transfer all of the outstanding equity of SouthWest and certain Corix US entities to Intermediate Newco.¹⁰ 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.¹¹

Thus, upon consummation of the Proposed Transaction: (a) CII and an affiliate or affiliates of CII will own 50% of Corix US's stock; and (b) SWMAC Holdco will own the remaining 50% of Corix US's stock. Corix US will own all of the stock of Intermediate Newco, and Intermediate Newco will indirectly own all of the utility operating subsidiaries comprising the CII water, wastewater and related businesses, as well as the SWMAC water and wastewater businesses, completing the merger of equals.¹²

Figure 2 provides a simplified organization chart reflecting the combined company after SWMAC merges with and into Corix US.

Figure 2¹³

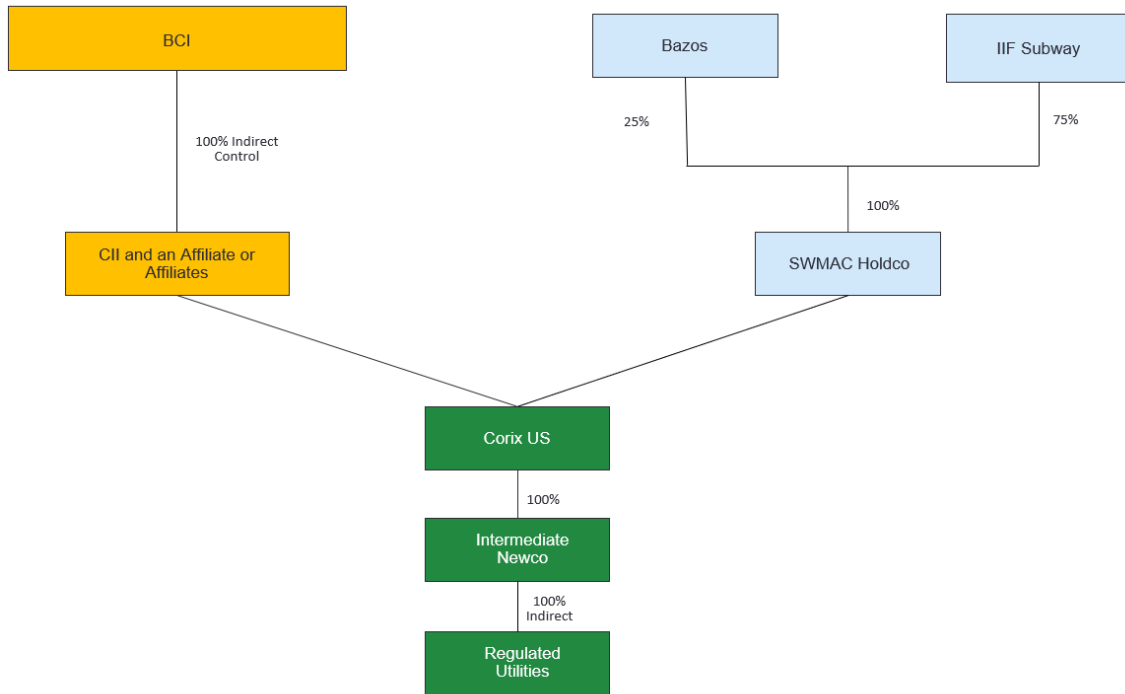
⁹ *Id.* at ¶ 13.

¹⁰ This part of the pre-closing reorganization involves the formation of a new US holding company ("Intermediate Newco"). Corix US will transfer all of Inland Pacific Resource Inc.'s stock and all of Corix Utility Systems (Georgia) Inc.'s stock to Intermediate Newco.

¹¹ *Id.* at ¶ 14.

¹² *Id.* at ¶ 15.

¹³ It is anticipated that, as of closing, CII and an affiliate or affiliates of CII will collectively own 50% of Corix US's outstanding stock.



The Proposed Transaction takes place well above the utility operating company level. As of closing, 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.¹⁴

For clarity, the proposed business combination does not involve the transfer of WSCK’s stock or assets. Nor will the stock or assets of WSCK be pledged or encumbered as a result of the Proposed Transaction.¹⁵ WSCK will continue to operate under its existing name and brand. Customers in Middlesboro and Clinton will continue to be served by a team of passionate, dedicated employees and leaders with local responsibility and accountability.¹⁶

¹⁴ Application at ¶ 19; Direct Testimony of Steven Lubertozi at Line 218.

¹⁵ Application at ¶ 16.

¹⁶ Direct Testimony of Justin Kersey at Line 104; *see also* Response to Commission Staff’s First Request for Information, Item 10.

IV. Legal Standard

KRS 278.020(6) and (7) set forth the framework for the Commission’s decision regarding the proposed transfer of ownership and control of WSCK:

(6) 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.

(7) 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. . . . 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. . . .

Accordingly, the Commission must approve the Transaction so long as the Joint Applicants demonstrate that the combined company has the “financial, technical, and managerial abilities to provide reasonable service” and the Transaction is “in accordance with law, for a proper purpose, and is consistent with the public interest.”

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.¹⁷

As the Commission has indicated, in certain cases, applicants may be able to provide the Commission with “immediate or readily quantifiable” public benefits. However, as the Commission has recognized, “most transfers of control that are presented to this Commission would be unable to meet this standard.”¹⁸ Consistent with the 2002 *Kentucky-American Water* rehearing order, the Commission should approve an acquisition even if the applicants cannot demonstrate an immediate net benefit to customers.¹⁹ In the present case, the Company’s customers will recognize the benefits of the Proposed Transaction over time.

V. Analysis

The Proposed Transaction satisfies the statutory requirements for the transfer of control and ownership of a utility. The resulting corporate structure will ensure that WSCK’s ownership has the financial, technical, and managerial ability to provide reasonable service to WSCK’s customers, as it has under CII. Additionally, the Proposed Transaction is being made in accordance with law, for a proper purpose, and is consistent with the public interest.

A. Joint Applicants have the Financial, Technical and Managerial Ability to Continue to Provide Reasonable Service

CII and SWMAC – separately and combined – have the 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

¹⁷ *Kentucky-American Water*, Case No. 2002-00018 at 9 (Ky. PSC July 10, 2002)(Rehearing Order) (quoting Initial Order dated May 30, 2002); see also *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*, Case No. 2007-00419 at 6 (Ky. PSC Nov. 21, 2007) (“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.”).

¹⁸ *Kentucky-American Water Co.*, Rehearing Order, Case No. 2002-00018 at 10.

¹⁹ *Id.*

people in 18 U.S. states, including Kentucky, and two Canadian provinces. 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.²⁰ For the 12-month period ending December 31, 2021, CII had revenue of approximately \$307 million and \$1.55 billion in assets. In 2021, CII supported approximately \$114 million in capital investments across its operating areas in North America.²¹

Similarly, 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. SWMAC's subsidiaries have approximately 500 employees operating approximately 170 water systems and 50 wastewater systems across those seven states. 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.²² SWMAC's majority owner—IIF—is an approximately \$26 billion²³ open-ended private investment vehicle focused on investing in critical infrastructure assets. IIF is responsible for investing and growing the retirement money of more than 60 million families. Since acquiring SouthWest in 2010, IIF has been an outstanding partner to SouthWest, including supporting over \$500 million in capital expenditures for critical infrastructure.²⁴ In 2021, SouthWest had annual revenues of \$248.9 million and over \$1.4 billion in assets on its balance sheet.²⁵

²⁰ Application at ¶ 26; Direct Testimony of Steven Lubertozi at Line 92.

²¹ Direct Testimony of Steven Lubertozi at Line 121.

²² Application at ¶ 26; Direct Testimony of Brian Bahr at Line 55.

²³ As of June 30, 2022.

²⁴ Direct Testimony of Brian Bahr at Line 68.

²⁵ *Id.* at Line 112.

The Proposed Transaction will provide the relevant employees with access to additional experiences and resources, which will benefit WSCK's customers. The increased scale and enhanced financial foundation of the combined company will improve WSCK's ability to make significant, long-term investments required to continue providing quality water services to the local communities served by WSCK. 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.²⁶

In addition, the testimony of Ellen Lapson discusses how the Proposed Transaction will have a favorable financial impact on WSCK and its customers. Her analysis demonstrates several critical factors to financial ability to continue provide reasonable service following the transaction:

1. The pre- and post-transaction financial conditions of WSCK's corporate parents will be similar.²⁷
2. WSCK's access to capital will be enhanced following transaction.²⁸
3. 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.²⁹
4. There are potential benefits in the form of future cost savings for WSCK due to the increased scale of the combined enterprise.³⁰

²⁶ *Id.*

²⁷ Direct Testimony of Ellen Lapson at Line 124. In addition, Corix US and all related parties will maintain a financial position that will allow them to meet the debt service coverage of any existing lenders as well as the debt service coverage requirements for lenders associated with any debt that will be assumed as a result of the merger. *See* Response to Commission Staff's First Request for Information, Item 1.

²⁸ Direct Testimony of Ellen Lapson at Line 174; *see also* Response to Commission Staff's First Request for Information, Item 3.

²⁹ Direct Testimony of Ellen Lapson at Line 234.

³⁰ Direct Testimony of Ellen Lapson at Line 104.

For these reasons it is clear that the Joint Applicants have the financial, technical, and managerial abilities to continue to provide safe, reliable service to WSKC customers.

B. The Proposed Transaction is in Accordance with Law and for a Proper Purpose

The Proposed Transaction will be in accordance with law because the Proposed Transaction will only be consummated once all requisite regulatory approvals are obtained³¹ and, as described in the Application and accompanying Appendices, the Proposed Transaction will meet the requirements of KRS 278.020.³²

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 the Company's customers will continue to receive safe, reliable drinking water.³³

Further, the Proposed Transaction is for a proper purpose because the Joint Applicants share a mission to help people enjoy a better life and to help communities thrive. Their shared vision is to be the preferred utility delivering solutions that customers want. The Joint Applicants also share common values centered on safety, environmental stewardship, integrity, employee empowerment, and excellence in how they serve their customers and communities and deliver on their commitments. As the Joint Applicants have expanded their respective businesses over the years, their commitment to customers and the communities they serve has remained unchanged. That commitment continues today and will continue into the future.³⁴

C. The Proposed Transaction is Consistent with the Public Interest

The Proposed Transaction will result in the combination of two strong water and wastewater utility holding companies that both possess financial, technical, and managerial

³¹ Direct Testimony of Steven Lubertozzi at Line 235.

³² Application at ¶ 27.

³³ *Id.* at ¶ 28.

³⁴ *Id.* at ¶ 29.

expertise in the water and wastewater industries while also having a shared mission and values. The Proposed Transaction is highly complementary and allows for sharing of prudent practices to support the creation of larger, stronger water and wastewater companies. The Proposed Transaction satisfies the public-interest standard that has been articulated and applied by the Commission: the Proposed Transaction will: (1) produce benefits arising from the advantages of a larger, more diversified company;³⁵ (2) improve WSCK's access to capital needed to support further investment in facilities and systems that would improve service to Kentucky customers;³⁶ (3) generate operational benefits to customers;³⁷ (4) provide additional benefits over time;³⁸ (5) retain the strong corporate citizenship and presence of WSCK in Kentucky;³⁹ and (6) support effective state regulation. Accordingly, the Proposed Transaction is consistent with the public interest and should be approved for, among others, the following reasons:⁴⁰

Shared Mission and Values. The Joint Applicants share a mission to help people enjoy a better life and to help communities thrive. Their shared vision is to be the preferred utility delivering solutions that customers want. The Joint Applicants also share common values centered on safety, environmental stewardship, integrity, employee empowerment and excellence in how they serve their customers and communities and deliver on their commitments. As the Joint Applicants have expanded their respective businesses over the years, their commitment to customers and the communities they serve has remained unchanged. That commitment continues today and will continue into the future.

Continued Local Presence. Consistent with their shared mission and values, the Joint Applicants believe in local governance and community presence. Just as WSCK today utilizes local employees and facilities to deliver water utility service to their customers, after the Proposed Transaction closes, WSCK will continue to rely on these employees and

³⁵ Direct Testimony of Steven Lubertozi at Line 266: Direct Testimony of Justin Kersey at Lines 149, 167.

³⁶ Direct Testimony of Steven Lubertozi at Line 281.

³⁷ Direct Testimony of Steven Lubertozi at Line 266 Direct Testimony of Justin Kersey at Line 167.

³⁸ Direct Testimony of Steven Lubertozi at Lines 271, 289.

³⁹ *Id.* at Line 334.

⁴⁰ Application at ¶ 30.

facilities to provide service to their customers. After the Proposed Transaction is completed, WSCK will continue to actively support and maintain a presence in the communities it serves. In addition, Corix US and SWMAC have committed to refrain from any involuntary reductions in force related to the combination for 12 months after the Proposed Transaction closes. This commitment to ensuring continuity of service and support for its employees recognizes WSCK's value as a steward of a precious resource in the communities it serves.

Financial, Technical, and Managerial Expertise. As described above, the Joint Applicants – separately and combined – have the financial, technical, and managerial expertise to own and operate WSCK. This further supports the fact that the Proposed Transaction is consistent with the public interest.

Benefits to Customers. As noted above, the combined company's financial resources, increased scale, and enhanced financial foundation will benefit customers in Kentucky by enabling significant, long-term investments needed to continue providing best-in-class water services. These investments, together with the sharing of prudent practices and operating expertise of both companies, will benefit customers through the continued safe, reliable, and sustainable delivery of critical water services and high-quality customer service. The combination will create a more diverse group of employees with more collective knowledge and expertise in providing quality water services, which will be shared throughout the combined company, including the employees assigned to Kentucky.

In addition, the combination is expected to produce financial benefits, such as reductions in costs of board governance, senior executives, and audits, which will benefit customers. The combination also is expected to produce longer term financial benefits as the integration of CII's and SWMAC's water and wastewater businesses occurs methodically and systematically over time.

Impact on Rates. The combination will have no immediate impact on WSCK's rates. As mentioned above, as financial benefits from the combination are achieved over time, the Joint Applicants believe that the combination may lead to lower costs and thereby help WSCK keep its water utility rates lower than they otherwise would have been without the combination. In short, customers will realize the benefits of the Proposed

Transaction over time when the combined company's cost structure is reflected in WSCK's revenue requirement.

Impact on Commission Regulation of WSCK. The combination will have no impact on the Commission's continuing regulation of WSCK as a regulated water utility in Kentucky. WSCK will remain a public utility subject to regulation by the Commission pursuant to the Kentucky Public Utility Act and the Commission's regulations.⁴¹

The Proposed Transaction offers numerous benefits to WSCK and its customers. In addition, it presents no adverse impacts to WSCK, its customers, its employees or the Commonwealth of Kentucky. The Joint Applicants expect that the combined expertise of Corix US and SWMAC will better serve WSCK, its customers, and the Commonwealth of Kentucky and improve the safety, reliability, and quality of WSCK's service. 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 various functions, which may result in cost savings that accrue over time, net of costs to achieve such savings.⁴² The Joint Applicants acknowledge that costs and benefits associated with integration will be addressed in future ratemaking proceedings.

Further supporting that the Proposed Transaction is consistent with the public interest, the Joint Applicants make the following commitments:⁴³

- 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.

⁴¹ *Id.*

⁴² See Direct Testimony of Steven Lubertozi at Line 289.

⁴³ Application at ¶ 32; Direct Testimony of Brian Bahr at Line 155.

- 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 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.
- 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.
- k) Within 60 days after the Proposed Transaction closes, WSCK agrees to provide to the Commission the journal entries that reflect the impact of the transfer/merger on its books and records, if there are any such entries.⁴⁴

These commitments, along with the benefits of the combined company articulated above, demonstrate that the Proposed Transaction is in the public interest. Specifically, the Joint

⁴⁴ See Response to Commission Staff's Initial Request for Information, Item 14.

Applicants have shown that the proposed transfer will not adversely affect the existing level of utility service or rates. In addition, the Joint Applicants have demonstrated how the Proposed Transaction will likely benefit WSCK customers over time through WSCK's inclusion in a larger, stronger water and wastewater company.

VI. Conclusion

As described above, the Proposed Transaction brings together two like-minded water and wastewater businesses that share a common mission, vision, and values. The combined company will have additional scale and be well-positioned to make the long-term investments needed to collect and dispose of wastewater and deliver water safely, reliably and sustainably to customers in Kentucky.

The record of this case demonstrates that the combined company has the “financial, technical, and managerial abilities to provide reasonable service” and the Proposed Transaction is “in accordance with law, for a proper purpose, and is consistent with the public interest.” Accordingly, pursuant to KRS 278.020(6) and (7), the Commission should approve the indirect transfer of control of WSCK.

Respectfully Submitted,

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